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RESEARCH STUDIES of the STATE COLLEGE OF WASHINGTON

VOLUME XIII

JUNE, 1945

NUMBER 2

BLUEPRINT OF THE NAZI UNDERGROUND— PAST AND FUTURE SUBVERSIVE ACTIVITIES

Robert M. W. Kempner

INTRODUCTION

The case of the Weimar Republic is the classical example of the overthrow of a democratic government by the misuse of its constitutionally guaranteed civil liberties and institutions. This study shows the *modus operandi* of the National Socialist German Workers Party (NSDAP) and its military organization by the abuse of the freedoms of person, speech, press, assembly, and political parties as revolutionary tools.

This political phenomenon was studied by the writer in Germany while he was serving under the Weimar Republic as disciplinary judge and as superior government counselor and legal adviser of the Police Division of the Prussian Ministry of the Interior. He followed up these tactics during the period of the Hitler regime from 1933 to 1945, when he had an opportunity to observe the application of similar techniques in France and the United States.

The result of his observations and research are contained in this study, composed of hitherto-unknown confidential documents which have been translated, annotated, and edited. The originals were brought out of Germany by the writer under personal risk,¹ reaching the United States in 1940. Probably no other copies are available.

The writer hopes that this study will be of interest to historians, political scientists, and administrators of occupied Germany and also be of value in the prosecution of war criminals. Through the proper translation of the documents, the writer tried to establish a standard terminology of German expressions. A list of important dates in the development of the National Socialist Party and translations of the pertinent sections of German criminal law is added.

¹ The writer is deeply indebted to Mr. Carl Chandler Adair for his translation of these documents and to Miss Ethel Frey for her assistance in editing the material. The study could not have been completed without their untiring assistance. He is indebted also to those persons who were helpful to him in bringing the documents from Germany to Switzerland.

The danger of the Hitler movement was recognized by responsible law enforcement officers in Germany long before 1930. Even back in 1924 the Bavarian Police Administration emphasized the immediate threat to the existence of the State. This is revealed in the almost prophetic parole report concerning Hitler made by the Bavarian Secret Police; this report is published as Document A of this study. It requested that Hitler should serve his full five-year term for high treason, or be deported as an undesirable alien for being a constant danger to the State. This official suggestion, however, was sabotaged by friends of the Nazis within the Bavarian Administration of Justice—among them the Minister Franz Guertner, who was appointed as Reich Minister of Justice in 1933.

The next move to avert the danger of the National Socialists by means of law enforcement was made by the Police Division of the Prussian Ministry of the Interior in 1930. The Ministry ordered a thorough investigation of the Nazi Party and its officers, in order to ascertain whether the Party violated the statutes on high treason, sedition, and conspiracy, and other provisions of German criminal law. The result of the investigations made by the secret services of Prussia, Bavaria, and Hesse is a confidential report of the Prussian Secret Police—which was supervised by the Ministry of the Interior—on the treasonable and conspirative character of the Nazi Party, written in August, 1930 (that is, two and a half years before the Nazis acceded to power). This report is the principal document of this study (Document B). It shows in detail the techniques of the Nazis in their misuse of the constitutionally guaranteed freedoms and the democratic institutions as tools for the final abolition of these freedoms. It also reveals their subversive methods in undermining and infiltrating the State apparatus, especially the army and the police. Details of these methods are presented also in various court decisions which are part of this study (Documents D1, D2, and D3).

The legal analysis of these Nazi techniques by the Ministry of the Interior (the present writer was at that time the responsible legal counsel) characterized the Nazi activities—allegedly performed within the boundaries of civil rights—as treasonable acts punishable according to the German Criminal Code. The Nazi Party itself, camouflaged as a parliamentary party, was analyzed as a treasonable organization.

This report on the treasonable nature of the Nazi organizations was submitted to the Oberreichsanwalt (Reich Attorney General),

Karl August Werner, and to other agencies, as basic material for the prosecution of the Party and its officers. Werner's act of sabotage in deliberately refusing to enforce the law is disclosed in correspondence designated herein as Document C. It consists of letters between the Oberreichsanwalt and the author, who used a pen name because of his official position as legal adviser of the Prussian government. This correspondence was terminated by the final announcement of the Oberreichsanwalt that he would not prosecute the Nazi Party and its officers for high treason and secret conspiracy. The result of this surrender of the democratic duty for law enforcement was that a criminal gang which endangered the freedom of all peace-loving countries came to power.

DOCUMENT A. A POLICE RECOMMENDATION OF 1924 TO
DEPORT HITLER

Document A is a report made by the Bavarian Secret Police to the Bavarian State Ministry of the Interior on September 22, 1924, recommending the deportation of Adolf Hitler.¹

On April 1, 1924, the People's Court of Munich had sentenced Adolf Hitler to five years' confinement in a fortress for high treason. However, the court ruled that Adolf Hitler, Friedrich Weber, and Hermann Kriebel, who had been in prison since November 9, 1923, be placed on parole after serving six more months.

This unusual ruling caused the State Police Administration at Munich (Polizeidirektion Muenchen), in charge of internal security in Bavaria, to protest strongly against the planned parole measures and to request Hitler's deportation should the parole unexpectedly be granted. These suggestions were made in two confidential reports of May 8 and September 22, 1924, addressed to the Bavarian State Ministry of the Interior, which was the supervisory agency of the State Police.

As a result of these reports, the Bavarian State Attorney filed formal complaints protesting against the parole ruling. However, the Bavarian Minister of Justice, Franz Guertner, intervened and ordered the withdrawal of these complaints. Consequently, the court's ruling finally became effective on December 20, 1924, at which time Hitler

¹ Note by Editorial Board: Not only has this document, edited by Doctor Kempner, been hitherto unpublished, but we believe even the fact that the Secret Police of Bavaria in 1924 recommended the deportation of Hitler is unknown to the public.

was released on parole from the Landsberg Fortress. Franz Guertner was later rewarded for his intervention by being made Reich Minister of Justice in the National Socialist Cabinet when Hitler came to power, where he served until his death in 1942.

The request to deport Hitler as submitted in the police reports was blocked by members of the Bavarian Cabinet who secretly favored Nazism or believed that they could do business with Hitler.

The confidential report of September 22, 1924, set forth below, is one of the most prophetic documents of modern history. Even in 1924 it recognized the threat of the Hitler movement to the existence of the German Republic.

STATE POLICE HEADQUARTERS, MUNICH

Munich, September 22, 1924

CONFIDENTIAL!

IV a.Hr.:2427

Report to the Bavarian State Ministry
of the Interior, Munich

Re: The conditional parole of ADOLF HITLER, writer;
Dr. FRIEDRICH WEBER, Veterinarian; and Lieutenant
Colonel (ret.) HERMANN KRIEBEL

The State Police department has already expressed its opinion in the report of May 8, 1924, to the effect that, in consideration of the temperament and energy with which Hitler pursues his political ambitions, it is to be definitely assumed that he would not give up these ambitions even after his release from imprisonment, but that he would remain a continual danger to the interior and exterior security of the State. Until the present time no reason has been found which could have led the police department to change the opinion rendered at that time.

In taking the stand that Hitler and Doctor Weber should not be released on October 1, 1924, the police department bases its decision on the following reasons: Even during the trial the three defendants repeatedly declared that, immediately upon their release, they would again promote the National Socialist movement and that they would continue to work in the same manner as before. Hitler, Kriebel, and Doctor Weber are now, as before, the leaders of the dissolved paramilitary troops and the spiritual leaders of their camouflaged front

organizations now in existence. Therefore a release of the three persons named, even on conditional parole, should not be considered. Should the court unexpectedly grant a parole, however, it would be necessary for the given reason to deport Hitler as the soul of the entire nationalistic and racial movement in order to avoid the immediate danger to the Bavarian State. In respect to this, I refer to my previous report of May 8, 1924, in which I fully explained the reasons for my request for Hitler's deportation from Bavaria.

The numerous riots instigated by his followers until the time of the Putsch are to be accredited to his influence. The moment he is set free Hitler will, because of his energy, again become the driving force of new serious public riots and a continual menace to the security of the State. Hitler will resume his political activities, and the hope of the nationalists and racists that he will succeed in removing the present dissension and discord among the officials of the para-military troops will be fulfilled. Hitler's influence upon all nationalistically inclined individuals—today he is more than ever the soul of the whole movement—will again carry the entire movement forward and will even engulf great masses of persons who are not foreign to his ranks and convert them to the idea of the National Socialist German Workers Party. In order to accomplish this, he will forcefully revive the mass assemblies, he will organize demonstrations like those prior to the Putsch, and we can surely expect outbreaks such as are still vivid in our memory. Hitler will again take up his relentless fight against the Government and will not abstain from violations of the law even if he is to face the revocation of his parole.

Therefore it is completely immaterial whether, as expressed, he will take up his residence in Berlin or in the Mecklenburgs upon his release or whether he will remain in Munich itself. . . .

/s/

The Director of the Bavarian State Police,
Munich.

DOCUMENT B. A POLICE REPORT OF 1930 REVEALING THE
NSDAP AS GUILTY OF TREASON¹

Document B is a confidential report made by the Police Division of the Prussian Ministry of the Interior in 1930 on the treasonable character of the National Socialist German Workers Party. It is based on Sections 86 and 129 of the German Criminal Code and Section 4, No. 1, of the Law for the Protection of the Republic (see Appendix A, pages 147-49 below). The contents are as follows:

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¹ Note by Editorial Board: This document, a confidential report concerning the Nazi Party before Adolf Hitler's appointment as Chancellor, was prepared in 1930 under the legal supervision of Mr. Kempner. At the present time it is highly interesting for its thorough treatment of the Nazi efforts to win over the Reichswehr and the police of the German states (pp. 96-130), and for its indication to what extent the Prussian Secret Police then realized the Nazi danger and how fully they appraised the new movement. For economy of space, some of the quotations have been omitted, and some others have been shortened.

The footnotes with asterisks were in the original document; those with numerals were added by Mr. Kempner in 1943 and slightly revised after the surrender of Germany. The italicized portions of the quotations were underlined in the original German (typed) text. As an aid to the reader, a list of "Important Dates in the Development of the National Socialist Party" has been added by Mr. Kempner (Appendix B, pp. 149-53 below).

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The text of Document B follows:

I. HISTORICAL DEVELOPMENT

The NSDAP (Nationalsozialistische Deutsche Arbeiterpartei—National Socialist German Workers Party) was founded in Munich after the Soviet dictatorship (Raetediktatur) had been abolished. Adolf Hitler, a draftsman who had come from Vienna in 1912, his mind full of anti-Semitic, pan-Germanic, and anti-Socialistic ideas, soon began to play a leading part in the new organization. The Party first appeared before the public on February 25, 1920, in a mass meeting in the Munich Hofbraeuhaus, where Hitler explained the program of the Party as based upon twenty-five theses. It has adhered to this program without change to the present day. On July 29, 1921, Hitler was elected the leader of the Party. Even at that time, in addition to the Party organization, the so-called Storm Troops were established as uniformed fighting units of military character; they were destined to support and promote the so-called National Revolution, proclaimed by Hitler in Munich on November 8, 1923.² This undertaking failed. Hitler was sentenced to five years' confinement in a

² November 8-9, 1923: Hitler's Putsch in the Buergerbraeu-Keller, Munich (see Document A and Appendix B).

fortress³ for high treason; furthermore, the Party was suppressed in Bayaria, after other states had taken similar action.

In December of 1924, Hitler was released on parole⁴ and soon afterwards shared in a general amnesty. Then the Party was reorganized, and it soon spread over the whole Reich as a result of extensive organizing and propagandizing activities. The basic program of the Party proclaimed by Hitler on February 24, 1920, was retained unchanged and also became the program of the National Socialist German Workers Association, which was founded in Munich on May 22, 1926, and was registered there with the registrar of associations on June 30, 1926. Although the Party as such does not possess the legal form of a judicial body,⁵ this association, evidently for tactical reasons, serves as the means of acquiring privileges and assuming responsibilities in the sight of the law. In reality, the Party is identical with the Association, inasmuch as admission to Party membership automatically means membership in the Association (Article 3 of the Statutes); the Party and Association are separated for formal reasons only.

II. CHARACTER AND PURPOSE OF THE NSDAP

A. The Party as an Organization

The political parties of Germany, although more closely knit than the French and the British were, are in general relatively loose organizations. Membership usually signifies only that one agrees basically with the principles for which the party stands; it is not necessary that the party member approve all of them. Membership indicates the political convictions of the individual, but his obligation to activity exhausts itself mainly through the payment of his party dues. As a rule, the acquisition of membership also indicates the willingness of the member to promote the aims of the party by voting for the party candidates in elections and plebiscites. The larger German parties expect no more active work on the part of their members, and even less do they look for constant readiness to perform duties for the party. Much as they may desire that their members should not restrict themselves to such a passive form of membership, active work for the party is never a *conditio sine qua non*. Ordinarily the members of the

³ Landsberg am Lech, Bavaria, together with Rudolf Hess and other co-conspirators.

⁴ See Document A and Appendix B.

⁵ By the Law Securing the Unity of Party and State of December 1, 1933, the NSDAP became a corporate public body and part of the governmental structure of the Reich.

German parties in their relations to one another feel more or less as individuals and act accordingly; at any rate they do not acknowledge for themselves unconditional submission to the party machine or unquestioning obedience to the uniform will of the party. Usually there are no close ties between the members; they are held together only by the fact that they belong to the same party.

The NSDAP differs fundamentally from the traditional pattern of German parties. Though it may call itself a party and exercise functions as do other parties, it does not stop there. It binds its members much more closely, not only in regard to shaping their decisions at elections and plebiscites, but also in all spheres of life. From this the Party derives its double character as a political party and as a political bund.

1. OFFICIAL PARTY STATEMENTS AND STATUTES

Even in his book, *Mein Kampf* (2nd German Edition, 1930, p. 651), Hitler states quite explicitly that the Party recognizes as members only those who will work actively for the movement, that there is no such thing as passive membership, and that, therefore, the acquisition of Party membership is identical with the obligation to constant active work for the objectives of the Party:⁶

A follower of a movement is one who agrees with its aims, *a member is one who fights for these aims.*

Accord is based only on the recognition of the aims, *membership on the courage to stand up for them and to spread them.*

Propaganda must, therefore, constantly endeavor to win new followers for an idea, while the *organization must take great care that from among the followers only the most valuable ones are made members.*

Hence it follows that the number of followers cannot be too large but that *the number of members may more easily be too large than too small.*

These are not mere personal statements of Hitler which do not affect the activities of the Party, but directives which are binding for the Party and which are constantly being used in its actual work. They have received a form and meaning in the Statutes of the Party and its organization.

Article 2 of the Statutes of the National Socialist German Workers Association reads as follows:

The purpose of the Association is to bind together all honest working groups of our people, regardless of whether they be physical or intellectual workers, so

⁶ Similar principles can be found in Bunds and Leagues organized by the Nazis in foreign countries.

that they with united effort may create the conditions necessary to win their political freedom and their economic independence.

We can understand what is meant by this "united effort" from the explanations of Gottfried Feder,⁷ the authoritative interpreter of the National Socialist program, given in his booklet "The Program of the NSDAP and Its Basic World Philosophy" (Booklet No. 1 of the *Nationalsozialistische Bibliothek*, 1930).⁸ On page 7 of this brochure we read:

Yes, fighters! Not "party members" of some political party which pursues any political objective or which tries to fulfill a small part of the promises made at election time by scheming political bartering.

Yes! Every National Socialist must be a fighter, a fighter for an idea, that is, in German "ein Hochziel," a high ideal, which is worth fighting for. "To fight" means more than "to endeavor," "to try to do something," "to acquire by long sitting," "to obtain by underhand means," "to barter" or "to succeed in a round-about way." . . .

To fight means to become active to the point of sacrificing one's self and one's personal interests, to dedicate one's self with all his abilities in all earnestness, and if necessary to sacrifice one's own life.

An article in the *Voelkischer Beobachter*,⁹ No. 129 of (June 1-2, 1930), entitled "Abschied vom Buerkertum" (Departure from Bourgeoisie), very significantly states:

*We renounce all bandwagon followers. He who joins our ranks must burn his bridges behind him—a hundred percenter or nothing.*¹⁰

In the spring of 1930 J. Berchtold¹¹ in the *Nationalsozialistische Monatshefte*,¹² No. 1, page 34, writes the following on the National Socialist Movement:

Figures in and of themselves have no significance. They attain value and meaning only when they can be used as the expression of spirit, of struggle, or of sacrificial courage. And this is truer in the National Socialist German Workers Party than anywhere else, for it is interested only in militant personalities, and therefore has only activists as members.

Article 2 of the Statutes is similarly interpreted in the pamphlet *Organisationssystem des Gaues Gross-Berlin*, pages 33-34:

⁷ Gottfried Feder became Under-Secretary in Hitler's Ministry of Economics, but fell into disgrace some years later. He died in 1942.

⁸ Official series of pamphlets of the Nazi Party.

⁹ The *Voelkischer Beobachter* became the official newspaper of the Nazi Party in 1920. Edited in Munich and Berlin.

¹⁰ Of particular importance for the setup of an underground organization.

¹¹ Josef Berchtold, born March 6, 1897, participated in the Putsch of November, 1923.

¹² Official magazine of the NSDAP, founded in 1930.

The NSDAP is fighting for a new system of social conditions in the German Reich. Article 2 of the Statutes contains among other things the following statements to this effect (the following quotation follows Article 2 quoted above): "From this we can draw the conclusion that every fellow countryman who joins the NSDAP is duty bound 'in common effort' to do all the party work necessary to reach the goal set by the Statutes. Hence there are no so-called 'passive members' in the NSDAP; the Party is the sole workers' association and includes all Party comrades."

From this we may conclude not only that the NSDAP is a spiritual group but in addition that the joining of this Party carries with it the obligation to support its purposes actively.

2. ORGANIZATIONAL STRUCTURE AND PHILOSOPHY

The organization of the NSDAP conforms to its functions. It is so closely knit that down to the last member the Party constitutes an obedient tool in the hands of its leader. At the head of the Party stands the Party Directorate, which consists of the chairman, the secretary, the treasurer, the chairmen of the various committees, as provided by the Statutes, and the executive secretary of the central headquarters.¹³ According to Section 6 of the Statutes, the main responsibility for the guidance of the Party is vested in the chairman. This provision is further explained at the end of this section with the statement:

As the responsible leadership of the association lies in the hands of the chairman, he must be regarded as superior to the officers. He is *responsible only to the General Assembly*.

According to its Statutes the Party is divided into Gau territories,¹⁴ whose leaders are appointed by the Reich Directorate—that is, by Adolf Hitler. This Directorate generally deals only with the local group and the Gau bureaus. Exceptions exist only for Bavaria, which as a Gau contains nine Gau-districts, and for the electoral districts of Duesseldorf, East and West, each of which forms a district directly responsible to the Reich Directorate. These are called Districts Essen and Bergisch-Land/Niederrhein, respectively. The division of the Gaus into districts, and of the local groups into sections and block cells varies. But in harmony with the whole structure of the Party, the

¹³ The number of the members of the Party Directorate was later enlarged by other officers, called Reichsleiter.

¹⁴ The area of a Gau frequently corresponds to the area of German States or Prussian Provinces. Originally the term Gau was used only for administrative districts of the Party; later, however, it was introduced into the State administration, e.g., Gau Sudetenland, Oberdonau, Tyrol, etc. The head of the Gau is the Gauleiter (Gau leader).

organization is so completely streamlined and hierarchical that it guarantees complete control of each Party member.¹⁵

In accordance with the structure of the organization, authoritarian forms govern all activities of the NSDAP. Adolf Hitler decides fundamental questions by issuing so-called official Party proclamations.¹⁶ Important measures are proclaimed by orders. "Richtlinien fuer die Aufstellung von Sportabteilungen" (Directives for the Establishment of Sport Divisions) issued for Berlin by the former Gau leader, Doctor Schlange, may serve as one of the many possible examples for this type of party activity. They begin with the sentence:

Every Local Group *must establish* a sport division at once and appoint a suitable Party member as the leader.

Point 3 contains the sentence:

The leader of the Sport Division is appointed by myself and is directly under my supervision.

The same observation can be made in all Gaus of the Party at all times. In a report directed to the National Command of the "Stahlhelm"¹⁷ regarding the plebiscite,¹⁸ Hitler calls himself "the leader of a highly centralized party, the National Socialist movement." In a circular of the Gauleitung Rheinland (Rhineland Gau Command), dated November 20, 1929, it is stated:

The final decision—we all should be quite clear about this—is never made by the masses of voters but by a small minority, closely knit and well disciplined, which is put into action at the right moment.

In the meeting of the NSDAP of July 1, 1930, in the Berlin Sportpalast, held on the occasion of the evacuation of the Rhineland, the Westphalian Gau leader, Wagner,¹⁹ said, according to the *Voelkischer Beobachter*, No. 159 (July 6-7, 1930):

The hour of our fulfillment moves steadily nearer, and therefore we now need a *hard iron discipline, which will press to the wall everyone who does not adapt himself.*

¹⁵ Similar principles are in force for Nazi Bunds or Leagues organized in foreign countries.

¹⁶ Expression of the *Fuehrerprinzip*.

¹⁷ Stahlhelm (Steelhelmet), Bund of Front Soldiers, founded November, 1918, by Franz Seldte—a nationalistic organization which subordinated itself to the Nazis in 1933, but was finally dissolved by Hitler in 1935.

¹⁸ Plebiscite sponsored by the Stahlhelm on the rejection of the Young Plan, proposed by Owen D. Young. This plebiscite was held in Germany on December 22, 1929, but only 13.8% voted in favor of the rejection of the plan.

¹⁹ Josef Wagner, born January 12, 1899, in Alsace-Lorraine. Member of the German Reichstag since 1928 and present Reich Price Commissioner. Formerly Gau leader of Westphalia and later Oberpraesident (Provincial Governor) and Gau leader of Silesia.

An article called "Reform oder Revolution" (Reform or Revolution) by the Silesian Gau leader Brueckner²⁰ in the 33rd of the *Nationalsozialistische Briefe* (February 1, 1927), says:

A disciplined organization, without which there is no striking power, must be used together with vitally necessary increased propaganda as plow and seed in cultivating the field.

According to *Der Angriff*, No. 5, July 3, 1930, at the General Assembly of the Berlin Gau of the NSDAP on July 1, 1930, Berlin Gau Leader Goebbels²¹ characterized "discipline as the supreme law of the organization" and emphatically declared: "He who does not fall in line will be forced out."

In No. 54 (July 6, 1930) of Doctor Goebbels' newspaper, *Der Angriff*, the following quotation appears in the column "Political Diary":

Men who desire only to liberate Germany from within as well as from without rally to it [i.e., the NSDAP]. This requires the strictest discipline on the part of every person as well as *sense of responsibility and wholehearted submissiveness*. Those who cannot become acquiescent should not join our ranks, or those already in should leave.

The same issue of *Der Angriff*, No. 54 (July 6, 1930), gives the following enlightening explanation about the question of the discipline of Party members:

They to whom this program does not appeal need not join our ranks. We request no one to do so. Of course, our philosophy affords ample opportunity for free intellectual development, and even in problems of tactics there may often be wide variance of opinion. However, at a certain point discussion must end. That is where theory ends and action begins in order to make decisions. *Once the decision is made, then the entire organization stands united in support of it, regardless of whether one or another has a divergent opinion as to the various strategies. That is the most primitive law of discipline.*

It is also quite possible that, among the many decisions made, one may be wrong. But in such cases there is all the greater obligation for the entire organization, from the highest leader to the lowest Party comrade, to stand together in solid resolution. For only in this way can the Party rise above the consequences

²⁰ Helmut Brueckner became Oberpraesident (Provincial Governor) of Silesia when Hitler came to power, but fell into disgrace some years later. His present whereabouts is unknown.

²¹ Paul Josef Goebbels, born October 29, 1897, in Rheydt, Rhineland—Reich Propaganda Chief of the Nazi Party; Gau leader of Berlin; Editor-in-Chief of the newspaper *Der Angriff*; chief columnist of the official magazine *Das Reich*, where the Propaganda Ministry publishes its propaganda; since 1933 Reich Minister of Public Enlightenment and Propaganda. On July 20, 1944, he became Reich Plenipotentiary for All-out Mobilization. Disappeared after the defeat—probably is dead.

of a wrong decision and ultimately convert it to its own benefit through iron discipline.

The affiliated organizations²² of the NSDAP, which reflect the same setup and include every member, do not permit mere passive participation but demand the most energetic activity for the Party. Thus the Nationalsozialistische Lehrerbund (National Socialist Teachers Bund), which was founded in Hof in April, 1929, describes as its aims:

To combine an activist group of teaching personalities who will lead an unrestricted, relentless fight against all forces which seek to submerge the future of our people, the German youth, in the swamp of internationalism, pacifism, and democracy.

A Berlin high school junior wrote as follows in the April, 1930, issue of *Aufmarsch*, the official organ of the Nationalsozialistische Schuelerbuende (National Socialist High School Students Bunds), about the Hitler Youth and the Student Bunds:

Both are great melting pots for the young *activists* who stream to us from all sources. . . . The Student Bund is the "fighting troop" in the schools; the Hitler Youth as the more inclusive organization has the duty of training young workers and students, that is, the youth of the bourgeoisie and the youth of the proletariat, for the battle of the future, to make German socialists out of middle class people and German nationalists out of proletarians.

3. EXAMPLE OF THE BERLIN GAU ORGANIZATION

As an example of the centralized organization of the NSDAP, which embraces every individual member by demanding active support of Party aims and constant willingness to do Party work, the *organization of the Greater Berlin Gau* should be mentioned here. This organization was described in a collection of circulars published by the Gau Command of Greater Berlin in October, 1929, under the title "Organisationssystem des Gaues Gross-Berlin."

In it was reprinted the plan for the organization of Block Cells, which was put into effect on July 15, 1928. This plan, as stated in the following sentences, emphasizes the revolutionary character of the Party, which requires a closely knit, uniform organization extending down to the last member, who unconditionally obeys the will of the political "Fuehrer:"

²² All organizations which have introduced the Fuehrer principle or are administered by a confidential representative of the Party must be regarded as affiliated, regardless of whether the affiliation is a general result of the totalitarian practice of the Nazi State or is established in a special decree.

As a revolutionary party the NSDAP must have an organizational structure which permits an expeditious, certain, and permanent execution of the political will of the "Fuehrer" (p. 5).

For this purpose the Berlin Gau is divided into Districts which in turn are subdivided into Cells, usually having five members. The chief of the Cell is appointed by the District leader and is responsible to the Block leader of the District, who is also appointed by the leader of the District. The extremely close relation of this leaders' group is evident in the following words:

The direct line of command of that leaders' group which actually commands the District extends from the Cell leader up to the District leader. It resembles a hierarchy, which, *complete in itself*, unerringly adheres to its own iron laws—achievement and responsibility. This group of leaders is the iron band enclosing the District (p. 80).²²

This close relationship exists not only among the group of leaders and those within the ranks of the Party activists, but also among all Party members, as is stated some lines later:

Only an organic grouping of all Party comrades, especially of the leaders of the Cells who are the nucleus of the District, guarantees the success of a District Command which has definite goals.

This is expressed even more clearly in statements regarding the execution of the plan for the organization of cells:

The "revolutionary party" as such is obligated, inasmuch as it is a *collecting center not of mere followers but of true fighters for the National Socialist philosophy*, not only to mold its members into an active, powerful organization, but, what is more important, to develop from among the members the greatest possible number of *personalities*; that is, Party members who are able actually to think and act for themselves. . . . It must develop understanding, perseverance, stamina, and the ability of the member to grasp and promote new principles in order to *pull him out of the sphere of the emotional revolutionist* (usually the result of mob psychosis, etc.) and make him into a *consciously fanaticized fighter* (pp. 8, 10, 11).

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The most elementary duty of the Section leaders is to develop the *greatest possible ability in action and the most complete spiritual unification of their subordinate members* (p. 14).

The provision that individual Block Cells contain no more than five men serves the purpose of achieving full participation of all Party members (p. 12). In order to have constant control over the members of his Block Cell, the leader of the Block Cell is required to keep a

²² This cell system is the logical system to be adopted by the remnants of the Party which will go underground when the Party itself is outlawed.

control book, which must contain columns for recording attendance at discussion evenings and other meetings. The same purpose is served by the provision (p. 30) that all members of the Block Cell units must attend public discussion evenings.

Because of its entire structure and purpose, the Party can accept active members only.²⁴ Therefore, through an organizational directive of December 30, 1929, the Gauleitung Berlin (Berlin Gau Command) resorted to a blanket non-admittance of new members during the months of January and February, 1930. This was also done in the Rhineland. During these months the Party was given the task of expelling all undesirable elements. As "undesirable" the following persons are expressly cited:

All Party members who emphatically refuse to do Party work, unless it has been definitely established that they cannot perform the work for reasons of health or profession (other reasons are not valid); all Party members who, it may be assumed, will be of no practical advantage to the Party in the future (those who are slow in paying dues, who fail to attend meetings, or who have weak and cowardly characters, as well as those who are opportunists, rowdies, drunkards, etc.).

4. LEGAL ANALYSIS

Therefore, as can be seen from the above, the NSDAP is not a loose alliance of persons who are bound only by the uniformity of their conviction, by the payment of dues, etc., or individuals who, without any knowledge of one another, pursue identical aims by voting for the same candidate.* It is a closely knit organization intended to endure for a long time. It is characterized by the subordination of the individual member to Party orders which represent the wishes of the whole. Because of its organization it demands the active participation of every member, the striving for close Party co-operation among all Party members and the closest relationship between them, and is not interested merely in an abstract concept of party.

We, therefore, have the characteristics of an "organization" as defined in Sections 128 and 129 of the StGB (Strafgesetzbuch—Ger-

* Compare Haentzschel-Schoenner, *Gesetz zum Schutze der Republik* (Law for the Protection of the Republic), 1930, note 4 to Sec. 4 (abbreviated Haentzschel-Schoenner); Cohn-Schaefer-Wichards, *Law for the Protection of the Republic*, 1930, p. 52 (abbreviated Cohn-Schaefer-Wichards). Also see Appendix A.

²⁴ The character of the membership body of the Party as a motor within the machinery of the Third Reich was maintained until the surrender.

man Criminal Code)²⁵ as established by repeated court decisions* and in the legal literature (compare the decision of the "Staatsgerichtshof zum Schutze der Republik" [State Tribunal for the Protection of the Republic] of October 25, 1924 - $\frac{\text{St.R.St. 54/1924}}{12 \text{ J. 190/22}}$ - in the criminal case against Hoffman *et al.*)

B. The Party as an Organization Hostile to the State as Defined in Section 129 StGB

1. WILL TO ILLEGALITY

The NSDAP will not submit to any eventual measures against it, especially those prohibiting the Party or some of its institutions. This is clearly expressed in No. 35 (January 7, 1930) of the *Nationalsozialisten Presse Korrespondenz*, an official publication of the National Socialist faction of the Reichstag:

... and therefore we wish to say that the Social Democrats and other party politicians would soon learn just how capable the NSDAP is of bringing about a national revolution *in spite of any prohibitive decree. We are not afraid to engage in political activities though we be condemned as illegal.* Today we have sufficient men from the ranks of the Communist Party and the Social Democratic Party who have been through an effective school of experience in regard to illegal political maneuvering. Mr. Braun²⁶ and accomplices will quickly find this out if they want to.

The same ideas and plans are repeatedly expressed by leading National Socialists. Thus, Gau leader and Reichstag deputy Wagner-Bochum declared in a public meeting of the NSDAP in Hamm (Westphalia) on June 28, 1930:

Our Storm Troops live and shall live forever. Should the Party be prohibited, then we shall *continue to work illegally.*

This same Wagner declared in a National Socialist assembly in the Schiesswerdersaal in Breslau on July 10, 1930:

We shall allow no one to prevent us from continuing the struggle for power in Germany. Up to this time the struggle has been legal, and we do not wish to deviate therefrom. But *should you force us, then we shall pursue this struggle*

* Decisions of the Reichsgericht in Strafsachen (RGST.) 24,328; 17,193; the German Criminal Code 1927, note 2 to Sec. 128 (abbreviated Olshausen); Cohn-Schaefer-Wichards, pp. 7 and 52; German Criminal Code annotated by Ebermayer, Lobe, and Rosenberg, 1929, note 2 to Sec. 128 German Criminal Code (abbreviated Leipz. K.); Haentzschel-Schoenner, note 4 to Sec. 4.

²⁵ See Appendix A.

²⁶ Otto Braun, Prussian Prime Minister (1920-1933); Social Democratic member of the German Reichstag and the Prussian Legislative Assembly. Otto Braun is living as a refugee in Switzerland.

illegally. And then you shall certainly see! For there is one thing that is more important to us, a thousand times more important than a ministerial decree, a thousand times more important than a police administration: the obligation to do the utmost to influence the destiny of Germany. No one can divert us from this.

And on July 18, 1930, District Leader Schmidt declared in a meeting of the NSDAP in Hameln:

Should they endeavor to prohibit the Party, it shall be continued by illegal methods. You shall give them no peace.

The same idea was expressed by Supreme Storm Troop Commander von Pfeffer²⁷ to a subordinate officer in Cologne on November 28, 1928:

The comradeship of the SA units must therefore become such a solid structure that all police bans or other underhand methods will glance off its granite wall.

Likewise, Hitler proclaimed to the mass meeting in the Berlin Sportpalast on May 2, 1930, according to a report in the *Voelkischer Beobachter*, No. 107 (May 7, 1930):

Everywhere new forces are appearing of which no one was aware and which are now present and are arousing our people. *And hundreds of thousands are just as ready to obey as they are able to command. We are courageously and ruthlessly building our new State.* None of the men in our ranks wants to vote, but actually they want one man to give the orders. *We are also prepared to declare: "We shall do what we want; we have the courage to face any power."*

2. LEGAL ANALYSIS

Accordingly, there can be no reasonable doubt that the leaders of the NSDAP were fully aware that by pursuing their plans they would incur the opposition of the Republican Government, and they were determined, by illegal methods, to overcome and emasculate the counter measures of the authorities, such as police measures regarding organizations and meetings.

According to Section 129, StGB,²⁸ it is a punishable offense to participate in an organization whose purposes or activities are to obstruct and emasculate measures of the administration by illegal methods. These elements are present in this case. According to court rulings and literature,* all methods which violate any law, even if this

* RGSt. 19, 99; Leipzig K., note 3 to Sec. 129; Olshausen, note 2 a.a.o.

²⁷ Franz von Pfeffer, born on February 19, 1888, in Duesseldorf, was Supreme SA Commander (Osaf) from 1926 to 1930. He participated in acts of sabotage against the occupational forces in the Ruhr Valley and in the fight against the Poles in Upper Silesia after World War I.

²⁸ See Appendix A.

law is not protected specifically by a threat of punishment, may be regarded as illegal.

The illegal methods, however, must have a purpose; they must serve to hinder or emasculate the measures of the administration or the fulfillment of the law. That is, there must be some kind of resistance to the authority of the State.* These elements are present in this case. The indicated illegality (that is, the disregard of the breaking up of an organization by the police) shall serve, through disobedience of these governmental measures, to assure the continued existence of the organization (then forbidden and illegal) in the interest of the common pursuance of its goals and plans, and to enable it to continue to work, in secret, on an organized basis.

The *measures of the administration* referred to in Section 129, StGB, are understood to include all measures of a general nature, as well as decrees which affect and individual in a special situation.** It is not necessary that the opposition or invalidation be directed against measures already enacted; rather, it is sufficient that they be directed against the measures planned in view of the danger threatening from the organization. The announcement of resistance to a ban of the NSDAP is an example of resistance to a measure planned but not yet enacted by the government; the NSDAP intends to oppose this measure by illegal methods. For the fulfillment of the provisions of Section 129, StGB, it is not necessary that the invalidation of *specific* measures already be contemplated.

The statements in question are not those of rank-and-file Party members, but involve the political conduct of those Party members who in actual fact and according to the statutes play a leading role in the Party; therefore it is not a question of personal views. Rather, attacks against decrees of the State described above are the *purpose and activity of the NSDAP*. The purpose is generally regarded as the goal toward which an organization strives, a motive which by itself or in conjunction with other motivating principles has occasioned the founding or continuance of the organization. This need not be the only purpose, nor the ultimate one. A decision in the controversy as to whether this purpose must be stated in the statutes or otherwise expressed, or whether the actions of an association are the decisive fac-

* RGSt. 16,294; 40,384; 54,103 as well as Haentzschel-Schoenner, note 3 to Sec. 4; Olshausen, note 2 to Sec. 129 and Leipzig K., note 3 to Sec. 129.

** Leipzig K., note 3 to Sec. 129, StGB.

tors, is not required here, as either the activities or the purpose is sufficient. Activity, however, is regarded as the recognizable aim of the organization which, though not openly expressed, is revealed in the operations of the organization.* Such an aim is evident here.

Accordingly, the NSDAP must be considered as an organization hostile to the State as defined in Section 129, StGB; anyone who is a participant in such an organization violates Section 129, StGB, and is subject to prosecution.

C. *The Party as an Organization Hostile to the Republic as Defined in Section 4, No. 1, of the Law for the Protection of the Republic.*

1. THE POLITICAL OBJECTIVE OF THE NSDAP

The political objective of the NSDAP has not as yet found a definite or clear-cut means of expression. From all statements it is evident that the Party not only visualizes its goal in the establishment of the National Socialist "Third Reich," but also is a pronounced enemy to the constitutional form of the German Reich and its States, developed under the Weimar Constitution. Adolf Hitler had already expressed this basically negative attitude as a program in his book, *Mein Kampf*:

Should one desire to transform the ideal conception of a "racio-nationalist" State into an actuality, then, independent of the existing powers of public life, one must seek for a new force which is willing and able to take up the fight for such an ideal. For this case does involve a fight, inasmuch as the *first task is not to create a "racio-nationalist" conception of State, but to do away with the present Jewish conception.* As so many times in history, the main difficulty lies not in forming the new order, but in *making room* for it.**

This negative attitude has remained the most prominent characteristic of the Party. The positive conception of the "racio-nationalist" philosophy of state, in which the basic principle is the complete negation of the parliamentary system, is only vaguely outlined by Hitler in the following words:

From the smallest local governments up to the Reich Cabinet, the "racio-nationalist" State has no representative body which decides by majority, but only advisory bodies which aid the elected leader; he apportions their share of work so that, as circumstances require, they, in turn, must assume complete responsibility in certain fields, exactly as must the leader himself or the head of a respective unit, on a larger scale.

* Cf. RGSt. 16,299, Leipzig K., note 2 to Sec. 129; Haentzschel-Schoenner, note 3 to Sec. 4; and Cohn-Schaefer-Wichards, pp. 54-55.

** Second ed. (1930), p. 504.

The "racio-nationalist" State, in principle, does not tolerate a situation in which advice or judgment in specialized fields—for example, in the field of economics—is asked of people who by virtue of their education and activity are unable to understand anything of the matter. *Therefore it completely divides its representative body into corporate political and professional chambers.*

In order to guarantee a beneficial co-operation between them, *they are always supervised by the elite of a special senate.*

Voting never takes place in any chamber or senate. They are working institutions and not voting machines. The individual member has advisory powers, but never the final word. *This is allotted exclusively to the chairman in charge.**

In full accord with the Fuehrer Hitler, the present Reich Propaganda Chief, Doctor Goebbels, shows that the National Socialist conception of the State is fundamentally different from the principles of the Weimar Constitution.²⁹ This statement is made in *Der Nazi-Sozi*, a propaganda booklet edited by publishers of the *Nationalsozialistische Briefe*, in which he draws the following picture of the structure of the State after the acquisition of power by the National Socialists:

The economic parliament of the National Socialist State will replace the "parliament of parties" of the democracies. This body will be elected by all the German working people in accordance with the common right of equal vote. *But in this election the people are not grouped according to parliamentary democratic parties,* but according to the larger occupational groupings (estates) within the national brotherhood. The occupational groups, completely organized, guarantee that every working German be given the right which he claims by virtue of his will, his accomplishments, and his responsibility within the State. The economic parliament handles only economic policies and not policies of the State.

The senate stands at its side. It is composed of 200 persons who are summoned by the dictator from all groups and classes of the people to guide the fate of the State. These 200 will represent the elite of all the people. They assist the government by word and deed. They are appointed for life. In the event of death, they elect a new member. The Chancellor is chosen from the senate. He carries the entire responsibility for the foreign as well as for the domestic policy of the Reich. He is prepared to give his life for this policy, if necessary. The Chancellor personally appoints his ministers and co-workers. He also assumes full responsibility for them, the natural result of which is that he can dismiss or appoint them at will.

It is no longer essentially important whether a president or a monarch stand at the head of this governmental system. The Chancellor is the decisive person, and we shall see that he is strong.

* Second ed. (1930), p. 501.

²⁹ The constitution of the German Republic as accepted by the National Assembly in Weimar on August 11, 1919. It was practically abolished by Reich President Paul von Hindenburg and Adolf Hitler through the decree of February 28, 1933, which abolished civil liberties, and through various other decrees (see Appendix B).

2. UNDERMINING OF THE REPUBLICAN FORM OF GOVERNMENT

In order to prepare the foundation for the creation of the State planned by the National Socialists, with its basic principles diametrically opposed to the republican form of the German government, the NSDAP wages the fight against the Weimar Constitution in the most acrimonious forms. A glance at the National Socialist press and visits to National Socialist meetings reveal that a campaign of the lowest insults and defamation is being carried on daily. Generally the term *Republic* is used only with an adjective aimed at and capable of defaming it in the eyes of the readers or the ears of the listeners.³⁰ Such is the situation in a proclamation made by Adolf Hitler, on New Year's as published in the January 1-2, 1928, issue of the *Voelkischer Beobachter*:

The domestic and foreign policies of this year constitute a serious accusation against the responsible statesmen and politicians of the *November Republic*.

The same effort to debase the Republican Constitution was made by Colonel Konstantin Hierl,³¹ one of the military experts of the NSDAP. On page 130 of Volume 3 of the *Nationalsozialistische Monatshefte*, he discusses the military problems under the title of "Deutscher Wehrgeist" (German Military Spirit). He speaks of the "Jewish infiltration into the German Republic"³² in which every year thousands of war invalids are driven to distraction and suicide.

Reichstag Deputy Dreher³³ expressed himself in a similarly derogatory manner in an NSDAP meeting in Stuttgart on September 11, 1929:

The German Republic, which one is not allowed to refer to as a "moneybag" republic, must be combated by all means possible.

³⁰ Similar techniques have been used by the Nazis against the republican governments of other countries—e.g., Austria, Czechoslovakia, and the United States.

³¹ Konstantin Hierl was born February 24, 1875, in Parsberg, Oldenburg. He became Commander-in-Chief of the Reich Labor Service in 1935, an auxiliary military organization. He holds the rank of a Reichsleiter in the Nazi Party hierarchy and that of a Cabinet member. Hierl, a captain in the Bavarian general staff during World War I, was a commander of the Free Corps before he became a colonel in the Reich Defense Ministry of the Weimar Republic. He resigned in 1924 and organized the National Socialist Labor Service Units for Hitler.

³² Similar techniques have been used by the Nazi propagandists in foreign countries.

³³ Wilhelm Dreher was born January 10, 1892, in Ay. He became Police Director in Ulm, Wuertemberg, after Hitler came to power. He is a Brigade Fuehrer in the SS Elite Guards.

An article in *Der Angriff*, commenting on the financial reform of the Reich under the title "Betrueger-Republik Fordert Opfer" (Chiseling Republic Demands Sacrifices), contains the following statement:

This State is doubly unjustified in demanding sacrifices from its citizens, for it is again its purpose to *defraud and cheat them*.

In the *Nazi-Sozi*,* Goebbels remarks:

There can hardly exist a worse form of government than our present so-called Republic. It is no Republic at all. It is an international rummage sale in which the soapbox auctioneer and the highest bidding Hebrews call themselves statesmen and commissars.

In an article entitled "Hinein in den Staat" (Into the State), published in *Der Angriff*, No. 17 (April 22, 1928), Doctor Goebbels also said:

One cannot be an enemy of the State if there is no State. Show me the State to which we are becoming dangerous. Do you mean this woeful creation? Yes, we are a danger to that. *This colony must be abolished in order to make room for the coming State.*

And in Breslau in April, 1929, Gregor Strasser³⁴ attacked the Republic and democracy with the following words:

The Republic, a democracy, is at present to blame for our misfortune. Among those who today are cabinet members, there is one general—the others are shirkers.

The Berlin edition of the *Voelkischer Beobachter* of August 28, 1930, pursues the same purpose when it reports the arrest of a National Socialist under the following headline: "Chained National Socialist Led through the Streets of the Republic."

The same attempt to defame the Republic is made in the *Voelkischer Beobachter* of March 14, 1930. Here the founders of the Republic—that is, those political groups which took up the reins of government in 1918, thus making it possible to reconstruct the State and also to create its new constitutional foundation—are depicted as criminals:

As the top organization of the coming Reich, we declare that we shall not rest or stop until the *November criminals*, together with the criminals of March 12, 1930, are sentenced by a *German State Tribunal*.

* Doctor Goebbels' *Der Nazi-Sozi*, published by *Nationalsozialistische Briefe*, first edition.

³⁴Gregor Strasser, once the No. 2 man of the Nazi Party, broke with Hitler in December, 1932, over tactical questions. He was murdered in Hitler's blood purge of June 30, 1934. His brother, Otto Strasser, who broke with Hitler in 1930, became leader of the so-called Black Front and claims to represent the real National Socialism. Otto Strasser is now living in Canada.

The same contention is expressed in a decree of the SA leader, First Lieutenant (ret.) von Fichte, issued in Kassel to his subordinate Storm Troop leaders on September 5, 1929:

It is ridiculously illogical to kill a man who has disclosed military information, while next to him in the highest seats of honor sit the gangsters who have betrayed an entire Reich and whose consciences are burdened with two million dead. They have millions of cripples upon their consciences, but they tranquilly continue to perpetrate their republican practices. It is foolish to do away with the small traitors in a State in which the government itself lets the administrative traitors go unpunished.

Characteristic also are the statements which endeavor to point out that the republican form of government in and of itself is perhaps not bad, but that in Germany it has taken on a form that must be rejected and combated by every good German. Thus, in an article entitled "Zur Befriedigung des Oeffentlichen Lebens" (Appeasement of Public Life), in *Der Angriff* of January 26, 1930, No. 8, Doctor Goebbels explains:

No one has serious objections to a republican form of government if it is a shield and protector of a truly German national brotherhood.

And further,

Who among you would not peacefully serve this Republic if it were a State of national honor and dignity, and if it had been germinated in resistance instead of in capitulation.

In the *Nationalsozialistische Briefe* of March 15, 1930, Karl O. Paetels writes:

Not a man shall go to the aid of this system in its difficulties! Every weakening of their system is a chance for us! What concern is it of ours if the common herd cries 'Bolshevism!' and fearfully trembles for the bric-a-brac on its shelves? This State is no concern of ours. Let it find its own protection. We are waiting for another day!

In pamphlet No. 23 of Volume 4, page 331, of the *Nationalsozialistische Briefe*, the desire to combat the republican system by undermining its principles is expressed in the following statements:

There was not one party or one newspaper that had any idea, much less recognized the fact, that in us the revolution was on the march, the revolution of the twentieth century which will bring about a fundamental and all-inclusive change in the entire pattern of life for this era, such as was accomplished by the great French Revolution. . . .

For National Socialism is this, and nothing else: it is the revolutionary fulfillment of the eternal law of the divine bi-polarity of the world; it is the revolutionary liquidation of the liberalism of 1789 in culture, state and economy (na-

tionalism, internationalism, democracy, and capitalism), through the revolutionary rebirth of conservatism in culture, state, and economy (racialist idea, nationalism, socialism)!

A revolution, then, against the present system!—Once and for all, this defines our political attitude . . . ; everything that can be utilized to prolong the status quo, which we believe to be in fatal confusion, will be violently opposed by us.

Frequent mention is made, for example, in the above-quoted article, of the "system" which must be opposed and eliminated; this epithet is chosen only for tactical reasons, as it serves to camouflage the object of attack. It definitely does not refer only to the application and interpretation of the individual provisions of the Constitution by the present government; rather, the fundamental principle of the parliamentary-democratic republican Constitution itself is attacked. He who evaluates the totality of the National Socialist attack in its many manifestations cannot fail to realize this, just as the readers and hearers of these expressions do not fail to realize the intended meaning, but recognize it for what it actually aspires to be: a fight against the parliamentary-democratic republican form of government itself.

In an essay, "Zehn Gebote Fuer Jeden SA-Mann" (*Ten Commandments for Every SA Man*), published by Doctor Goebbels in No. 24 of the *Nationalsozialistische Briefe* (September 15, 1926), the prescribed conduct is set forth:

If nothing else is possible, submit yourself to the State's power. But console yourself: our day of reckoning will come.

This is not only a challenge to resist the power of the State whenever possible; it is also an expression of the fact that, although National Socialism may for the moment be forced to yield to the power of the State, it knows itself, from the point of view of a higher justice, to be in the right.³⁵ Gau leader Hellmut Brueckner expresses this clearly in the 33rd issue of the *Nationalsozialistische Briefe* (February 1, 1927):

The rights of the State stand in opposition to the rights of the people.

Naturally, the fight is also directed against the essential components of the German Republic. In the *Nationalsozialistisches Jahrbuch* of 1925 (p. 167) in a treatise of Heinz Haake,³⁶ a member of the

³⁵ The use of such a tactic was one of the main commandments of the Nazi underground.

³⁶ Heinz Haake was born January 24, 1892, in Cologne. He joined the National Socialist Party in 1922 and from 1925 until 1928 was the only National Socialist member of the Prussian Legislative Assembly. He became an SA

Prussian Legislative Assembly, on "Parliamentarismus oder Diktatur?" (Parliamentarianism or Dictatorship?), we read:

Under a different form of government it will still be possible to control the great masses of the people who uphold the State, in order to lead them towards a unifying goal in times of necessity. The character of the parliament, however, not only obstructs this unifying leadership, but it also is responsible for the fact that there is flaming up in Germany a fight of all against all, and the individual against the individual for their daily bread. . . .

. . . so the first act of annihilation must be directed against the Jewish-democratic parliamentarianism.

In the *Nationalsozialistisches Jahrbuch* (National Socialist Yearbook) of 1927 (p. 124), the present Thuringian Minister of the Interior, Doctor Frick,³⁷ writes:

Our participation in the parliament does not indicate support, but an undermining of the parliamentary system; it does not indicate that we renounce our anti-parliamentarian attitude, but that we are fighting the enemy with his own weapons and are fighting for our National Socialist goals from the parliamentary platform. Our next goal still remains the conquest of the political power of the State; it is the prerequisite for the realization of our ideals. But for this, an intimate knowledge of the complicated mechanism of the modern State apparatus and its driving forces is especially necessary if one wishes to dominate them in the future. One best acquires this knowledge in parliament.

Gottfried Feder, member of the Reichstag, declares in Booklet No. 1 of the *Nationalsozialistische Bibliothek*

that the nuisance of the parliamentarian-democratic right to vote will be swept away.

Roth-Liedolsheim,³⁸ deputy to the Legislative Assembly, stated in several meetings held in November and December, 1929:

The parliamentary system is nothing more than a state-sanctioned nuisance and a Jewish racket. Do you know the difference between the parliamentarian system and the skin of a sausage? Both are fit only for a cat!

Brigade Fuehrer and chief of the Provincial Government (Landeshauptmann) of the Rhine Province.

³⁷ Wilhelm Frick, LL.D., born on March 12, 1877, in Alsenz, was Hitler's Reich Minister of the Interior from January 30, 1933, until August 24, 1943, when he became Reich Protector of the Bohemian-Moravian Protectorate. He has the Party rank of a Reichsleiter and became a member of the Reichstag in 1924. Frick participated in the Hitler Putsch of November, 1923, and was sentenced by the People's Court, Munich, to fifteen months' confinement in a fortress. He served his term together with Hitler in the Fortress of Landsberg, Bavaria. He was made Minister of the Interior in Thuringia in 1930 and thereby became the first National Socialist cabinet member of a State government in Germany.

³⁸ Albert Roth, born September 10, 1893, was a Reich Lecturer of the Party. In 1933 he became a member of Hitler's Reichstag and Division Chief in the Reich Food Authority.

Another technique of the fight against the Republic is employed by Wilhelm Weiss³⁹ in the previously mentioned pamphlet No. 3 of the *Nationalsozialistische Monatshefte*, on pages 131 ff., where he deals in detail with General Groener.⁴⁰ It can be deduced from the following statements (p. 134) that this scornful treatise is not aimed against the Reich Defense Minister personally, but against him as a representative of the democratic Republic, and therefore serves the purpose of undermining the republican form of government which appointed Groener as its Reich Defense Minister:

Generals who capitulate to their mutinous soldiers without a fight are not usually commended in history books. *In the German Republic they become cabinet members.*

On the following page the Reichstag is derided as a "forum of professional anti-militarists and 'Feme' agitators."⁴¹

The attacks on the cabinet members and other representatives of the Republic which can be found in nearly every issue of the National Socialist newspapers and in nearly all of the National Socialist meetings are directed—even though this is not particularly expressed in every instance—not so much against the ministers personally as against them as "representatives of the system"—that is, against the republican form of government. In the above-mentioned *Jahrbuch* (p. 181), the chairman of the National Socialist faction of the Legislative

³⁹ Wilhelm Weiss, born March 31, 1902, former Captain and Free Corps fighter. He became Vice-Editor-in-Chief of the *Voelkscher Beobachter*, Presidial Counselor of the Reich Press Authority, and co-director of the *Deutsches Nachrichten Buero*, the DNB.

⁴⁰ Wilhelm Groener, born November 22, 1867. In November, 1918, he became first General Quartermaster of the German Army as successor to General Erich Ludendorff, and concluded the historic working agreement between the Army and the Social Democrat, Friedrich Ebert, the first President of the newly created German Republic. From January, 1928, until May, 1932, he was Reich Defense Minister, and from October, 1931, until May, 1932, he was Reich Minister of the Interior. The Nazis hated him especially for outlawing the Storm Troopers and the Elite Guards.

⁴¹ "Feme" refers to the criminal practice of the German secret para-military organizations, such as the Free Corps, of executing their members for disciplinary reasons, and for informing the State authorities about details of these secret organizations. These executions were made without trial during the period from 1918-33, at which time such procedure became the "legal" right of the Elite Guards. Democratic groups in the country and in the Reichstag which exposed the Feme were stigmatized as "Feme agitators" by the National Socialists. Furthermore, the Feme organizations murdered outstanding representatives of the new democratic regime, among them the Reich Finance Minister Matthias Erzberger (August 26, 1921) and the Reich Foreign Minister Walther Rathenau (June 24, 1922). The Feme organizations were financially supported by secret funds of the Army and certain industrialists.

Assembly in Prussia, Wilhelm Kube,⁴² expresses this when he says:

To us the Brauns, Beckers, Severings, Grzesinskis, Weisses,⁴³ etc., are so minor that we need not make them conspicuous in any way as persons, let alone as personalities. *They are the prototypes of a system.*

This is certainly in accordance with the *refusal* of the Hitler Youth to give an affirmative reply to the statutory question—put to it in pursuance of its petition to be admitted to the Reich Committee of the German Youth Movement—whether the Hitler Youth would declare itself ready to co-operate with other organizations and, regardless of its basic attitude, *to respect the existing State and its organs.*

3. LEGAL ANALYSIS

The strategy of the NSDAP which has been outlined here is directed, as a whole, against the constitutional-parliamentarian-democratic-republican form of the German Reich and of the German States. If the Law for the Protection of the Republic guarantees a safeguarding of the constitutional form of State, it does not intend this protection to cover only the legal, outward form of the Constitution, which is provided for by the individual articles, so that only those assaults would be affected which from a purely legal point of view condemn the present Constitution as deficient, unjust, or pernicious. On the contrary, this protection, as the law shows, *covers the ideology which finds its legal expression in the present Constitution. It also covers the application of these safeguards to practical political activity—safeguards which were created by the constitutional government in accordance with the articles of the Constitution and prevailing public opinion.* For the legislator pursues practical objectives. They would be served badly if he wanted to extend the protection of the law merely to the exterior legal form of the Constitution in so far as it becomes the direct object of attacks; experience has shown that attacks of this kind do not make a lasting impression on the masses of the

⁴² Wilhelm Kube was born November 13, 1887, in Glogau. After Hitler came to power, he became a Gau leader of the NSDAP, Oberpraesident (Provincial Governor) of Brandenburg, and a member of the Reichstag. In World War II he became administrator of occupied Eastern territories; he was assassinated in 1943.

⁴³ Otto Braun, Prussian Prime Minister (1920-33); Karl Severing, Prussian Minister of the Interior (1921-26, 1930-32); Albert Grzesinski, Prussian Minister of Interior (1926-28) and Police President of Berlin (1925-26, 1930-32); Bernhard Weiss, Vice Police President of Berlin (1927-32); Carl Becker, Prussian Minister of Science and Education (1925-30). These men were intensely hated by the Nazis for their relentless fight for the Republic.

population. Only in rare instances do they tend to arouse the spirit of rebellion and the inclination to commit acts of violence, the suppression of which was what the legislator wanted to accomplish in issuing the Law for the Protection of the Republic. By the constitutional republican government of the Reich is really meant the German Republic as it has actually developed and is now functioning under the principles of the Constitution.*

It is the republican form of State in this sense that the National Socialists are attacking when they speak of the "Jew-infested German Republic," of the "Moneybag Republic," of the State which "consciously tries to deceive and betray" the citizens, and of the Democracy and the Republic which "are to blame for the misfortune"; or when they characterize the Republic as the work of "criminals," when they declare that it is part of its character to neglect "the protection of true German folkdom" and "the national honor and dignity," or that it displays a "deadly disorder," and that one need submit to it only if there is absolutely no other choice. To the constitutionally established form of the State, in this sense, belong also all its essential characteristics—i.e., the policies laid down in the Constitution, policies in which the republican idea finds its peculiar expression.

The number, the type, and the originators of the insult, defamation, and disparagement heaped on the German Republic, its representatives, symbols, and characteristic institutions prove that there is a systematic campaign against the foundations of public order. This campaign aims to and is equipped to endanger the constitutional State to the extensive degree described above, and thus is equipped to prepare the ground for the complete rebuilding of the constitutional structure as planned by the NSDAP. All the activities of the NSDAP—its press, its meetings, its propaganda, and the activities of its members in the parliaments of the Reich, the states, and the communities—are consciously, systematically, and persistently dedicated to this goal. Thus this conduct is identified as "undermining" in the sense of Section 4, No. 1, of the Law for the Protection of the Republic. The term "undermining" requires an unprecipitate, systematic action which gradually weakens the foundations of public order and its means of defense so that the success of the ultimate attack can be more surely guaranteed. What means of attack is to be used, in the course of the progressive development, by an organization proceeding in this manner

* RGSt. 57,209.

and working for the overthrow of the Constitution, naturally depends on the exigencies of the momentary situation.* In any instance, "undermining" need involve neither a violent nor an underground, so-called "mole" activity. On the contrary, it can be any activity which continues over a period of time, whether it be, in itself, legal or illegal. It is, therefore, irrelevant to the present discussion whether the individual attacks, considered separately, fulfill the conditions of a punishable act, particularly in accordance with Section 5, paragraph 1, of the Law for the Protection of the Republic.**

The actions which have been discussed as undermining the constitutionally established form of State do not represent the escapades of a few members of the NSDAP, but are constantly performed by the official leaders and organs of the Party themselves. It is the Party as such, then, which must be charged with these actions, which therefore are identified as objectives of the Party as defined in Section 4, No. 1, of the Law for the Protection of the Republic. The fact that we are dealing with an intention which is, of course, not mentioned directly in the statutes as an aim of the Party is as unimportant as the fact that it is not the sole nor the ultimate objective of the Party.***

In conclusion, the NSDAP is, therefore, an organization which endeavors to undermine the constitutionally established republican form of State. Inasmuch as the NSDAP is simultaneously—as was shown under heading "B"—an organization hostile to the State as defined in Section 120, StGB, it is subsumed under the definition of Section 4, No. 1, of the Law for the Protection of the Republic, according to which participation in such an organization is to be punished with not less than three months' imprisonment.

D. The Party as a Treasonable Organization

1. VIOLENT OVERTHROW OF THE GOVERNMENT AS OBJECTIVE (REVOLUTION—DICTATORSHIP)

a. THE PARTY AND THE HITLER PUTSCH OF 1923.

Since its foundation, the NSDAP has endeavored to change the Constitution of the German Reich by force. Even in his book, *Mein*

* Cf. Reichsgericht ruling of July 23, 1925, published in "Juristische Wochenschrift," 1930, p. 1149.

** Cf. Haentzschel-Schoenner, note 7, to Sec. 4; Cohn-Schaefer-Wichards, p. 57.

*** Cf. Doctor Bell in Reichstag 247 session of July 10, 1922, stenographic report, p. 8398; Haentzschel-Schoenner, note 5 to Sec. 4; Cohn-Schaefer-Wichards, pp. 56-57.

Kampf,* Hitler writes that he is not interested in collaborating with the existing order. On the contrary, the ideology which he has worked out must fulfill its obligation to "prepare the downfall of this order and to overthrow it by all available means."

The first attempt to bring about this violent overthrow was made by the Party under the leadership of Adolf Hitler and other leading National Socialist officials on November 8, 1923, in the so-called Hitler Putsch in Munich. The decision of the People's Court of Munich, District I, on April 1, 1924, established this as an act of high treason. According to this decision, the objective of the Putsch was:

The destruction of the Weimar Constitution and of the parliamentary system which it embodies. The driving out of the pacifist spirit. The destruction of the conditions brought about by the Revolution of 1918, especially of the governments set up and now operating as a result of this revolution. The gaining of freedom by a national effort.

In order to achieve these objectives, the campaign for the settlement of the German problem was to commence in Bavaria, a German Freedom Army was to be called up under a German government in Munich, and the fight was to be carried on all over Germany until the black-white-red Swastika Flag was hoisted over the Reichstag buildings in Berlin as a sign of the liberation of Greater Germany.

This court decision resulted in Hitler's being sentenced to five years' confinement in a fortress for high treason. Doctor Frick, present Thuringian Minister of the Interior, and Robert Wagner, now a National Socialist Deputy of the Bavarian Legislative Assembly, both played a decisive role in this Putsch at Munich, and each was sentenced to one year and three months' confinement in a fortress as accomplices in the crime of high treason. It is noteworthy that the bill of indictment against Frick likewise stated that an overt act of treason had been committed. It was not proved to the satisfaction of the court, however, that he had known of the decisions taken in the days from November 6 to November 8, 1923, regarding the carrying out of the Putsch of November 8, 1923, thereby committing an overt act of high treason. But the decision of the court definitely maintains that, at any rate, a number of facts lead to this assumption.

According to the decision of the People's Court of Munich, then, there are at least serious grounds for suspecting that Frick not only participated in, but was a willful accomplice and collaborator in the execution of the overt act of high treason promoted by Hitler.

* Second ed., 1930, p. 50.

b. DEVELOPMENT SINCE THE HITLER PUTSCH

After the failure of the 1923 Putsch, the NSDAP did not relax its efforts aimed at the violent overthrow of the government. After Hitler was released in the spring of 1925, there was an increase in the organizing and recruiting activities to rebuild the Party, accompanied by a revival of the dissemination of propaganda for a violent overthrow of the government.

aa. *Hitler's Testimony*

Since that time, Hitler, the Party Fuehrer, has generally refrained from publicly advocating the use of force, apparently for tactical reasons. Nevertheless, there are many indications that he is still determined on a violent course of action against the republican State. He set forth this course of action in his book, *Mein Kampf*, and even tried to put it into effect in November, 1923. Thus his statements made at a public meeting in Munich on February 27, 1925—

Loyalty to conviction, relentless fighting for the ideal, and the consciousness that when one wishes to achieve something, he is justified in using any method (*Voelkischer Kurier*, March 1-2, 1925, Nos. 58-59)—

and at the Party convention in Nuernberg from August 19 to 21, 1927—

Those to whom the heavens have granted the greatest energy have also been given the power of sovereignty—

clearly reflect that the NSDAP does not depend only on legal methods—that is, the obtaining of a majority of votes—in order to gain its power, but that it also contemplates other tactics in which, as a last resort, the *National Socialist* dictatorship will be boldly announced.

Hitler expresses himself even more clearly in a communication to the National Command of the "Stahlhelm," in which he states his position on the plebiscite planned by the "Stahlhelm" in the latter part of 1928. This plebiscite was intended to bring about a change in the Constitution of the Reich. The communication states:

Malignant conditions can hardly be done away with through the democratic method of a so-called people's plebiscite, when these conditions themselves are the inevitable result of democracy. *In my opinion a people's plebiscite for the re-establishment of an actual German National Government is sensible only if the new National Government is represented by a single force which already exists for all the nation to see and which has achieved general recognition by virtue of its own efforts.* In such a situation a plebiscite is therefore only a formal act which gives a superfluous democratic sanction to an existing authority of the State which has actually already been established. . . .

The collapse of 1918 was the inevitable end of a general and slowly progressing democratization; the effects of this collapse cannot be overcome by a struggle of democracy against democracy by democratic weapons. *There must be born in Germany a new determination of the State and a new governing authority embodied in a clearly defined political force.* It is possible that in order to establish its accord with the inner will of the nation, this new State authority will, on occasions, request a plebiscite. *However, it is impossible for the nation to initiate, hasten, or promote the process of building such a State authority through a plebiscite only. . . .*

Individuals who are born with the gift of ruling do not in any way need the preliminary coddling or sponsoring of parliamentary or democratic institutions. But a man whom Providence—and it must be believed in in this situation as well—has destined to be a Fuehrer will never allow his actions to be dictated to him, nor have them restricted by the ridiculous jurisdictional limitations of a constitution, when the action prescribed by the constitution would lead to the downfall of the nation. . . . *If one adopts the opinion that by augmenting people's constitutional rights through a democratic procedure one can enable them to reshape the fate of nations, one only reveals how much one himself—perhaps entirely unconsciously—is already poisoned by democracy, and also how, because of the fear of the power of personality, he prefers to emphasize the significance of office. . . .*

I deem it extremely dangerous for young Germany to participate in such attempts at historical deception.

Therefore, as the leader of the National Socialist movement, I must, for basic reasons, decline to effect the correction of constitutional weaknesses of the present system through participation in the plebiscite which was proposed by the national leaders of the "Stahlhelm." Such an improvement would have no positive significance for the present and for the future of our people, but would endanger the continuation of the decisive battle."

Here Hitler sets forth in a cautious but nevertheless very definite manner that no connection exists between his conception of a State dictatorship and the democratic-republican Constitution—that the dictatorship he is striving to establish can never be brought about by "the majority vote of a people's plebiscite." And, further, that this plebiscite can, moreover, at best supply a formal supplementary proof of the people's confidence when "the new State Authority" is already represented "by a single force which already exists for all the nation to see and which has achieved general recognition by virtue of its own efforts," in contrast to having the majority make the decision. Hitler here unmistakably alludes to the manner in which Fascism gained power in the Italian State. He clearly expounds that a dictatorship is to be achieved by means of force, that a dictatorship, to speak in formal legal terms, should be "sovereign-dictatorial," and not (as set

forth in Article 48 of the Constitution of the German Reich) "constitutionally commissioned."

bb. Frick's Testimony

The same ideas are expressed by Doctor Frick who, next to Hitler, is the most influential representative of the NSDAP and who is at present the Thuringian Minister of the Interior, in an article entitled "Die Nationalsozialisten im Reichstag 1925/26" (The National Socialists in the Reichstag, 1925-26), which appeared in the *Nationalsozialistisches Jahrbuch* for 1927, pages 123-24:

There is no National Socialist and no racialist who expects any kind of manly German deed from that gossip club on the Koenigsplatz⁴ and who is not convinced of the *necessity for direct action by the unbroken will* of the German people to bring about their spiritual and physical liberation. But there is a long road ahead! *After the failure of November, 1923, there was no choice but to begin all over again* and to strive to bring about a change in the spirit and determination of the most valuable of our racial comrades, as the *indispensable prerequisite for the success of the coming fight for freedom*. Our activities in parliament must be evaluated as merely a part of this propaganda work.

Our participation in the parliament does not indicate a support, but rather an *undermining* of the parliamentary system. *It does not indicate that we renounce our anti-parliamentarian attitude*, but that we are fighting the enemy with his own weapons and that we are fighting for our National Socialist goals from the parliamentary platform.

At the Reich Party Convention of the NSDAP at Nuernberg in August, 1927, Frick declared:

The National Socialists long for the day when the well-known lieutenant with his ten men will put an inglorious but well-deserved end to this infernal sham (the parliament) and will open the way for a racial dictatorship.

And on October 18, 1929, at a National Socialist meeting in Pyritz, he stated:

This fateful struggle will first be taken up with the ballot, but this cannot continue indefinitely, for history has taught us that *in a battle, blood must be shed*, and iron broken. The ballot is the beginning of this fateful struggle. . . . Just as Mussolini exterminated the Marxists in Italy, so must we also succeed in accomplishing the same through *dictatorship and terror*.

Although in the latter half of 1929 the NSDAP daily expected the dissolution of the Party or of its auxiliary organizations, Doctor Frick expressed himself (though cautiously) as follows—in an article entitled "Die Nationalsozialisten im Reichstag 1928-29" (The National

⁴Reference is made to the German Reichstag, which convened in the Reichstag Building on the former Koenigsplatz.

Socialists in the Reichstag, 1928-29), which appeared in the *National-sozialistisches Jahrbuch* for 1930, page 178:

No wonder that as the situation of the entire German people, as well as that of the individual racial comrade, grows rapidly worse, increased numbers are realizing the incompetence of the parliamentary system, and no wonder that even some who are responsible for the present system *desperately cry for a dictatorship*. This, however, will not save them from their fate of *one day being called to account before a German State Tribunal*.

For some time, the threat of a National Socialist "State Tribunal" against the representatives of the Republic—in the event of the establishment of the Third Reich—has played a special role in the thoughts and utterances of National Socialist leaders. The Constitutions of the Reich (Article 59 of the Constitution of the Reich) and of the states already provide for the impeachment of cabinet members before a constitutional "State Tribunal." However, in their threats, the National Socialists do not refer to such a constitutional procedure, but rather to a different procedure, which according to the present situation is possible only through a violent overthrow—a typical phenomenon of successful revolutions. Therefore, to these National Socialist announcements of the establishment of a "State Tribunal," we must ascribe the clear and indisputable significance of an avowal of the principle of violent overthrow, which is the goal of the National Socialist Party.

In spite of their optimism, the National Socialists cannot count on winning the majority of the people within a reasonable time, thereby gaining legal validity for their ideology. Their cry for a dictatorship is the best proof that they themselves do not expect this to happen. They also very openly state that even as a minority, they wish to achieve their goal by force. This immediately excludes the legality of their action.

cc. Rosenberg's Testimony

The editor of the *Voelkischer Beobachter*, Alfred Rosenberg, likewise states in his brochure, "Wesen, Grundsätze und Ziele der NSDAP" (Character, Principles and Aims of the NSDAP), page 10, that the Party neither expects nor desires ever to constitute the majority of the people:

National Socialism openly confesses that it is a militant Party, never to constitute a numerical majority of the people.

dd. Goebbels' Testimony

Doctor Goebbels, the Reich Propaganda Leader of the NSDAP and Reichstag Member, openly and bluntly advocates the establishment of a dictatorship by force. At a conference of the Party in Munich on June 20, 1927, he declared, as part of his critical observations in regard to the Berlin meeting of the "Stahlhelm" in 1927, that if he were able to march into Berlin with 120,000 men, as the "Stahlhelm" had done, he would not promise, as had the leaders of the "Stahlhelm," to depart from the city peacefully. He said that he was certain that 120,000 National Socialists would not leave Berlin in the same condition in which they found it. According to a report of the *Voelkischer Beobachter* of July 14, 1927, he declared, as Gau Leader at the Brandenburg Gau Convention at Potsdam on July 10, 1927:

There is quite a difference between advertising a soap and fighting for race and freedom. . . . every youth in Berlin knows the NSDAP. It is very doubtful that this could have been accomplished by a cautious, insipid campaign, and it is even more doubtful that this propaganda would have converted a single Storm Trooper to the idea in such a degree that he would be willing to pay with his life. *A movement which is bent upon destroying an old State cannot tread softly in bedroom slippers.*

If we cannot make a city of four million love us, then let them hate us, for hate can turn into love. The man who risks his own life is morally justified in expecting great sacrifices.

On September 14, 1927, he stated in Duesseldorf:

All our strength must be applied to the shaping of the future State. *Nothing can be accomplished without arms.*⁴⁵

Doctor Goebbels expressed his views on the objectives and paths of National Socialism in a more detailed form in his propaganda booklet *Der Nazi-Sozi* (first ed.), which was distributed by the publishing house of the *Nationalsozialistische Briefe*. In the chapter "Parlament und Parteien" (Parliament and Parties), page 15, he writes the following:

The others enter, chat, debate, vote, and collect their fees. But we act. We are creating a powerful group with which we can one day conquer this State, and then, with the power of the State, we shall relentlessly and brutally enforce our will and our program.

In the next chapter, under the heading "Diktatur und Staendestaat" (Dictatorship and Corporate State), page 16, he openly demands

⁴⁵ The problem of arms hidden by the Nazis will be one of the most difficult of the postwar period. It cannot be solved without an adequate intelligence force of the occupational power.

the right of the National Socialists as a minority to conquer the State by a dictatorship of force and to carry out their ideas:

History is replete with examples showing that a young and determined minority has always been able to overthrow the rule of a corrupt and disintegrated majority. Thus for a time they were able to control the State and its administrative forces, in order to *accomplish through a dictatorship of force*, motivated by a self-conscious responsibility, the conditions in the State which were necessary for the complete conquest and enforcement of the new ideas of the minority. *Thus it will be with us. Once we have conquered the State, the State is ours. . . . Then, by dictatorial force, we will reshape the State according to our principles.* Then the responsible minority will force its will on a lazy, incompetent, and stupid majority, behind which only the Jew hides in order to carry out his nefarious plans. And we shall know how to enforce the necessary measures to save the people.

We want to make the German nation free, nothing more. *If the German people do not approve of their being set free, then we shall do without their approval. . . .*

A large majority of the German people today have become so materialistic and so cowardly that they can be made happy only against their will—by force.

The chapter entitled "Der Wille zur Macht" (The Desire for Power), page 18, gives the following answer to the question as to how the State shall be conquered, inasmuch as the gaining of the majority vote for the National Socialist idea cannot be counted on and the movement is opposed by the State and all its powers:

What then? Then we shall set our teeth and get ready. *Then we shall march against the State. Then we shall risk everything for Germany, and revolutionism in word shall become revolutionism in deed. Then we shall make revolution!*

Then to the devil with parliament and we shall organize the State on the basis of the strength of German brain and German brawn. . . .

The determination for power creates the means to power. If the other side has arms, we, on the contrary, have that which it does not have: the desire for violence. This desire creates arms wherever they are needed.

The character of the statements discussed was recognized as treasonable and hostile to the State in that *Der Nazi-Sozi* was confiscated on January 30, 1928, by order of the Municipal Court of Elberfeld, in accordance with Section 86, StGB.⁴⁶ The proceedings instituted by the "Oberreichsanwalt" (Reich Attorney General) against Doctor Goebbels as the author of the booklet were discontinued on August 31, 1928, because of the Reich amnesty of July 14, 1928. In a second edition of the booklet the most incriminating passages were either omitted or modified. But it can in no way be concluded that the treasonable plans have been abandoned. Considering the gen-

⁴⁶ See Appendix A.

eral attitude of the Party, we must regard this as a temporary restraint which has evidently been adopted for tactical reasons—that is, in order to prevent the authorities from interfering with the further expansion of the movement, which feels that its hour has not yet come.

This is unquestionably evident from the further activity of Doctor Goebbels. According to *Die Deutsche Zeitung* of March 12, 1928, he stated at a meeting in Bernau in March, 1928—that is, while the charge of high treason was still pending against him:

Fate has destined us to build the anvil which will break the chains of slavery, and if necessary, we will do it *through a National Socialist revolution*.

And in No. 32 of the National Socialist weekly, *Der Angriff*, entitled "Revolutionaere Forderungen" (Revolutionary Demands) (August 6, 1928), he wrote:

What we demand is new, decisive, and radical—therefore, *in the deepest sense, revolutionary. Its character has nothing to do with barrels and barricades. It is possible that it will come to that some day. . . .*

Revolution is on the march. We demand.

Doctor Goebbels has since then continuously pursued this activity, aimed at the violent overthrow of the government. Thus he writes in his weekly, *Der Angriff*, No. 35 (September 2, 1929):

The referendum against Young acquires increased political significance, and it is now the special task of our movement to give it a decisively revolutionary character, over and above the purely practical purpose for which we believe some of his associated groups have adopted it. . . . Is it then any wonder that we wish to launch the fight against this madness, that we organize an armed revolt against this criminal system with all our strength, so that the cry of a tormented people may be heard! Away with this treason of German freedom! Raise the flags of resistance and of revolution! Clear the streets!

On September 27, 1929, in the Berlin Sportpalast, he declared:

The referendum is only the beginning. Today a referendum, tomorrow a national protest, *day after tomorrow a national revolution*. The Jewish journalistic canaille may well hide behind Hindenburg. They will be brought into the open. The revolution of 1918 was a Jewish revolution. Now the battle cry is: *From revolt to revolution, from disarmament to rearmament, from emasculation to new virility, from ruin to a reconquest of our German nationalism*.

Consequently, at the request of the Oberreichsanwalt (Reich Attorney General) of April 10, 1930, judicial investigation was instituted against him, on the grounds that since 1928 he had been guilty of repeated attempts at high treason, to bring about by violence a change

in the Constitution of the German Reich and of its states. This investigation is still pending.⁴⁷

ee. Testimony of Deputies, Subordinate Officers, and Lecturers

These remarks by the most influential leaders of the NSDAP are supplemented by innumerable statements in the press and at meetings by subordinate officers and lecturers. They, too, quite openly advocate the violent overthrow of the government, the propagation of a German revolution and the establishment of a dictatorship. In the 33rd of the *Nationalsozialistische Briefe*, dated February 1, 1927, the Silesian Gau leader Hellmuth Brueckner presents the following statement in an article entitled "Reform oder Revolution?" (Reform or Revolution?):

The slogans of 1924 are still valid. However, the uprising of the nationalist forces of that time was dispersed, and this by virtue of the ironclad laws. The Third Reich, as it is termed in the popular battlecry, will not develop from a reform but must be fought for and won through revolutionary actions. The leader is Hitler and no one else. Accordingly, the great German revolution must organize itself in those places where our people are still formally the people of the State, that is, in Austria and in the "Reich." The mission of Hitler was clear to those persons of vision, just as was the incompetence of the national leaders who did not dare to risk the step from reform to revolution, because of their inner impotence. Freedom and heaven cannot be won by half-heartedness. Reform is a half measure; *revolution is everything*. . . .

Therefore not every revolutionist of today is ready and willing to march in our ranks with us. The preachers of National Socialism must work on two fronts to propagate the clear-cut line of action and goal of the only possible means of liberation, and also to prevent those between the ages of twenty and thirty from joining the wrong side.

A disciplined organization, without which there is no striking power, and an increased propaganda must, in the year 1927, work together in desperate co-operation to prepare the field, to plow, and to sow. Let the storm rage on. The more the inflexibility of our inner politics is broken, the sooner the German spring approaches. Our revolutionary movement will take root only when our people break into action! Therefore our slogan "Into the State!" is not meant to obtain reform surreptitiously. *The people's rights are opposed to State's rights*. Hate for that which exists is the solution. Call our compatriots for the greater German Ruetli oath (Ruetlischwur).⁴⁸ *Admonish the exploited ones to overthrow*

⁴⁷ As a result of the nationalistic and partly National Socialist attitude of the Reich Attorney's office the cases against the National Socialists were never pressed through. See also Document C.

⁴⁸ Ruetlischwur was the oath sworn in the year 1307 by the delegates of the original Swiss cantons who were fighting against the Hapsburg oppressors. This term is now used to refer to any solemn oath taken to fight the oppressors of free men.

the tyrants. Unite the fighting compatriots in a confession to the Fatherland. Then will socialism and nationalism become united as Adolf Hitler had intended. Reform cannot erect the house in which they are to dwell in life-long unity. Only the German revolution which Fate demands will bring about the realization of the Third Reich. Heil Hitler!

In No. 238 of the *Voelkischer Beobachter* (October 15, 1927), Wilhelm Weiss, in a review of the tactics of the German freedom movement, writes, after censuring the conduct of the Stahlhelm:

A State is not conquered by tightly clinging to it and worrying about the renovation of its façade, *but by proclaiming a fight against it and disarming its troops, either by open attack or by a planned political war of position.*

In a meeting of the Stuttgart Local Group of the NSDAP on May 1, 1928, Doctor Ley, member of the Prussian Legislative Assembly, stated:

If you wish to clear out the lies and falsehoods in this State, then put on the brown shirt as our youth have done, and as I have done. *Fight daily and, if it be necessary, in the barricades. This fight will be fought with machine guns, mines, and grenades.*

In a "Lehrbrief fuer Fuehrer" (Letter of Instruction for Leaders),⁴⁹ distributed by the Rhineland Gau of the NSDAP, 2nd year, No. V, d.d. Cologne, dated July 9, 1928, the following is stated regarding the realization of the Party goals:

To attain these goals, we accept any member. We fear no kind of social revolution if it demands the freedom of the nation (in accordance with the National Socialist conception).

In the same Letter of Instruction, outspoken propaganda is made for the abolition of the parliamentary-democratic form of government by *a National Socialist dictatorship.*

In the next Letter of Instruction, dated July 14, 1928, the following is advocated as a means for the *overthrow of the existing State:*

These are the landmarks of the new aristocracy of brain and brawn.

... We have felt the *whip of the savage military marauders*, and at present we have no opportunity of achieving our rights but, instead, must appeal to our own passion, which will one day win a new future for us. The new aristocracy is founded on sacrifice and hatred. *Preserve discipline! It makes a battalion out of a few! Be fanatics! If we are right—and our very blood convinces us that we are—then all the others are wrong.*

⁴⁹ Secret "letters of instruction" were and will be one of the most important means of advising Nazi underground groups.

The final keynote of the leaders of the Uckermark Convention of the SA in Prenzlau on July 14-15, 1928, was in the form of an oath and contained this threatening note:

We know that another election will not take place, but that we, at a given time, shall win true national freedom for our Germany *by fighting in the barricades*, for it cannot be gained otherwise. . . . Under our beloved Fuehrer and war hero, and in accordance with our oath of allegiance to the flag, we shall man the barricades when he calls us, and we shall know how to win victory and how to die for him or with him.

The statement of the Westphalian Gau Leader Josef Wagner at a meeting of the Party in Hamburg on July 28, 1928, is also characteristic. In this the same fighting weapons are claimed for the National Socialists as are used by the revolutionary Communist Party.

On February 16, 1929, District Leader Terboven⁵⁰ of Essen declared at a National Socialist meeting in Kettwig:

We younger National Socialists have been handed down a disorganized and disintegrated Reich, and we wish to clean this pigsty. For this, we ask the support of the citizens. The present ministers will not relinquish their seats voluntarily. Therefore the resolute will to violence is necessary.

At a meeting in Plauen on May 1, 1929, Schlemm, leader of the Oberfranken Subdivision, member of the Bavarian Legislative Assembly and president of the National Socialist Teachers' Bund, said that the NSDAP would take to the streets because the old German Reich had been destroyed on the streets, and that therefore *the new German Reich must also be founded on the streets*.

In the 22nd issue of the *Nationalsozialistische Briefe*, Vol. 4 (May 15, 1929), Reinhold Muchow, chief of the Berlin Organizational Division, writes about the role of the Party in the political struggle for power (p. 368):

The coming *revolution* cannot and will not be anything but a *National Socialist* one. . . . Adolf Hitler does not leave us the least bit of uncertainty when he says: "*In this fight heads will roll in the sand*, either theirs or ours. Therefore we must see that it is the heads of others that roll."

In "Radikale Bauernbewegung" (Radical Peasant Movement), an article by Bodo Uhse in the June number of the *Nationalsozialistische Briefe* of 1929, the conscientious preparation of a revolution is emphasized in the following words:

⁵⁰ Josef Terboven, born May 23, 1898, in Essen, became Gau Leader and Oberpraesident (Provincial Governor) of the Rhine Province. After the invasion of Norway he became Nazi Commissar of Norway.

In the present hour, it is the task of National Socialism to make the peasant understand in his confusion that it is far less radical to ignite a charge of dynamite than to cut the roots of the system by calmly preparing the destruction of the present government. *We do not want a peasants' revolt that will be mowed down by Severing's machine guns,⁸¹ but what we want is a revolution of peasants not for the sake of the peasant, but for the sake of the people whose first pioneer, next to the worker, is the peasant.* In the present phase of the national revolutionary development in Germany, it is necessary to learn from the mistakes that others have made, and to make sure that in the preparation of the revolution, the united march of the peasants and of labor begins today.

In the official collection of organizational circulars published by the Gau Headquarters of Greater Berlin in October, 1929, there appears the following statement on page 11 under the title "Organisationssystem des Gau's Gross-Berlin" (Organizational System of the Greater Berlin Gau):

The Party, or rather its units, must be the school through which he [the National Socialist] must pass to obtain *practical training in the nature of the dictatorship*, so that he can begin the real work on the day that power is won.

On October 1, 1929, Reich Organizational Leader and Reichstag Deputy Gregor Strasser wrote in pamphlet No. 7 of Vol. 5 of the *Nationalsozialistische Briefe* (p. 106):

If there is talk now of an impending dissolution of the Reichstag, this too is only a symptom, and a new Reichstag or a new government would not yet be a solution; the only solution is "German Revolution!"

On October 7, 1929, National Socialist District leader Terboven of Essen announced in a meeting:

This weakness is especially known to Severing, who symbolizes the present State, and he intends to render a service to the State, which is breathing its last; but this too will no longer save the *present corrupt parliamentary system*. . . . But I give such a dictatorship only four weeks. Then the people will awaken, *then the National Socialists will come to power, and then there will not be enough lamp posts in Germany*. . . .

The Bolshevik government is sitting on a volcano, and the German government is in the same situation. The National Socialists will do everything to further this explosion. . . . When in the future we call the present representatives of the government to account, they will not be able to defend their actions as representatives of a parliamentary system. *They will have to answer with their heads to the German people, and particularly to the National Socialists, for their actions in the past.*

The National Socialists will march into the new Reichstag with thirty members; *then there will be black eyes every day in this Reichstag*; thus this corrupt

⁸¹ Refers to the machine guns of the German police forces.

parliamentarian system will be further discredited; *disorder and chaos* will set in, and then the National Socialists will judge the moment to have arrived in which they are to seize the political power.

The student Studentkowsky,⁵² who often appeared as a lecturer, declared in a National Socialist meeting in Essen on October 15, 1929:

In 1918 the German people saw a revolution which brought no relief to the working man. *But soon a new revolution will come!*

On October 18, 1929, Reichstag deputy and present Thuringian Minister of the Interior Doctor Frick discussed the fight against the Young Plan in a meeting in Pyritz:

This fateful struggle will first be taken up with the ballot, but this cannot continue indefinitely, for history has taught us that *in a battle, blood must be shed, and iron broken. The ballot is the beginning of this fateful struggle.*

We are determined to promulgate by force that which we preach. Just as Mussolini exterminated the Marxists in Italy, so must we also succeed in accomplishing the same through dictatorship and terror.

On October 21, 1929, the Silesian Gau Leader Brueckner declared in a National Socialist assembly in the Schiesswerdersaal in Prenzlau, according to a report of the *Reichsbannerzeitung*, Vol. 45 (November 9, 1929):

The day will come when the National Socialist leaders will have a difficult time holding back their masses from doing that which the people would like to do. One does not know what may be the end of Mayor Mache. *The revolution will not materialize this winter, but within a few years. . . . If we do not succeed with the ballot, the fist will do it.*

On October 22, 1929, Gau Leader Telschow⁵³ stated in a meeting in Neuhaus/Elbe in regard to the Storm Troops:

The present State is no State. The NSDAP is taking up the fight against the present system and against the "Three Hundred" of the international capitalists who rule the world. . . .

We are fighting for you. If necessary, our brown-clad youth will risk their lives in this fight, and we will prosecute this struggle by all methods. In such a fight, there will be casualties; there will be new graves in our fight against the Jewish scum. Some mothers will perhaps lose their sons!

⁵² Werner Studentkowsky, born September 20, 1903, in Kiev, Russia, became Chief of the University Section of the Ministry of Education in Saxony after Hitler came to power. Since that time, he has been a member of the German Reichstag.

⁵³ Otto Telschow, born February 27, 1876, in Wittenberge, was an administrative official of the police administration in Hamburg from 1901 to 1924. He became a member of the Nazi Party in 1925, and after 1933 a Gau leader and Prussian State Councillor.

On November 10, 1929, Manfred von Killinger,⁵⁴ National Socialist member of the Saxon Legislative Assembly, stated in one of their meetings:

So, my dear Sirs, you want to challenge us National Socialists. Go ahead, and we shall gladly accept the challenge. But take care that some day we do not throw down the gauntlet to you and not, to quote Danton, in the form of a guillotined king's head, but we shall challenge you with the *cut-off heads of your highest politicians*.

It is even more strongly expressed in a leaflet prepared by the Sorau District (Nieder Lausitz) of the NSDAP distributed in January, 1930, in which the following statement is made:

We appeal to all German working people to rally against the democratic-parliamentarian seducers of the people: "Set up the German dictatorship!"

Rolf Becker of Adler & Falken, a youth organization closely allied with the NSDAP, says in a periodical of that organization, *Die Kommenden*, Vol. 2 (January 10, 1930):

We are convinced that this dispute must be settled by force of arms, for the international allied capitalistic bourgeoisie will not voluntarily retire in favor of the nation. They will not consent without opposition to the social changes which are necessary for the recovery of the people.⁵⁵

In a speech in the Sportpalast in Berlin on February 7, 1930, General Litzmann⁵⁶ stated:

The German youth must be inspired by the Brown Shirts (Storm Troopers), who, by day or night, are ready to sacrifice themselves for their idea.

... Let yourselves be filled with this spirit and then on to a new victorious "thrust."

According to an official report of the Hessian State Police, Legislative Assembly Member Koehler declared, at a National Socialist meeting in Fraenkisch-Grumbach on March 2, 1930:

⁵⁴ Manfred von Killinger, born July 14, 1886, a former Lieutenant-Captain in the German Navy. After World War I he became a commander in such military organizations as "Freikorps Ehrhardt," "Organisation Consul" ("OC"), and "Viking Bund." He was involved in several cases of murder of democratic statesmen, of sabotage against the occupational army, and of high treason against the Republic. However, the Reich Attorney General and the State attorneys failed to institute the energetic prosecution which their duty demanded. After Hitler came to power, Von Killinger became Prime Minister of Saxony, then German Consul General in San Francisco, later Hitler's Special Envoy to Rumania, where he committed suicide in 1944.

⁵⁵ One of the few early Nazi statements about armed action on an international scale.

⁵⁶ Karl Litzmann, deceased, born on January 22, 1850, was General of the Infantry, in World War I. He became one of the first followers of Hitler among the Prussian generals. His son, Karl Siegmund, became Reich Inspector of Training in Horseback Riding for the Storm Troops.

A change can be wrought only by an immediate overthrow of the government and the rise of a dictator who will save the people before it is too late. The National Socialists will try to start this overthrow soon.

On April 27, 1930, the supplement to the newspapers published by Strasser's *Kampfverlag*⁵⁷ entitled "Im Braunhemd fuer SA und Hitler Jugend" (In the Brown Shirt for SA and Hitler Youth)—(cf. *Maerkischer Beobachter*, No. 55, April 27, 1930)—contains a poem "Aufstand" (Arise), which reads as follows:

A united cry:
 We are enslaved!
 Those who promised us freedom
 Have today broken their promise!
 We are enslaved!

We shall free ourselves!
 We shall attack!
 When you voted your "yes"
 You forgot the people!
 We shall attack!

A united cry:
 Now only blood shall decide!
 We shall attack! We are not alone!
 Millions are thirsting to be avengers;
 We demand your blood!

Accordingly, the NSDAP wishes to bring about the overthrow of existing conditions. It is repeatedly emphasized that this can be accomplished only through "a direct action by the unbroken power of the German people," the "racialists," "National Socialists," or "a German revolution," inasmuch as the Party, "though numerically a minority, is a militant Party." The German Nationalist or National Socialist "dictatorship" is constantly set up as a goal. In order to accomplish this, it is necessary to sweep aside parliament, that "infernal sham." The fight will be waged in every possible way, "by force" and, under any circumstances, "in the barricades," as "nothing can be accomplished without arms," and then the "responsible leaders will be called to account before the State Tribunal"; then will "heads roll in the sand," and "there will not be enough lamp posts" for the vengeance of the National Socialists. All this can be interpreted to mean only that the NSDAP has adopted as its program the violent overthrow of the government.

⁵⁷ Gregor Strasser owned a Nazi Party newspaper chain in which his brother Otto was active before his break with Hitler.

2. PREPARING THE VIOLENT OVERTHROW OF THE GOVERNMENT BY
UNDERMINING AND ALARMING THE POLITICAL AND ECONOMIC
PUBLIC LIFE

The NSDAP does not restrict itself to declaring and propagandizing its goal of a violent overthrow by revolution and the setting up of a dictatorship over a National Socialist "Third Reich." It is also making active preparations to realize its goals.

In order to put the masses in the right frame of mind for the planned overthrow of the government, the Party must create a mass revolutionary movement and, with the help of effective propaganda, arouse, stir up, and alarm the people. In his article "Idee und Organisation" (Idea and Organization) in the *Nationalsozialistisches Jahrbuch* of 1930, Otto Bangert declares on pages 159 ff.:

Thus the mission of National Socialism must begin by stirring up the masses by means of revolutionary propaganda. This must be followed at the critical moment by the seizure of power, which will in turn be succeeded by the erection of the Third Reich. Today National Socialism is still primarily in the first stages.

Helmut Brueckner, in an article entitled "Reform oder Revolution" (Reform or Revolution), in No. 33 of the *Nationalsozialistische Briefe* (February 1, 1927), prophesies as follows:

Therefore not every revolutionist of today is ready and willing to march in our ranks with us. The preachers of National Socialism must work on two fronts to propagate the clear-cut line of action and goal of the only possible means of liberation, and also to prevent those between the ages of twenty and thirty from joining the wrong side.

A disciplined organization, without which there is no striking power, and an increased propaganda must, in the year 1927, work together in desperate co-operation to prepare the field, to plow, and to sow. Let the storm rage on. The more the inflexibility of our inner politics is broken, the sooner the German spring approaches. Our revolutionary movement will take root only when our people break into action! Therefore our slogan "Into the State!" is not meant to obtain reform surreptitiously. The people's rights are opposed to the State's rights. Hate for that which exists is the solution. [See also, "Call our compatriots, etc."—quoted on pages 89-90.]

The objectives of this agitation of the masses by the National Socialists are quite openly discussed. Studentkowski, member of the Legislative Assembly of Saxony, declared on September 9, 1929, according to an official report of the Police Bureau of the State of Hessen, dated September 20, 1929:

Order and peace, as desired by the bourgeoisie, are emphatically rejected by

the Party, as they contend that their *main task* is to *stir up and alarm the masses!*

According to an official report of the Police Bureau of the State of Braunschweig, Reichstag Deputy Wagner stated in a lecture on the "Befreiungs-Politik oder Geldsackpatriotismus" (Policy of Liberation versus Money-Bag Patriotism), on July 9, 1930:

The NSDAP will not let the people rest in peace until they have obtained power.

The words of Storm Troop Leader von Pfeffer show us that to influence the masses is to be a necessary part of the preparation for the overthrow of the government:

All German National Socialists must set aside all daily struggles and steer their course towards the goal of the German Reich. *Even today a State within the non-State* must be formed, so that in the erection of a National Socialist Greater Germany, the inner form shall stand independent, unassailable, strong, and firm in every respect.

The endeavor of the NSDAP to disintegrate the whole economic and political life of Germany in order to prepare the ground for a violent overthrow appears most distinctly and clearly in an article by the deputy and Reich Organization Leader Gregor Strasser in No. 23 of the *Nationalsozialistische Briefe* (June, 1929), entitled "Katastrophenpolitik" (Catastrophic Policy):

Then *definitely, a revolution* against the existing system!—This, once and for all, defines our political attitude as well as the potentialities and extent of our political tactics: *everything that is detrimental to the existing order has our support*; everything which can be used to prolong the existing order which, according to our conception, is a deadly disorder, will be opposed by us.

Or, in other words, inasmuch as *we desire the catastrophe* towards which, according to our conviction, the liberalistic world is heading, we shall not interfere and shall even prevent, as far as we are able, anyone else's interference which could postpone this collapse. In short: *we are promoting catastrophic policies—for only catastrophe*, that is, the collapse of the liberal system, *will clear the way* for that new order which we call National Socialism.

To promote catastrophic policies does not mean to preach or engage in any kind of activity or passive rebellion against the State. Promoting catastrophic policies means much more—rather the hastening and support of the automatic self-destruction of liberalism! If, for instance, by exploiting the demagogue of the democratic system we prevent the balancing of the State budget, then this is catastrophic politics! If we expose the irresponsibility of parliamentarianism through motions and proposals which are irresponsible from the standpoint of the existing order and thereby lay it open to destruction, then this is a catastrophic policy! If we split open the tension of the lies, which exists between the inner

political promises and exterior political pressure of all parties, by systematically and consciously demanding that those promises be kept, then this is a catastrophic policy!

And we are and must be engaged in this type of catastrophic policy for the sake of that German revolution, the fulfillment and goal of which is National Socialism.

Let us always be conscious of this: *all that serves to precipitate the catastrophes of the ruling system—for instance, every strike, every governmental crisis, every disturbance of the power, every weakening of the system (such as the abolition of capital punishment, pacifism, etc.)—is good, very good for us and our German revolution.*^{57a}

According to a report in the *Voelkischer Beobachter* of July 17, 1927, Doctor Goebbels expressed the same idea in the Brandenburger Gautag (Brandenburg Gau Convention) of the NSDAP in Potsdam on July 14, 1927:

A revolutionary movement has but one thing to do: *to disrupt*, as our present "rulers" once did.

3. DISRUPTION OF THE STATE'S MEANS OF CONTROL

In view of the circumstances, the NSDAP must, in its efforts to overthrow the government by violence, expect to encounter the resistance of the State, which will call out the Reichswehr^{57b} and the police^{57c} against it. The NSDAP, therefore, has an obvious interest in disrupting these two forces of control, according to the Communistic example, in order to eliminate them as opponents in the planned overthrow, or at least to weaken them as much as possible.

a. "REICHSWEHR"⁵⁸

The hope that the Reichswehr in particular—with whose co-operation the NSDAP had developed its plan for the Munich Putsch and whose future co-operation it thought it could expect—would, at a given moment, neglect its duty of protecting the State, even against the National Socialists, has constantly dwindled as the political situation has become consolidated. This consolidation was the result of the Reichstag election of 1928, in which the Social Democrats became cabinet members and the Social Democratic Party, with its military program, officially and unmistakably took a positive attitude toward

^{57a} Similar tactics were used by the Nazis in undermining foreign governments.

^{57b} Reichswehr, the 100,000-man army of professional soldiers created under the provisions of the Versailles Treaty.

^{57c} Refers to the State-administered or State-supervised pre-Hitler German police forces of about 175,000 men, partly barracked.

⁵⁸ See also Documents D1, D2, and D3.

the problem of the Reichswehr and the national defense.⁵⁹ Hitler opened the fight for the Reichswehr with a large public mass meeting on March 15, 1929, in Munich,* where he discussed the subject "Nationalsozialismus und Wehrmacht" (National Socialism and the Armed Forces). In this speech, he said:

For us National Socialists, the Reichswehr is not only a militia, or an army recruited from the people, or a standing army; it is also a means to an end. We National Socialists must reject any concept which sees in one of these institutions an end in itself. Our viewpoint will never be: "Is this advantageous to the Reichswehr?" or perhaps, "Is this advantageous to the standing army?" but we will always consider these problems from the standpoint: "Is this advantageous to our people?" (Shouts of approval.)

I expressly use the phrase, "Is it advantageous to our people?" because the concept "Volk" is more important to us National Socialists than the concept "State." (Vigorous shouts of approval.) For all of these institutions, including the States or the Army, are not ends in and of themselves, and cannot be. It is possible that a State may become so lazy and decayed that it is only in the interest of the people that it be eliminated. (Storm of approval.)

Here the idea is openly expressed that, according to the National Socialist conception, the Reichswehr must be regarded not as the servant of the State, but as the servant of the people, who may possibly be in opposition to the State. And in the last sentence, Hitler leaves no doubt that he considers it as "service for the people" and thus also as a duty of the Army to eliminate this "lazy and decayed State"; the apparent conditional form of this statement is only a rhetorical trick. The fact that the audience received these particular statements with loud applause proves that they thoroughly understood that Hitler was covertly challenging the Reichswehr to refuse obedience to the State power, and demanding that it march against the State. Here is also expressed the conviction, characteristic of every revolutionary movement, that it has the higher right of the people on its side against the right of the State, a conviction without which no revolutionary movement could exist, but which, on the other hand, no State which does not capitulate can tolerate. How "rotten" this State is is elabor-

* See special edition of the *Voelkischer Beobachter* of March 26, 1928, on the Reichswehr.

⁵⁹ The Social Democratic Party was always divided in its policy toward the Reichswehr. The close political ties between high-ranking Reichswehr officers and the anti-democratic forces of Germany were one of the main reasons why many Social Democrats strongly suspected the Reichswehr. On the other hand, the National Socialists decried the Reichswehr because in 1928 some powerful officers in the Reichswehr Ministry tried primarily to strengthen their own political influence and not that of the nationalist or National Socialist groups.

ated upon by Hitler in the following remarks, in order to show that the time for a secession of the Wehrmacht is not so remote at all:

In recent times the "politicians" have become a special guild (laughter in the audience) which is chosen from the body of the people annually, or, at the most, every four years by a special process of selection. (Excessive laughter and applause.)

Soldiers and officers are trained—that is, they receive a specialized training for their profession in order to insure the continued existence of a nation. But "politicians" are elected, not by those who know the least thing about this matter but rather by those who could not have been elected themselves, as they know nothing about it. (Loud applause.) For no one wishes to maintain that all German men and women would be capable of governing a people, but one does maintain that they are capable of electing those who can govern the people. That is, the great prophetic vision through which the nation recognizes the great spirits lies in the ballot of the voters. This is the most wonderful process that there is. No one can question that the fate of the greatest men is inscribed in the book of Providence. But today, more than ever, one must not doubt that just that part of humanity which possesses no ability will, especially through the ballot, choose those whom fate has predestined for office. (Loud peals of laughter and applause.)

After Hitler has thus expressed the difference between democracy, which is incapable of true leadership, and the authoritarian conception of the army, which, in his opinion, alone guarantees a virile leadership, he asks a purely rhetorical question of the Reichswehr:

Do you wish to drag the army down to the level of the politicians, or do you not wish to do away with the present low political morals, so that they may again be raised to the standard of the army? (Loud applause.)

In this question Hitler obviously demands the elimination of democracy as the basis of the present State and its policy, and the disobedience of the Reichswehr to its political superiors.⁶⁰

In support of his thesis, there follows a discussion in which it is pointed out that today the army has already been estranged from its real political task by democracy:

We have before us the phenomenon of militarism when an organization no longer maintains a vital, inner, and rational contact with its actual purpose, but, instead, becomes an end in itself. Such an organization places itself at the disposal of any government as a dead mechanism and permits this government to play havoc with the people as long as its own existence as mechanism is guaranteed. An organization completely dead inside and out, and one which has severed all connection with life, is used as an instrument of power by any and all who are willing to preserve this instrument of power for its own sake. (Loud applause.)

⁶⁰ The Reichswehr Minister was a member of the cabinet.

Then one thing must be said: the old German Reich had very little of *militarism*, as it had to a great extent united this instrument with our people—indeed, it was the best school for them, the best institution for the disciplinary education of our people.⁶¹ *But today our military organization has much more nearly approached the conception of militarism.*

The army is then openly urged to do away with this state of affairs:

Even here the army has a political mission to fulfill, namely, that of not participating in party politics, but, instead, of helping to destroy the muddle and pestilence of party politics.

And in order to explain the steps the army ought to take, in the opinion of the National Socialists, the following is said:

If, for instance, they had been filled with the National Socialist ideology and had acted accordingly, Germany would never have found herself in this swamp of party politics and parliamentarianism. *The Italian army, which embraced the cause of Fascism, was thereby able to save Italy.*

This also contains a rhetorically disguised challenge, in which the Reichswehr is asked not only to refuse obedience to the political authorities if the government is overthrown as planned by the NSDAP but also to place itself at the head of the revolution.

In lengthy remarks, Hitler then insists that Germany's salvation lies solely in a dictatorship, for only thereby can that hegemony of Europe which is absolutely necessary for the freedom of the German people be obtained. After presenting a criticism of Marxism, he asserts that the army cannot stand on the side of democracy, which is dominated by Marxists.

He fires at the Marxists for wanting the army separated from politics:

Naturally, politics and the army must be separated, completely separated. That is, politics can be played by scoundrels, but at the head of the army there must be completely unpolitical figures. Then only can you be sure that the scoundrels govern a people complacently; then the scoundrels have the official instruments of power on their side, and then their party politics can completely ruin the nation. Unpolitical officers and hard-boiled politicians as representatives of a nation! That is the quickest way to reach the goal which the Jew has set up for himself.

The following are explanations of why the honor of an officer does not permit him to collaborate with the Marxists, that is, with the democratic powers:

⁶¹ Under the Imperial regime, Germany had compulsory military service. This was abolished after World War I but reintroduced by the Nazis on March 16, 1935.

Who once destroyed the old Reich? This is a question of conscience which I am convinced an honorable officer cannot answer other than truthfully. Who destroyed it? Marxism. And today the people believe that they can share the government with it! Believe me, it is terrible when the honor of an officer is no longer identical with the highest conception of honor. (Loud applause.) We are no officers. I was only an ordinary musketeer, but I have made no reconciliation, no compromise with the traitors and annihilators of the Fatherland. (Very loud applause.) *We do not wish to reconcile ourselves with them, and we do not wish to have a part in their government; we only want to fulfill the mission for history, the mission that must be fulfilled: namely, that every evil deed must some day be atoned for. As soon as an officer can be made to waver in this or if he even believes that he can take up a middle course with the annihilators of the Fatherland who have been unmasked and revealed to him a thousand times, he deviates from his standards. In that moment he degrades himself, and at that very moment something which formerly appeared nearly as unshakable as granite crumbles down, and in that very moment he loses the nimbus which he had before. He will then become ripe to participate in parliamentary dinners, seasoned to be addressed by diplomats, and perhaps ripe enough to receive an invitation from a Soviet ambassador. Yes, but the more he participates in such honor, the more he estranges himself from the heart of his people, who alone can give him strength and who alone can protect and cover him. The people alone can give him those who will serve him in an emergency in order that he may fulfill that which he is called to fulfill.*

This again contains a hidden challenge to refuse obedience to the political power, insofar as it is represented by Marxists. In reviewing the part which the Free Corps⁶² should have played in 1919 and the manner in which Fascism acted in Italy in October, 1922—it appears in this speech for the second time—Hitler advocates that this resistance be made active and end in a military revolt:

Had the Free Corps not been unpolitical in 1919, but rather had they consciously promoted nationalistic politics, Germany would not find itself in the situation in which it is today. Then those who risked their lives could have taken the fate of the Reich into their own hands, and they would have been the people's representatives, and not those who appointed themselves to this position. A representative of the people, in my eyes, is he who fulfills the highest duties of a nation—that is, he who risks his life, and not he who sells out his nation at home. (Loud applause.) Even at that time they did not have a political idea, but that which the Free Corps did not have, the political commanders possessed. They had a political

⁶²Free Corps (Freikorps) developed after the official dissolution of the German Army after World War I. Such Free Corps consisted mostly of the nationalistic younger Army officers and men. They were tolerated by certain branches of the government of the former Republic, especially by the Reichswehr. The Free Corps became the nucleus of the National Socialist para-military organizations: the Storm Troops and the Elite Guards. Speaking about the "unpolitical" attitude of the Free Corps in 1919, Hitler expresses his discontent that the Free Corps did not merge into his SA and SS units at an earlier date.

idea and developed it into appropriate form. Again, thousands of young Germans had died for this dirty party libel, but their death only helped to establish that regime of incapability which surrounds us now.

We are thus faced with the fact that in a time when our people had an organized army of 100,000 men, the inner political development sank to a new catastrophic low.

No one can proclaim himself innocent. *There is no army which is only an end in itself, but rather the task of an army is service to the nation.* Naturally, a war cannot be waged outside the borders with 100,000 men, *but the nation can develop such an army to a degree which will again restore its power sufficiently to fight for its destiny.* You say that we are here only to maintain peace and order. I ask you, is that peace which you are protecting? Do you call that order which you are defending? History will one day have another name for it.

There is another State in which the army had a different conception of these exigencies. That was in the State where in October, 1922, a group made ready to take the reins of the State out of the hands of the gangsters, *and the Italian army did not say, "Our only job is to protect peace and order." Instead, they said, "It is our task to preserve the future for the Italian people."* (Loud applause.) And the future does not lie with the parties of destruction, but rather with the parties who carry in themselves the strength of the people who are prepared and who wish to bind themselves to this army, in order to aid this army some day in defending the interests of the people. In contrast, we still see the officers of our Reichswehr belatedly tormenting themselves with the question as to how far one can go along with Social Democracy. But my dear Sirs, do you really believe that you have anything in common with a world ideology which stipulates the dissolution of all that which is the basis of the existence of an army?

You first need a people which is healthy. *You, as officers, cannot maintain that you do not care about the fate of the nation: whether it is poisoned or over-run with disease, or whether it believes in God or not, whether it has an ideal or not; or that it is immaterial to you whether children are born or not.* That you cannot say. You need all of those things; otherwise, all your actions are only superficial and feigned.

Hitler thus turns directly to the officers and asks them for a decision in the following words:

You can . . . *not say either that it is immaterial to you whether we ultimately have a democracy or not.* Gentlemen, either laws are correct or they are not. Imagine introducing democracy into your ranks!

And then he states clearly that democracy and soldierdom are diametrically opposed to each other, and gives the officers an alternative:

Either you have a healthy State with a really valuable military organization, which means the destruction of Marxism, or you have a flourishing Marxist State, which means the annihilation of the military organization capable of serving the highest purposes.

One must realize that the National Socialists place Marxism and democracy on the same level, so that to them the fight against Marxism is the same as the fight against democracy, and that the challenge to the officers to destroy Marxism also contained the challenge to destroy democracy. In addition to this, at the time that Hitler made this speech the Social Democrats were represented in the cabinet of the Reich, and the principles of the Reich policy were formulated by a Social Democratic chancellor. The challenge to the army to destroy Marxism—in addition to the above statements that only a dictatorship can help, the condemnation of the unpolitical conduct of the Free Corps in 1919, and the reference to the march of the Fascists on Rome—can therefore be interpreted only as a demand for similar action, that is, the violent overthrow of the government in co-operation with the National Socialists. The following statements in the speech, also, which are definitely directed to the officers, can be understood only as a challenge to refuse obedience and to support an active struggle against democracy:

The Reichswehr generals may well keep in mind the following:

The victory of one course or the other lies partially in the hands of the Army—that is, the victory of the Marxists or of our side. It is necessary that one be able to visualize the consequences clearly. Should the leftists win out through your wonderful unpolitical attitude, you may write over the German Reichswehr, "The end of the German Reichswehr." For then, gentlemen, you must definitely become political, then the red cap of the Jacobins will be drawn over your heads, and then you will have to make haste to adjust yourselves quickly to the new state of affairs. Then you will become commanders of an organization which has nothing more to do with the German people, and then a troop will arise which is similar to the Russian army of hangmen and has only one task: to subjugate their own people to the Jews. Then you will be renouncing the happiness of a rebirth of our people and the glory of the Reichswehr, which is the continuation of the glory of the old army.

.....

If the leftists win out, you may at the same time bury the future of the German people. But do not forget one thing: that Germany could not stand up under as much hunger as Russia, that great agrarian territory, was able to bear. And do not forget that world history continues to roll on, and that it will not stop for Germany because you have at last acquired a democratic-Marxist army. On the contrary, the hour will come in which the fate of our nation will be realized. These are the prospects that you will have in the event of a democratic victory. And do not delude yourselves into thinking that they will suddenly have a change of heart. *You may then become hangmen of the regime and political commissars, and if you do not behave, your wife and child will be put behind locked bars. And if you still do not behave, you will be thrown out and perhaps stood*

up against the wall, for a human life counts little to those who are out to destroy a people.

Even from the contents of Hitler's speech, it is clearly seen that here he is not dealing with a purely theoretical discussion of military questions, but rather with the express intention to win the Reichswehr over to the National Socialist ideas—that is, to divest them of their quality as one of the reliable instruments in the hands of the constitutional representatives of the Reich⁶³ and, beyond that, to urge them to take an active part against the democratic power of the Reich in the event of the overthrow of the government as planned by the NSDAP. This purpose is stressed by the fact that, in spite of its great length, Hitler's speech was published verbatim as a special Reichswehr issue of the *Voelkischer Beobachter*, to serve as propaganda material within the army circles.

Continuing the activity aimed at the disruption of the Reichswehr, Adolf Hitler, in Pamphlet No. 3 of the National Socialist monthly entitled *Deutscher Wehrgeist* (German Military Spirit), page 101, discusses the military problems as follows:

In reality, the German Reichswehr alienates itself from the traditions of this glory from year to year in the same manner as it stops being a representative of the consciously and definitely national concept. *The more it kills the aggressive nationalistic spirit within its own ranks and alienates the representatives of that spirit in order to give positions to the democrats or even ordinary careerists, the more it becomes alienated from the real German people.* For the sly gentlemen in the present Reichswehr Ministry should not imagine that they can gain "Anschluss an das Volk" (Access to the People) by concessions to the Marxian-pacifist-democratic faction of our people.⁶⁴ Every military organization is of itself hateful to this faction of the German people, as long as it has to do with warlike purposes and does not serve as a watchman for international financiers. *The only faction with which an army of military value and significance can maintain a spiritual relationship is that consciously national nucleus of a people which not merely out of tradition thinks militarily, but which, rather out of a national love, conviction, and enthusiasm, is always ready to don the soldier's uniform in order to protect the honor and freedom of its people.* It is necessary that a military body keep up the spiritual relationship with those from whom it can draw replacements in the

⁶³ The point of reliability was overemphasized in this police report in order not to offend the Reichswehr, another branch of the government. However, the subversive activities going on in the Reichswehr were known to the internal security system.

⁶⁴ Referring to the late General von Schleicher, a political intriguer. He tried to form his own political machine through a political coalition between the Army, the Socialist wing of the Nazis under Gregor Strasser, and certain Trade Union leaders. Schleicher and Strasser were murdered in Hitler's blood purge of June 30, 1934.

hour of emergency, and not with those who at every opportunity, because of their inner spiritual attitude, reject and ultimately betray it. Therefore the present leaders of the so-called Reichswehr may act as democratically as they please, but through this they will never gain a close connection with the German people, as the people suited for such a relationship are not to be found in the ranks of democracy. By not opposing, but rather by recommending the dismissal of consciously and emphatically national-minded officers and leaders, the former Chief of the German Reichswehr, General von Seeckt,⁸⁵ has finally created an organization which ousted him with little remorse!

Since the retirement of Von Seeckt, the democratic-pacifist influence has worked untiringly to make of the German Reichswehr a thing which the parliamentary lords of the present State envision as the most desirable ideal: a republican-democratic guard for parliament!

With such an instrument one can hold down only his own nation, and cannot carry out any worthwhile policy abroad.

The efforts of the NSDAP to weaken the discipline in the army, thus disrupting the military power machine of the republican German State, is even more evident in the statements of Wilhelm Weiss in the same pamphlet (p. 137) in a treatise "General Groener," where he says:

In article No. 1—of the "Berufspflichten des deutschen Soldaten" (Professional Duties of the German Soldier)—we read:

"The German Reich is a Republic. *A soldier swears allegiance to its Constitution.* Unswerving loyalty to the Fatherland is the soldier's noblest duty."

Article No. 2 reads:

"*The Reichswehr serves the State, not the parties.* Political activity is forbidden to soldiers."

In article No. 1 the soldier swears allegiance to the "Constitution"; that is, he swears allegiance to something abstract, *the product of a majority decision in parliament*, which might again be changed at any time by a majority decision. And this decision is made by political parties *in which, according to article No. 2, the soldier is not allowed to participate.* The Reichswehr soldier must, therefore, be prepared to risk his life unreservedly for any constitution (the latter according to article No. 3). What is written in the constitution is not to concern him, for that is stipulated by the majority of the parliament (red and black pacifists!).⁸⁶

⁸⁵ The late Hans von Seeckt, born April 22, 1868, was a Colonel General in the First World War and organized the new 100,000-man Reichswehr as a cadre army. From 1920 to 1926 he was chief of the German Armed Forces. That year he was forced to resign after I revealed publicly that he had unlawfully accepted the son of the German Crown Prince as a member of the Reichswehr for temporary training as a German officer. Such temporary trainings were violation of the Treaty of Versailles and part of the secret rearmament which started immediately after World War I.

⁸⁶ "Red pacifists" refers to the Social Democratic Party. "Black pacifists" refers to the Catholic (Centrist) Party (Zentrum).

Thus the oath of allegiance of the Reichswehr soldier becomes an absurd demand on the soldier, to say the least. He swears to risk his life for a matter of which he knows nothing and which does not concern him. He swears to let himself be killed for any whimsical decision of the majority made by more or less anti-military parliamentarians.

Here, in camouflaged but unmistakable form—this form which has become definitely characteristic of the NSDAP—the statements are directed at the Reichswehr soldier, challenging him to break the oath of allegiance which “represents an absurd demand.” In its issue of August 27, 1930, the *Voelkischer Beobachter* shows the same purpose—that is, to disrupt the Reichswehr. There, in an article entitled “Das Reich finanziert die Hetze gegen die Reichswehr” (The Reich Finances the Agitation against the Reichswehr), it is stated:

Could there be a better illustration of the judicial comedy which, at the behest of Groener and his political friends, is soon to be played before the Reich Supreme Court in Leipzig against the three young officers who . . . probably had every reason to doubt the serious military intentions of their highest officers?

We for our part shall not leave anything undone to see that this newest scandal about Mr. Groener, who is at present eating his wedding feast, becomes known to everybody whom it concerns and who has an interest in learning by whom and with whose help they are continuously spited and slandered. It is a fine State which helps to ridicule those who some day may have to risk their heads for it, and let themselves be killed!

The same issue also contains the following in regard to the Ulm Reichswehr officers who are being tried for high treason:

Their crime is supposed to have consisted of the nationalization of the Reichswehr. That is indeed terrible, considering the present system, where the Reichswehr Ministry distributes gold watches as denunciation premiums.

But the time will come when the *government of the office generals* will be terminated.

Even some time previously the contents of a secret circular of the Party regarding the setting up of cells within the Reichswehr had become known. According to this, the local groups of the NSDAP are instructed to ascertain the identity of former Storm Troopers and Party members who are now serving in the Reichswehr. The local groups are further instructed to determine where these persons are stationed, and to inform the Gau directorate of their addresses. Gau headquarters are to have been instructed to approach former Party members by writing friendly letters to them, or by sending them packages, and to forward their replies immediately to the Party headquarters in Munich for special evaluation.

National Socialist printed matter aimed at the disruption of the Reichswehr was first thrown into barracks in March, 1930, at Munich and Wuerzburg. In Wuerzburg the above-quoted special Reichswehr issue of the *Voelkischer Beobachter* was discovered, and in Munich a leaflet called "Groeners Schnueffelkommission" (Groener's Spying Commission) was distributed.

The trial of the Ulm officers Scheringer, Ludin, and Wendt⁶⁷ (^{12 J 10.30}₂₅) has already revealed the effects of this actual subversive practice. According to the investigation, there existed a group of Reichswehr officers who were working to establish a firm organization with the purpose of delivering the Reichswehr into the hands of the National Socialists. The defendants, Scheringer and Ludin, had a conference with Captain von Pfeffer (ret.) and Captain Doctor Wagner (ret.), with the result that the two defendants were to try to win the Officers' Corps over to the National Socialist idea. The goal they had set was to work in such a manner that if the National Socialists made an attempt to overthrow the government—which the defendants expected within a short time—the officers and troops would join the revolutionary movement and under no condition would they open fire on the National Socialists or National Socialist organizations. They found a willing collaborator in the defendant Wendt. The defendants made several trips in order to win over to their cause officer friends whom they considered suited to their purposes. As these officers, however, were not willing to enter into the plans of the defendants but, instead, reported them, the subversive activities of the defendants were brought to an end. It has been established through testimony that it was planned to form an organization within the Reichswehr and that, for the time being, trusted representatives and functionaries were to be placed in the various Reichswehr units. From the testimony, it

⁶⁷ The three Reichswehr officers—Richard Scheringer (born September 13, 1904), Hans Ludin (born June 10, 1905), recently a general of the SA Storm Troopers (at that time both were lieutenants in Ulm), and First Lieutenant (ret.) Hans Friedrich Wendt (born December 5, 1903)—were sentenced by the Reich Supreme Court (Reichsgericht) to 18 months' confinement in a fortress for preparation of high treason. Sentence was pronounced on October 4, 1930 (file 12 J. 10/1930 XII H. 41/30) and was published by the writer in *Die Justiz* (Justice), Vol. 6, in January, 1931. During the trial Adolf Hitler testified under oath that the term "revolution" used by him meant only spiritual revolution in Germany, and that the heads which would "roll in the sand" would do so as the result of a legal procedure by a State Tribunal if the National Socialists came to power. I attended the trial as an official observer of the Prussian State administration. In my report I suggested the arrest of Hitler for perjury. See Document D1.

is to be concluded that the officers who were to participate in this propaganda were to be reimbursed for traveling expenses and that the NSDAP supplied the defendants with the money for these expenses.

b. POLICE⁶⁸

The NSDAP has recently initiated a similar activity of undermining within the uniformed police.⁶⁹ An article in the *Voelkischer Beobachter*, No. 13 (June, 1930), serves this purpose. Under the title "Die Schupo und Wir" (The Uniformed Police and We), the article discusses the alleged fact that, in the election of Berlin's City Council in November, 1929, 222 out of 4300 police officials voted the National Socialist ticket in six different voting districts of Berlin. The article states:

These voting policemen are no day dreamers, but politically active men, and from this we may conclude that, *if there is an emergency, they will carry with them part of their comrades against Zoergiebel⁷⁰ and the Weimar system.*

. . . This is all the more comprehensible among the Berlin policemen, as the anti-national and degenerate police methods have by now utterly nauseated every decent man who wears the police uniform.

. . . Zoergiebel and his cohorts are going to experience still other surprises as the result of the vote of the Berlin police, which pleases us very much, for we are aware that the liberation of Germany will be carried out not against but with the armed force. (We hope you are listening, Mr. Groener.)

. . . We are not turning against the individual police officials, but against the Weimar system, which has commanded them to perform the services of thugs for the parasites of the people, and thereby drags their honor as human beings into the dirt.

Here again we have in a disguised form the challenge to the police officials to refuse obedience to their superiors. In addition, Hitler openly expressed this in a meeting in Gotha in May, 1930:

On a small scale, we are today ready to meet the left wing if it takes to the street, and in such a moment we have only one hope: that the police will let us have the freedom of the streets!

This clearly means that the NSDAP is trying to provoke a violent collision with the leftist parties which are willing to oppose an overthrow, and wants to assure itself of the neutrality of the police in such an eventuality.

⁶⁸ See also Documents D1, D2, and D3.

⁶⁹ Refers to the uniformed police forces of the individual German States, especially to the uniformed police of Prussia, the so-called Schutzpolizei, abbreviated Schupo.

⁷⁰ Karl Zoergiebel, a Social Democratic trade unionist, was Police President of Berlin from October, 1926, to November, 1930.

Individual acts of propaganda within the police closely resemble the communist procedure. According to official information from the Oldenburg government, all officers in the police force received National Socialist printed matter. A National Socialist in Luebeck recently admitted that he mailed National Socialist literature to police officials. The Hessian Police Department in Darmstadt, in a communication of June, 1930, considers it strange that already "police officers have also accepted the teachings of Hitler."

Taking into account the context, we can still recognize clearly the purpose of arousing discontent as well as hostile feelings against their superiors among the Reichswehr soldiers and police officials, so that, in the event of an armed conflict, the government instruments of power would not fulfill their duties toward the constitutional government.* This subversive activity is also highly adaptable to making the police officers and Reichswehr soldiers useless in regard to the fulfillment of those assignments which concern the defense of the constitutional form of government. How significant the success of such an activity is for the existence of the constitutional form of government, as well as for the prospects of the NSDAP when it attempts to carry out its plans for a violent overthrow of the government, needs no further discussion. We also have practical proof of the danger of this undermining activity through the regrettable occurrences in the Reichswehr at Ulm.

4. THE CREATION OF PRIVATE REVOLUTIONARY TROOPS (SA—STORM TROOPERS, AND SS—ELITE GUARDS)

a. PURPOSE AND TASKS

The NSDAP is not content with the propagandistic preparation of the violent overthrow of the government and of the destruction of the government's means of control. In order to accomplish its revolutionary objectives, it has already created in its Storm Troops (SA) and Elite Guards (SS) a uniformed and well-disciplined military organization.⁷¹ Hitler himself even spoke of the organization of a large

* Cf. decision of the Reichsgericht (Reich Supreme Court)—Feriensenat, July 25, 1928, as well as RG IV Feb. 21, 1929 of Jan. 3, 1929 and of 13 J. 38/1928 13 J. 204/1928, 13 J. 118/1928 May 16, 1930 13 J. 38/1930.

⁷¹ The SS Elite Guards, under Heinrich Himmler, were combined with Himmler's police apparatus in 1936. The combined organization took over full control of the German administration on August 24, 1943, when Himmler became Reich Commissioner General of the Administration and Reich

national army during the District Meeting of the Party in Munich in the fall of 1926, and expressed the hope that the SA and SS would soon attain a membership of one million, and that that would be the signal for the desired national liberation. Since then, the purpose of the SA and of the SS as a revolutionary army has been more and more clearly expressed. On October 13, 1928, Von Pfeffer, at the time the Supreme Leader of the SA, writes to a subordinate officer in Cologne:

We are of the opinion that the SA, as the nucleus of the future German army, must be so trained and organized that even today, slowly but surely, a State is formed within the non-State, so that when the National Socialist Greater Germany is created the internal structure will already exist, determined and strong, invincible in every respect. One might still dispute about the external form and the tactics which are to be applied and which depend mainly on the particular conditions of time, or, even more important, of place.

He addresses the same person on November 28, 1928, as follows:

The SA⁷² is the militant force of the movement—it is the personification of the will to power of a political organization. . . . As our SA is the expression of a party machine's politically organized will to power which wishes—not with words, but with actions—to accomplish the national and social liberation of the German people, the concept of comradeship in its ranks takes on an entirely different meaning from that in the so-called military and veteran organizations. . . .

The comradeship in the SA formations *must, therefore, become such a solid structure that all police bans or other underhand methods will recoil from its granite wall.*

In Cologne on May 23, 1929, Colonel Langendorf wrote to his subordinate SA leaders:

The first task of the SA is the fight for the State, the struggle for power.

Lieutenant Colonel von Ulrich⁷³ (ret.), then acting Supreme Deputy SA Leader of the Western Region, and at present Inspector General of the SA, expresses himself similarly in two orders of July 22 and July 27, 1929, to the colonel of the Storm Troops of the Rhineland Gau. On July 22 he says:

Minister of the Interior. They gained control also of the Army when Himmler became commander of the Home Army on July 20, 1944.

⁷² After the assassination of Ernst Roehm, SA Chief of Staff, by Hitler on June 30, 1934, the political significance of the SA was sharply reduced in favor of the SS Elite Guards. It appears, however, that the influence of the SA increased again in 1943.

⁷³ Curt von Ulrich, born April 14, 1876, in Fulda, is a former Lieutenant Colonel in the Army. He joined the NSDAP in 1925 and became an Elite Guard commander in Hessen. From 1930 to 1933 he was Inspector General of the SA. After Hitler came to power, Von Ulrich became Oberpraesident (Provincial Governor) of the Prussian province of Saxony.

Our parade in Nuernberg will prove to the whole world that the German future belongs to National Socialism, that Germany is awakening. *The thundering steps of the Brown Legions* announce a new era which will bring to an end the life of serfdom and misery. Friend and enemy must and will take note and be aware of us.

And on July 27, 1929:

It is well known that the *coming National Socialist State does not recognize general conscription* of the old type of Kaiser Wilhelm's time. (*The SA would not tolerate every scoundrel's thereby being forced to wear its revered uniform.*) The selection of those fitted for military service is made according to military law. Every German ought to be happy if he is permitted to represent his Fatherland. This privilege is also a test. He who joins us is not forced to do so as in the old Empire. It is his own free choice. But we accept no excuses thereafter. The National Socialist program is quite definite in this respect when it provides that only he who has fulfilled his military duty will be permitted to exercise the privileges of a citizen. That is, every sound Party comrade ought to belong to the SA and march in its ranks, and leave it for the others to stand on the sidelines and be mere spectators. The greater our display of power, the deeper the impression we shall leave behind, and the sooner will the others yield; the reactionaries⁷⁴ (one group of our enemies) showed in 1918 how they could run away from a handful of despicable deserters. Marxism showed, during the Kapp Putsch⁷⁵ and the Hitler Putsch,⁷⁶ how quickly the politicians capitulate. On both occasions the so-called rulers disappeared during the night, and they will do the same again when our day comes. *Free the streets for the Brown Battalions; free the streets for the Storm Troopers!*

On October 22, 1929, Gau Leader Telschow, in a meeting at Neuhaus/Elbe, declared the following in regard to the SA:

The present State is no State. The NSDAP is taking up the fight against the present system and against the "Three Hundred" of the international capitalists who rule the world. . . .

We are fighting for you. If necessary, our brown-clad youth will risk their lives in this fight, and we will prosecute this struggle by all methods. In such a fight, there will be casualties; there will be new graves in our fight against the Jewish scum. Some mothers will perhaps lose their sons!

Circular No. 3 of the Cologne University Group of the Nationalsozialistischer Deutscher Studentenbund⁷⁸ (National Socialist German Students' Bund), dated July 23, 1928, clearly shows that the NSDAP

⁷⁴ "Reactionaries" refers to monarchists who "capitulated"—as the Nazis termed it—when in November, 1918, deserters (that is, Democrats, Social Democrats, etc.) took over. The term gained new significance during the purge of the "reactionary" generals in July, 1944.

⁷⁵ See Appendix B.

⁷⁶ The Nazi cells among university students were the most active Nazi groups in the early twenties. The illegal rifle practice of these cells was a part of the secret rearmament and an important factor in undermining German universities.

is also pursuing its objective of the violent overthrow of the government with the aid of the SS. The following declaration is included:

In reference to Circular No. 2, we expect every healthy member to register for SS service *in order to receive practical training for the coming struggle to set up the National Socialist dictatorship.*

The statements cited are not to be considered as insignificant chatter of unimportant Party members or subordinate leaders, but rather as official proclamations of the Supreme Leader of the SA, the Supreme Deputy SA Leader of the Western Region, and a Gau Leader. SA Colonel Langendorf and the University Group of the National Socialist German Students' Bund in Cologne expressed themselves to the same effect. In short, the SA is the "expression of the personified resolute will to power" of the NSDAP—that is, of a movement which strives for the violent overthrow of the government. They serve first "to train healthy, brown-shirted members of the NSDAP for the coming struggle to set up the National Socialist dictatorship." The SA is not just a unit of young men of the same opinion without any determination to take the initiative, but an organization "determined to work for the national and social liberation of the German people by deeds rather than by words." Its task is "the struggle for the State." The SA is very much aware that these acts, this fight for the State, will be opposing "police bans and all kinds of other underhand methods," which are to be understood as measures of the authorities taken against the NSDAP for their acts of violence; for the fight will be prosecuted by "all possible means." It will be necessary for the SA members to "risk their lives in this fight." The SA and the SS are therefore the instruments of power of the NSDAP whose first duty it is to carry out the planned overthrow of the government. In order that there may be no doubt in this respect, the Supreme Deputy SA Leader of the Western Region quotes two treasonable actions, the Kapp Putsch and the Hitler Putsch, as examples for the final struggle. It will be the same when the day of the National Socialists comes: "Free the streets for the Brown Battalions; free the streets for the Storm Troopers!"

b. MILITARY TRAINING.⁷⁷

Observation of efforts on the part of the National Socialist leaders to obtain training in the use of military weapons and in military opera-

⁷⁷ The military character of the SA and SS has never changed. In 1943, the SA members who were not drafted served as auxiliaries to the army. The SS has

tions reveals that preparations are being made for the violent struggle with the existing State.

In the Rhineland Gau during the summer of 1928, a so-called "Sport Course for Leaders" was held. It was formulated in a strictly military manner. The *content of the course* is to be found in the Letters of Instruction which were sent to the leaders in outlying districts who were unable to attend in person. The Letter of Instruction No. I (August 2, 1928) deals with "Instructions on the Model 98 Rifle"; Letter of Instruction No. II (August 9, 1928) with the "Bayonet Model 98, Ammunition and Firing Instructions"; Letter of Instruction No. III (August 14, 1928) with "*Range of Bullets, Firing during an Engagement, and Estimating of Distance*"; Letter of Instruction No. V (August 22, 1928) with "Duties of Patrol Scouts"; Letter of Instruction No. VI (August 24, 1928) with "Patrol Duty." During the evenings on which instructions regarding the Model 98 rifle were given in the course, a rifle of this caliber was used for demonstration.

The Supreme Headquarters of the SA not only were aware of this course, but approved of it. To be sure, they suggested that these Letters of Instruction be kept as short as possible, in accordance with the new regulations of the Reichswehr regarding the necessity for caution, and that specifically military instructions be only in oral form during the lecture evenings. Moreover, at the request of Hitler, the military character of the course was later changed in favor of placing more emphasis upon the sport angle. It is significant, however, that Hitler did not reject this military training as a matter of principle. He rather expressed the wish that military instructions, if they were considered necessary, should be given only in oral form and in a very intimate circle of interested Party comrades, and that the written instructions should be restricted to entirely reliable Party comrades. We can, therefore, attach no weight to Hitler's declaration that, if the course were continued on its present basis, he would not be able to assume any responsibility for it, particularly as, according to a letter from the Supreme SA Leader to the Rhineland Gau, Hitler intended to discuss the matter with him again. It is also worthy of note that the Supreme SA Leader left it to the discretion of the Gau to continue the course according to its own judgment and upon its own responsi-

its own divisions, destined mainly as crack troops against revolutionary movements at home, since only 10 per cent of the SS men served in the field during 1943.

bility. The incident and the manner in which the Party headquarters dealt with it are at least very informative as to the *serious intentions* and efforts of the NSDAP *to prepare itself also in the military field for the planned violent overthrow of the government.*

C. MILITARY STRUCTURE AND DISCIPLINE

The purpose of the SA and SS as a revolutionary army is also in harmony with their military structure and discipline.

The SA is composed of specially suited and reliable Party *comrades from the territorial districts of the Party organization.* The SA is independent of the local Party organization (Ortsgruppe and Gau), has its own *leaders* who are independent of the local Party functionaries, and is placed under the command of the Supreme SA Headquarters (Osaf) in Munich. Until the end of August, 1930, Captain (ret.) von Pfeffer of Munich was Supreme SA Leader and was solely responsible to the Party Fuehrer, Hitler. As a result of the rebellion of the Berlin SA divisions in September 1930, Von Pfeffer resigned and Hitler took over the functions of the Supreme SA Leader for the time being.

The *organization* of the SA is strictly military. The smallest unit is the *Gruppe* (group), consisting of three to thirteen men who, if possible, should be employed in the same place. Several groups in a locality form a *Trupp* (troop), which is similar to a company. Several troops form a *Sturm* (battalion), and several battalions form a *Standarte* (regiment), the size of which is stipulated by the SA Leader. All of the regiments in a Gau form the *Gausturm* (Gau battalion); a particularly large and strong Gau may divide the Gau battalion into *Brigaden* (brigades), which might themselves contain several regiments. Recently several Gau battalions have been co-ordinated under a Supreme Deputy SA Leader, as were the former army inspection districts. In Germany there exist at present five such large regions:

1. East, Berlin: Captain (ret.) Stennes,⁷⁸ Supreme Deputy SA Leader.
2. North, Hannover: Major (ret.) Dinklage, Supreme Deputy SA Leader.
3. West, Duesseldorf: Lieutenant Colonel (ret.) von Fichte.
4. Central, Dresden: Lieutenant Captain (ret.) von Killinger.
5. South, Munich: Major (ret.) Schneidhuber.

"Inspector General" of all Storm Troopers is the former Supreme

⁷⁸ Captain Stennes had a feud with Hitler and left the Party before Hitler came to power. Then he emigrated to China, where he served as adviser in police matters until his alleged death in 1942. Most of the higher SA leaders who survived the blood purge of June 30, 1934, received high posts in the Hitler administration.

Deputy SA Leader of the Western Region, First Lieutenant (ret.) von Ulrich of Kassel.

Every battalion must have two trained medical aides; these form a special *medical corps* in the battalion. Every regiment also has a *band* (Spielmannszug—S. Z.) and an *orchestra* (Musikzug—M. Z.) The cyclists in the SA of a Gau may organize a *cyclists' unit*. The SA Gau Leader, who has an adjutant, is in charge of the Gau battalion. The SA Gau Leaders are under the Supreme SA Leader (Osaf) in Munich, who, until some weeks ago, was the former Leader of the Free Corps, Captain Pfeffer von Salomon (ret.). Every regiment Leader (Standartenfuehrer) has an adjutant.

The members of the SA wear uniforms, the so-called "Dienstanzug" (service uniform), consisting of: brown Hitler caps with chin straps; brown shirt with a brown tie; short trousers, brown if possible; leather or gaiter puttees; belt with shoulder strap; swastika armband (red band with black swastika on white circle); haversack and canteen, knapsack if necessary. On his right collar wing every SA man wears the number of his battalion in Arabic numerals; this collar insignia and number are of different colors in the various Gaus, just as the various regiments of the army corps were formerly identified. The leaders are identified by special insignia, such as stars, braid, etc. According to an order of the Supreme SA Headquarters, all members who served in the armed forces should be used in positions of leadership.

This military organization of the SA is in line with *military discipline*. The SA man taken from the ranks of the Party members must sign a special obligatory declaration of allegiance, in which he promises, among other things, *flawless discipline*. What is really to be understood here, and what, in consideration of the character of the SA, will have to be understood, is shown in the wording of such an oath as was given in 1926. Evidently out of caution, the wording has in the meantime been changed. In this oath, the SA man promises *implicit obedience* to the Fuehrer of the movement, Adolf Hitler, and to his appointed subordinates.⁷⁹ In spite of the change in wording, the oath still demands absolute obedience. In a more recent (May, 1928) directive to the SA members of the Oder-Warthe Gau, it is stated: "The SA men must implicitly obey their leaders."

⁷⁹ A similar pledge was required of members of organizations formed abroad in accordance with the principles of the SA, such as the various Nazi-minded Bunds and Leagues.

According to an order of the SA Gau headquarters of the Rhineland Gau dated April 4, 1928, "the directives of the SA Leaders must be adhered to fully without the slightest protest." A letter from Adolf Hitler to the Supreme SA Leader, Von Pfeffer, sets forth the following rules for an SA man:

The SA man must be a fanatic defender of the Hitler ideology and must unquestioningly submit to the *commands of the officers*.

Supreme SA Leader Captain (ret.) von Pfeffer wrote to one of his subordinate leaders in Cologne on December 28, 1929, as follows:

Before you stands but one individual: der Fuehrer. And you obey him. Faith in him is faith in the German people. He commands and you obey. You ask not why nor wherefore. *You know the goal.*

These orders are put into practice. The following example is characteristic. A farm employee, Willy Priess of Halle, had been indicted for participating in a Communist riot which the National Socialists had provoked. When questioned on what he had thought regarding the arrival of the Communists, he declared that he had not given it any thought, that *every SA man must go wherever his leader directs*. From this it can be concluded that the members assumed the obligation to submit to the orders of their superiors, disregarding their own judgment and not considering the legality or expediency.

The Elite Guards (Schutzstaffeln—SS) are made up of the best and most reliable Party members from all the local groups. They are in close liaison with each other and are organizationally under a Superior Command in Munich (S.S.O.L.), which itself is under the Supreme Leader (Osa). Their duties are threefold: protection of meetings, propaganda for the party, and service as a defense organization. According to the regulations for the SS, it is also their particular duty to provide reinforced protection for the Party Fuehrer, Hitler. Like the SA, the SS is strictly a military organization, and in its organizational duties it is independent of the local groups and the leadership of the Gau. It is also independent of the SA except that it is subordinate to the Supreme SA Leader.⁸⁰

The uniforms of the SS members are black. Requirements for entrance into the SS stipulate an age of 23-35 years, a minimum height of

⁸⁰ The organizational subordination of the SS to the supreme SA Leader was abolished when Hitler came to power. The political influence of the Reichsfuehrer

1.70 meters (not required of veterans), one year's Party membership, and affidavits of two other Party members who vouch for the applicant. The SS, therefore, represents an elite group of the NSDAP and is a kind of secret police. Obedience and silence are the principal qualities. The statutes of the SS contain a clause concerning unconditional silence regarding the internal affairs of the organization. Therefore a principle has been established whereby only those persons are admitted who, it can be expected, will remain National Socialists all their lives and will not leave the Party or be excluded from it. In conformity with this strictly military organization, all positions of leadership are to be filled, so far as possible, by former officers;⁸¹ there must also be maintained a register of military data for the members; and a monthly password must be issued.

The SS and SA are, therefore, strictly official Party military organizations, designed and, because of their organization and training, able to serve as the revolutionary assault troops in the violent overthrow planned and prepared by the NSDAP, and at the same time to form the nucleus of the army of the future National Socialist State.

5. DECLARATIONS OF LEGALITY AND THEIR VALUE

As revolutionary movements assume greater proportions and thereby present a greater danger to the maintenance of public order, they must naturally expect the government to take measures against them. During this phase, it is their custom to make declarations of legality, in order to keep the government from interfering with the organization which is still in the process of construction and preparation. The significance which may be attached to these assurances of a revolutionary movement has been pointed out by the Reich Supreme Court in its numerous high treason cases against members of the KPD (German Communist Party), in which it characterizes the frequent declarations of legality on the part of the Communists as completely unreliable assertions made for their own protection.

of the SS, Heinrich Himmler, increased so enormously that he became Chief of the Gestapo (1934), Chief of the entire German police system (1936), and Czar of the Home Front (August, 1943).

⁸¹ Many of these officers who became SS Generals (SS Gruppenfuehrer, SS Obergruppenfuehrer) were active saboteurs against the occupational forces after World War I. Hence they are experienced for future underground activities.

Recently, the NSDAP has also announced by repeated declarations and official directives by the Party Fuehrer, Hitler, and by subordinate officials, that it is striving for the complete transformation of the present State, but in a legal way and without the use of illegal methods. It is to be noted that the tactics of the National Socialists have assumed such a form that the Party directorate itself had thought that a new official proscription was imminent. Such a measure, however, would hamper and damage the development of the movement, even though the Party had intended, in the event of such a proscription, to continue illegally along the Communist pattern. It, therefore, seems more advisable to the Party officials to put on for the moment the cloak of legality in order to avoid official obstacles. In actuality, the real purpose of this step is only to gain time until the moment when the party is in better condition and better prepared for action.

The National Socialists have already previously made the same cover-up statements in moments of great danger to themselves, such as after the failure of the Munich Putsch. The attorneys of all the defendants who had participated in the Putsch⁸² endeavored to exonerate their clients by asserting that their undertaking had been a legal act. The court established the fact that it could not possibly have been a legal act. But even so far as the mental attitude of the defendants was concerned, it declared that it was utterly impossible for them to have acted in good faith when it stated, referring to Hitler:

It must be concluded that from all this, according to his description of the events during the first day of the trial, Hitler was at least not convinced of the legality of his acts:

"I said [to Kahr, Seisser, and Lossow],⁸³ 'We cannot turn back now. You will also perish with the whole affair.' For I foresaw that they would be put in prison with us if the plans failed."

And in regard to the other defendants, the court stated that:

From the education of the defendants it was utterly impossible to conclude that they assumed that Kahr was absolute ruler of Bavaria in the manner of Louis XIV, who created the phrase "L'état, c'est moi" (I am the State), or that

⁸² The Munich Putsch of 1923.

⁸³ Hitler has always maintained that the Bavarian Generalstaatskommissar Gustav von Kahr, Reichswehr Lieut. General von Lossow (Commander of the Bavarian Military District), and Police Colonel von Seisser (Chief of the Bavarian Police) were originally not opposed to his Putsch, but betrayed him later, both in action on November 9, 1923, and in their testimony in the following trial. All three, at that time retired officials, were murdered in the blood purge of June 30, 1934, on Hitler's order. Von Seisser again became a high police administrator in Bavaria under the American occupation of 1945.

he was even imitating him. Therefore, they also could not have believed that everything they did with Kahr or that Kahr did in conjunction with them was legal.

A revealing light is cast upon the value of legal assertions by National Socialist leaders in a description of the negotiations between Hitler and the former Bavarian Minister of the Interior shortly before the Munich Putsch of 1923. These negotiations are described by the former Bavarian Minister of the Interior, Franz Schweyer, in his book *Politische Geheimverbaende* (Secret Political Organizations), ed. 1925, pages 110-11. According to this book, when the Minister of the Interior warned Hitler, in a conversation, of the danger which might result from the development of the National Socialist movement, Hitler solemnly protested against the suspicion that he was plotting against the State. Hitler is supposed to have jumped up in great excitement, beat his breast, and declared:

Your Excellency, I give you my word of honor that I shall never in my life promote a revolt.

Hitler repeated this declaration with solemn emphasis, and a short time later he carried out the Munich Putsch!

And even today the assurances of the NSDAP must be evaluated only as tactical maneuvers.⁸⁴ The National Socialist leaders are, therefore, in a difficult position, for they must clothe their assertions of legality intended for the government officials in such a form that their followers can easily recognize that in reality no fundamental deviation from the revolutionary methods of using force is meant. This ambiguity is apparent in all National Socialist statements which attempt to pacify the authorities.

Alfred Rosenberg very characteristically says in his booklet *Der Voelkische Staatsgedanke* (The Racial Concept of the State):

Two mortal enemies can use the same words and yet convey two entirely different meanings.

Koehler,⁸⁵ a member of the Legislative Assembly of Baden, states more clearly in his speech in Buehl on May 28, 1930:

⁸⁴ The value of Hitler's "word of honor," so generously given in matters of foreign policy between 1933 and 1939, finally became apparent to the whole world. When this report was written in 1930, even members of the German administration did not like the statement that Hitler was a professional liar.

⁸⁵ Walter Koehler, born September 30, 1897, in Weinheim, was one of the First National Socialist members of the Legislative Assembly of Baden. After Hitler came to power, he became Prime Minister of Baden as well as Minister of Finance and Economics.

In spite of the Law for the Protection of the Republic, we are always able to keep within the borderlines of legality. If we want to call a minister a scoundrel, we use more flowery phraseology.

Doctor Buttman⁸⁶ of Munich stated in regard to this on June 18, 1930, in Baden-Baden:

I do not wish to step on the toes of the police officers, who must do their duty, or the plain-clothes men, who must supervise our meetings. But we have had some bad experiences with them; so I can easily say that we are able to discuss the *problems most dangerous to the Republic* in the meetings without their noticing it. No one can blame them, for with the present methods of the police schools, they are not taught any better.

Doctor Abendroth of Heidelberg declared in Mannheim-Sandhofen on June 15, 1930:

The National Socialists are no longer willing to have their speakers locked up for months. They have become more cautious in their remarks.

The statements of the former member of the Reichstag, Hermann Goering,⁸⁷ are not lacking in clarity when he says:

We are fighting in this State and the present system because we wish to destroy it utterly, *but in a legal manner*—for the long-eared plain-clothes men! Before we had the Law for the Protection of the Republic, we said we hated this State, but under this law we say that we love it, and still everyone knows what we mean.

In an article in *Der Angriff* of February 18, 1929, Doctor Goebels explains how "legal methods" are defined by the NSDAP:

A revolutionist must be able to do everything. His revolutionary convictions are proved not alone by fighting but also by the fact that he knows how to strike at the right moment. To be prepared is everything. Anyone can be blackjacked by the police, outlawed, or thrown into prison. *But to arouse volcanic passion, to awaken anger, to set the masses in motion, to organize hatred and despair with ice-cold calculation—that is, so to speak, with legal methods—is what differentiates the revolutionist from the revolter.* The revolution must also be organized. If revolution means nothing else, it means the breaking through of new spiritual, intellectual, and political ideas, and if the revolutionist is so unshakably convinced

⁸⁶ Dr. Rudolf Buttman, born July 4, 1885, in Marktbreit, founded the Free Corps "Buergerwehr" after World War I. From 1925 to 1933 he was the chief of the National Socialist faction of the Bavarian Legislative Assembly. Since 1932 he has been chief of one of the commissions of the Central Political Commission of the Nazi Party. After Hitler came to power, Buttman became Chief of the Section for Cultural Policy in the Reichsministry of the Interior and, in 1935, Director General of the Bavarian State Library and judge of the Reich Disciplinary Board for Civil Service.

⁸⁷ Hermann Goering, "Hitler's most loyal paladin," Marshal of the Third Reich, born January 12, 1893, at Rosenheim, Bavaria (named Hermann for his Jewish godfather, Hermann von Epenstein, M.D.), now awaiting trial as war criminal.

of the justice and necessity of this transformation that he will sacrifice his life if necessary, then he will also find ways and means of actually setting this insurgency in motion. . . . *To know how to wait is now essential, both for the leaders and the led. We must believe in the revolutionary strength of the movement, even though it wanders respectably and peacefully along seemingly bourgeois paths.* The most effective avengers are not those who let their hatred engulf them in blood and fury. To creep up on the enemy coolly, to feel him out and ascertain where his most vulnerable spot is, and to throw the spear calmly and with careful aim, so that it will pierce this weakness, and then perhaps to smile pleasantly and say, "Pardon me, neighbor, I cannot do otherwise!" is a dish of vengeance which is enjoyed in cold blood.⁸⁸

The most recent *Nationalsozialistisches Jahrbuch* (1930) brings out in a veiled fashion—but clearly and plainly for the attentive reader—that these methods of pacification are only tactical measures. In an article by Otto Bangert entitled "Idee und Organisation" (Idea and Organization) (pp. 159 ff.), we read:

After the German revolution of November 9, 1923, had failed as an armed uprising, Hitler recognized that democracy could now be beaten only with its own weapons. Accordingly, National Socialism—*against its innermost conviction*—was forced to begin the unequal race with the old parliamentary parties. It was forced to send its fighters into the parliaments. It had to train an army of agitators. Armed with the tongue, the pen, and the brush, with all the means of political propaganda which a democratic age handles so superbly, it had to go and meet the people in the streets and market places and begin the struggle for the great masses. . . .

As National Socialism did not find any traditional factors with which it could begin its operations, it had to appeal to the spontaneous life of the people *and to realize and organize through them the great revolutionary wave which will one day sweep away the entire present misfit of a State and all of its corruption. Therefore the first step in the task of National Socialism is to incite the masses through revolutionary propaganda. This must be followed up at the critical moment by the conquest of power, which in turn will bring about the establishment of the Third Reich.*

Today National Socialism is still entirely in the first phase. . . .

Long after the countryside has been conquered and the towns and smaller cities are firmly in our hands, the really large cities with their great concentrations of Reds may defy the National Socialist flood, until a final all-out attack lays them at our feet.

Then National Socialism will enter into the *second phase* of its development, which is characterized by the *seizure of political control. When and how we shall do this God alone knows. This question will eventually answer itself when the internal strength of the movement and all surrounding conditions tell us that the hour has come.* All our present work, so rich in sacrifice, is then only for the

⁸⁸ Of interest as a device for the coming Nazi underground.

sake of the historic moment when the banner of the Third Reich shall wave triumphantly over all Germany.

These statements reveal that during the present first phase of the mission of National Socialism the masses must be stirred up to a point of frenzy through revolutionary propaganda, and democracy must be disintegrated with its own, that is, with parliamentary legal methods. However, National Socialism knows not only a first but also a second phase, the phase of the conquest of the control of the State in order to establish the "Third Reich." The way in which this second phase is to be accomplished has been officially omitted, and this omission clearly proves that legal methods are not being considered.

Particularly characteristic is the much clearer statement by Doctor Frick in the same *Jahrbuch* (1930) (page 178): "The desperate cries for a dictatorship really come from those who are responsible for the present system; but in spite of this they will be called before a German State Tribunal for judgment." Doctor Frick set an example of the fact that assurances of legality are proffered only in moments of danger, but they are frequently accompanied by contradictory statements. When, in June of this year, he was interrupted in the Reichstag by the exclamation, "His Party does not want a revolution!" his answer was in utter contradiction to the clear meaning of the statements quoted above when he said, "Haven't you ever heard of a spiritual revolution?" He said this in spite of the fact that in his former speeches, already discussed in detail, he had demanded that a lieutenant and ten soldiers disperse the Reichstag, and that a dictatorship and terror be enforced in this country, just as had been done by Mussolini. These absolutely contradictory statements allow only one conclusion: that the very rare objection to illegal methods is not to be taken seriously, particularly because a challenge to use violence is constantly reiterated. The real significance of this attempt at diversion, which can be observed elsewhere as far as the so-called "spiritual revolution" is concerned, is demonstrated not only by many other convincing facts, but also by the statements of Doctor Goebbels in his pamphlet "Wege ins Dritte Reich" (Paths to the Third Reich), such as the following:

Revolution is not the literary affair of decayed snobs, but an actual political step toward socialism.

An article by Killinger directed against the Reichswehr—"Der Groener-Erlass" (The Groener Decree)⁸⁹ in the *Voelkischer Beobach-*

⁸⁹ The decree of the then Reich Minister Groener was directed against the acceptance of National Socialists in the German armed forces.

ter, No. 60 (March 13, 1930)—contains both the assurance of legality and the glorification of violence. At one point he states:

It is true that we wish to abolish the existing system of irresponsibility, with all of its Jewish and Marxist implications. However, not by violence, but rather by the methods of spiritual revolution which the Constitution grants us. He further maintains:

The soldier of the Reichswehr must conclude from this decree that the National Socialists are out to overthrow and destroy the existing German Reich and to excite it to a state of civil war, all of which is not true.

But in conclusion he remarks:

We shall use all means and extensive publicity in the press, which the Reichswehr also reads, to tell the people what must be done in the face of political events and political collaboration, and *we shall hammer not only into every soldier but also into every German the reason why he carries a weapon and the reasons why he must free his people.*⁹⁰

This is certainly nothing more than a veiled admonition that the liberation of the German people from the system of irresponsibility can be accomplished only by violence.

The utmost of mendacity regarding the assurances of legality is reached in the article "An die Gewehre" (To the Guns!) in *Der Angriff*, No. 58 (July 20, 1930):

We shall organize such an election campaign as the parliamentary politicians have never before experienced. And it is our determination that the new *Reichstag to be elected shall be the last. We want to end this system—legally—for after the September Reichstag, only one thing will exist: the Third Reich of national labor and social justice.*

Doctor Goebbels cynically declared at a propaganda meeting on June 6, 1930, in Berlin:

In 1927 and 1928 the NSDAP used very strong language, whereas in 1929 it acted with great restraint; *but it is well able to throw off this innocent mask once more in order to show its real strength.*

In this connection there should also be quoted the statement in the *Nationaler Sozialist* dated August 19, 1930, by K. O. Paetel, who is at present a member of the national-revolutionary nationalists, a group of left-wing dissenters of the NSDAP. These social-revolutionary nationalists know the real intentions of the NSDAP from personal observation, and the following statement by Paetel bears a great deal of weight:

⁹⁰ This technique of 1930 became the pattern for seditious Nazi activities in the whole world.

We leave the naive dream of accomplishing this (a healthy governmental condition) by "legal" means of legislative measures of the "Volksnationale"⁹¹ and the numerous bourgeois who share their convictions!

There can, therefore, be no doubt that the assurances of legality by the NSDAP, like similar assertions by the KPD (German Communist Party), are to be considered as tactical cover-up statements and are worthy of no credence.

6. LEGAL ANALYSIS

We must, therefore, start with the finding that the NSDAP is striving toward a revolution, using violent methods; the goal of this revolution is, by establishing the National Socialist dictatorship, to set up the National Socialist Third Reich. This endeavor is directed against the *Constitution of the German Reich*. By this Constitution are to be understood the fundamentals of the national life, whether they be expressly stated in this constitutional document or have found their legal expression in other places. Under the authority of the Weimar Constitution, the sovereign control of the German Republic rests with the German people.⁹² The German Reichstag is the representative of this united people as the bearer of the Reich sovereignty. At its side stand the Reich President⁹³ and the Reich government as instruments of the Reich. Therefore, when someone undertakes to remove the people from their position as bearers of the State authority, it must be considered an attempt to bring about a fundamental change in the Constitution. A dictatorship cannot be established without dislodging the people from this position granted them by the Reich Constitution. Under any condition, the establishment of a dictatorship involves a change in the Constitution under the democratic republican form of government as it exists in Germany, regardless of whether it is intended to be the final goal or serves only to accomplish other purposes.*

The nature and goal of this undertaking have taken a rather definite form. The goal is the overthrow of democracy and the establishment of a dictatorship. It is to be accomplished by means of

* RGSt. 56, p. 259 ff., especially pp. 260-63; see also Leipzig Comm., note 4 to Sec. 81, StGB.

⁹¹ A national splinter party which tried to promote its objectives by evolution.

⁹² Abolished by Hitler through the Enabling Act of March 23, 1933 (*Reichsgesetzblatt*, 1933, I, p. 141).

⁹³ The office of the Reich President was abolished after the death of Reichspräsident von Hindenburg by law of August 1, 1934 (*Reichsgesetzblatt*, 1934, I, p. 747), despite the fact that Sec. 2 of the Enabling Act of March 23, 1933, excluded such a constitutional amendment.

violence. The time has also been definitely set, so far as the conditions of the law are concerned. According to the decision consistently handed down by the Reich Supreme Court,** it is not essential that the treasonable plot should have been formulated completely in every detail in the minds of the participants; especially it is not necessary that the very day and hour of the intended violent overthrow of the government should have been set in advance. Such a limitation would make the law untenable and useless against all undertakings whose execution requires a great number of detailed acts. The choice of the time of execution—especially if the execution has been definitely decided upon—may depend upon circumstances. It is evident from the facts discussed above that the determination of the NSDAP to overthrow the government by violence is irrevocably established. According to these facts, after its failure in 1923 the NSDAP "began all over again," as Frick expressed it, to re-create "the indispensable preparation for the success of the coming fight for freedom." The day of the establishment of the national dictatorship is "longed for." Doctor Goebbels expressed the fact that the National Socialists are "creating a powerful group with which they will be able one day to conquer the State" and that "the revolution is on the march." The National Socialists definitely know that "another election will never be held." At present, they allegedly abhor bombing and revolts, so that they may prepare their forces for the "coming revolution" and not deplete them prematurely. District Leader Terboven gives the "corrupt parliamentary system" and the dictatorship (which he believes Severing is planning for the end of 1929) "only four weeks' grace; then the people will awaken, then the National Socialists will rise to power."

The following recent statements also clearly show that the NSDAP considers the violent overthrow as imminent. In *Der Angriff* of April 22, 1929, Von Pfeffer says:

The tempo of the last year must give Hitler the complete certainty that the time of our victory lies much nearer than we had previously dared to hope.

Arthur Grosse, the Reich Leader of the Hitler Youth, quite clearly states in an article entitled "Buendische Menschen in der Hitler Jugend" (Members of Youth-Bunds in the Hitler Youth), published

** RGSt. 5, p. 60, and 16, p. 165, as well as the decisions of the Staatsgerichtshof zum Schutze der Republik in 1924-25 and of the 4th Senate of the RG for the following years in the trials for high treason against members of the KPD (for instance, RG IV $\frac{18.6.1926}{14 \text{ A J. } 24/1926}$ and RG IV $\frac{21.2.1929}{13. \text{ J. } 204/1928}$).

in the magazine *Die Kommenden* of January 10, 1930, that the activities of the National Socialists constitute a continually careful preparation for a decision which has been definitely desired and planned for, and which may be expected in the near future:

If we exert all our strength, we still have time to train our youth, we still have time! *Woe unto us if it should be too late, and the Storm Troopers bleed to death for a State which may fly a different flag outside, bear a different name and bring a different order, but which internally has the same old ugly face of bourgeoisie and the same lack of culture.* Then the two million dead of the World War and the thousands who fell in the fratricidal struggle will have died in vain, and then we will have been the betrayers of our people.

The National Socialist agitator Staebe, of Wiesbaden, according to an official report of the Hessian Police Department of June, 1930, stated at a meeting in Giessen on March 19, 1930:

He who has a spark of love for the Fatherland and is prepared to make the supreme sacrifice on the altar of the Fatherland should join the NSDAP. *We are on the eve of a revolution.*

According to a report of the *Voelkischer Beobachter*, No. 159 (July 6-7, 1930), Wagner announced at a meeting held in the Berlin Sportpalast on July 1, 1930, regarding the evacuation of the Rhineland:

Our hour of realization comes nearer and nearer; therefore we now need unheard-of, ironclad discipline.

A report of the *Voelkischer Beobachter*, No. 161, regarding the celebration of the National Socialist Local Group in Meseritz on July 9, 1930, states:

. . . a solstice celebration and an enthusiasm which finds its source only in the ironclad belief in an *approaching* better future and in a new Third Reich for us, reborn from deepest infamy and slavery.

And according to the *Voelkischer Beobachter*, No. 171 (July 20-21, 1920), Hitler remarked at the peasants' demonstration on the Hesselberg on July 13, 1930:

We do not, like cowards, want to leave the fight against slavery to our children. . . . No, *we ourselves want to experience the day of freedom.* We want to fight for it, and we shall also say, as those peasants said when they descended from this mountain four hundred years ago to begin the Peasants' War, "It must be, come what may. We shall fight."

The fact that the NSDAP has already created, in the Storm Troops and the Elite Guards, the military troops for the intended overthrow and the nucleus for the army of the future National Socialist State also excludes every possibility of thinking of them as merely

theoretical statements of an event in the distant future. This fact rather forces us to the conclusion that they are dealing with a seriously intended coup which may be expected soon. The timing of this coup depends only upon sufficient preparation of their own forces and upon the favorableness of the political situation, as the Party wishes to avoid a repetition of the failure it experienced in 1923. How seriously the NSDAP wants and contemplates this overthrow is very clearly evident from the fact that the greatest energy is applied to the working out of the principles of the new National Socialist form of government to be brought about by the violent overthrow. A communication dated October 22, 1929, from the Reich Directorate of the NSDAP Organizational Division No. 2 to the Gau Leaders and Local Group Leaders stated in regard to this:

Until now, the NSDAP has used the weight of its political activity to expose and combat the destructive plots of the *forces inimical to the people which control the existing State and present society*. This fight must be continued in the future with increased vigor and by the exploitation of all legal means, until the political control of the State is taken over. But this must be accompanied by a gradual intellectual preparation for the *construction of the future National Socialist State*, in harmony with the growth of the movement.

The ways and means which lead to this new order cannot be planned in all detail so far in advance, as they depend on the unpredictable way in which the internal and external political situation develops. *But the ideal of a new order, which is our ultimate goal*, can be worked out clearly and distinctly, and the various possibilities and probable stages along the way to this goal can be studied.

Therefore, the present problem is to work out theoretically the effect of our racial ideology and of the National Socialist concept of State upon the basic philosophy of the various professional fields, and in this manner to gain a firm foundation and definite practical suggestions for the future reconstruction of the State.

The activity of the NSDAP throughout its many branches constitutes a continual preparation for the intended high treason, and thus an act of high treason as defined by Section 86, StGB. According to the decisions of the Reich Supreme Court*, Section 86 covers and makes punishable the slightest act reflecting the preparation of high treason. But under this also fall all acts which do not directly lead to the execution of the attempted undertaking, but only serve to prepare for the latter, and even those which do not aid the consummation of

* RGSt. 5, pp. 60 ff., and 16, pp. 165 ff.

the preparations but only serve as the basis for further contributing acts. Under these preparatory acts as discussed above, undoubtedly fall the promoting and strengthening of the Party and its collaborating organizations, working for the violent overthrow, the propagandizing of these ideas in public, the exciting and stirring up of the political and economic atmosphere, the subversive activity in the army and among the police, and the establishment of their own power machine organized on a military basis.

It must, therefore, be concluded that the change of the Constitution by violence⁹⁴ is the goal of the NSDAP and that its activities are a continued undertaking of high treason, thereby also fulfilling the conditions of Section 129, StGB.⁹⁵ Thus, further proof is given of the inimical character of the Party as an organization which aims to prevent measures of the Administration or to weaken them illegally. In order to fulfill the conditions of Section 129, StGB, it is not necessary that the attacking or weakening be directed against already existing measures; rather, it suffices that the organization be conscious of the fact that in pursuing its plans it will encounter the resistance of the government, and that it be desirous of overcoming the opposing counter measures of the authorities by illegal methods, such as violence, and so forth. This may be done even if such measures against the danger threatening from the organization may still be pending.* Among the most important duties of State are to guarantee the security of the State and of the constitutional administration, and by precautionary and corrective measures, to prevent their being disturbed. A violent attack against the security of the State and the constitutional order—for the planned overthrow of the government by the NSDAP must be so considered—cannot be accomplished without flouting and violating the measures of the administration. If such tactics have not been employed during the preparation of the attack, they will be employed immediately upon the outbreak of the violent insurrection. In addition, the fact that the violent insurrection is continually propagated is in itself sufficient proof that the Party has taken into consideration the fact that there will be resistance to the planned violent attack, and is

* Olshausen, note 2, Sec. 129; see also RGSt. 54,102.

⁹⁴ The change of the Constitution by violence was carried out on February 27, 1933, when the Reichstag was set on fire by the Nazis, and, as a consequence, the civil rights guaranteed by the Constitution were abolished through the Emergency Decree for the Protection of People and State of February 28, 1933 (*Reichsgesetzblatt*, 1933, I, p. 35).

⁹⁵ See Appendix A.

hoping to overcome this resistance by force, in order to gain its objectives.

In order that Section 129, StGB, may be applicable, it is not even necessary that the preparations be concentrated toward a definite undertaking of high treason, as is obligatory for the application of Section 86, StGB. The basis for the intention and activity of obstructing or weakening measures of the administration by illegal methods would, on the contrary, be present even before the preparations for an enforced change in the Constitution were yet recognizable as an act of high treason.*

III. CONCLUSION

Accordingly, the NSDAP is an organization hostile to the State as defined in Section 129, StGB. This organization endeavors to undermine the republican form of State as based upon the Constitution (Section 4, No. 1, RepSchG.—Law for the Protection of the Republic). In fact, its activities constitute an undertaking of high treason as defined in Section 86, StGB.

Whoever is associated with the NSDAP and has a knowledge of the Party's objectives becomes liable thereby to a prison sentence of from three months to five years. It is sufficient that the subject be aware of and approve the ultimate objectives of the Party; he need not approve its working or fighting tactics (RGSt., Vol. 58, p. 401). Therefore whoever is associated with the Party, though only with limited intentions and approval, is guilty of the felony of high treason as set forth in Section 86, StGB, or of aiding and abetting such a felony.

*R.G. of July 25, 1928—13.J.38/1926—R. G., Vol. 19, p. 100; Vol. 40, p. 383; Vol. 54, p. 102.

DOCUMENT C. REFUSAL OF THE REICH ATTORNEY GENERAL
IN 1930-32 TO PROSECUTE NAZI LEADERS FOR TREASON
AND SEDITION

Document C consists of correspondence between the present writer and the Reich Attorney General regarding law enforcement against the NSDAP.

The confidential report of the Prussian State Police Administration on the treasonable character of the National Socialist Party was forwarded through official channels to certain cabinet members and to the Oberreichsanwalt (Reich Attorney General).

However, inasmuch as the Prussian Police Administration was aware of the reluctant attitude—to say the least—of the Reich Attorney General in respect to enforcing the law against National Socialists; the author, as Chief Legal Officer of this Administration, endeavored to put the Reich Attorney General under public pressure. Under the pen name of "Procurator," the author published an article entitled "All Germans Are Equal before the Law," stressing the fact that the National Socialist Party was an organization attempting high treason and that the Reich Attorney General had the legal duty to enforce the existing law against all revolutionary groups, whether of the right or left. The duty of compulsory law enforcement is established by the German Criminal Procedure. This article was published in "Die Justiz," the legal magazine of the Republikanischer Richterbund, the only association of judges in Germany which was based on loyalty to the principles of the democratic Weimar Republic.

The author was supported in his action by this organization of which he was an officer, and by the legal offices of the German League for Human Rights, which recognized that civil rights could be effectively protected only by relentless enforcement of the law against those who tried to destroy them. Copies of the article were sent to the Reich Attorney General and to the various Departments—with the request that the law against high treason be enforced against the National Socialist Party and its officers.

The sabotage method used by Reich Attorney General Karl August Werner to protect the Nazis will be shown in the following correspondence between the Reich Attorney General and the author:

1.

Berlin

August 28, 1930

To the Reich Attorney General
Leipzig
Reichsgerichtsplatz I

Enclosed we are forwarding you a copy of *Die Justiz*, Vol. 4, No. 11, dated August, 1930. (Dr. Walter Rothschild, Publishers, Berlin-Grunewald.)

We draw your attention to the article "All Germans Are Equal before the Law," a comparative legal dissertation for the Reichsgericht [Reich Supreme Court] and the Reich Attorneys, by "Procurator," on pages 678-89, and request the Reich Attorney General, according to the sections of the German criminal procedure referred to in this dissertation, to institute the necessary prosecution against the National Socialist Workers Party of Germany and/or against their responsible officers. Please inform us of steps taken.

For their information, we have forwarded copies of this letter to the Reich Minister of Justice, the President of the Reichsgericht, the Prussian Minister of Justice, and the Prussian Minister of the Interior.

Registered
Enclosures.

2.

December 22, 1930

To the Reich Attorney General:

We are enclosing a copy of our letter of August 28, 1930, and would very much appreciate the Reich Attorney General's being kind enough to answer this communication.

3.

January 22, 1931

To the Reich Attorney General
Leipzig

In our communication to the Reich Attorney General of December 22, 1930, we enclosed a copy of our letter of August 28, 1930, and requested an answer. The Reich Ministry of Justice, as well as the other departments concerned, have already complied with the request and forwarded their reply some time ago. A franked envelope is enclosed for your use.

4.

January 29, 1931

From the Reich Attorney General:

The investigation against the officials of the National Socialist German Workers Party regarding the material presented in the article "All Germans Are Equal before the Law" is not yet fully completed.

As soon as the investigation has been completed, I will answer your inquiry.

Your letter of December 22, 1930, has not been received here.

s/ WERNER

5.

June 29, 1931

To the Reich Attorney General:

In reference to our letter of January 29, we wish to request that you inform us of the results of the investigation in this matter.

6.

July 6, 1931

From the Reich Attorney General:

The pending investigation as referred to in my letter of January 29, 1931, is, even as yet, not fully completed.

s/ per/NAGEL

7.

The Result

Finally, a year later, on August 7, 1932, the Reich Attorney General decided not to prosecute the Nazis. This was the dowry of the then Reich Chancellor, Franz von Papen, saboteur of the first World War, to Adolf Hitler, whose Vice-Chancellor he became when Hitler took over power on January 30, 1933.

Reich Attorney General Karl August Werner retained his office after Hitler came to power, and the National Socialists announced that he had been a follower of the Nazi Party when he held the office of Attorney General of the Republic.

The Republikanischer Richterbund and the German League of Human Rights were dissolved immediately after Hitler came to power. The police administrators, investigators, and judges who had requested the smashing of the Nazi Party, according to the laws of the Republic, were murdered or put into concentration camps, or were forced to flee the country.

In conclusion: After World War II, law enforcement against subversive groups in Germany should be carried out by the occupational authorities or entrusted to Germans who have the will and the energy to prosecute and smash the remnants of Naziism and its nationalistic associates. A beginning has been made through the reappointment of the few surviving members of the Republikanischer Richterbund by the occupational authorities. Among them is the Bavarian prosecutor Doctor Hoegner, one of the few active fighters against the parole of Hitler by the one-time Bavarian Minister of Justice, Franz Guertner.

DOCUMENTS D1, D2, D3. COURT DECISIONS OF 1930-31 ON
SEDITIONARY ACTIVITIES OF THE NSDAP IN THE
ARMY AND POLICE

Court decisions of the following cases are presented below:

- D1. German Reich vs. Lt. Richard Scheringer, Lt. Hans Ludin, et al.*
- D2. Prussian State vs. Major of Gendarmerie Kummer.*
- D3. Prussian State vs. Police Captain Seupel.*

The German texts of these decisions are in the hands of the present writer.

Document D1

Re: German Reich *versus* Lt. Richard Scheringer, Lt. Hans Ludin, and 1st Lt. (ret.) Hans Friedrich Wendt, High Treason.

Decision of the Fourth Senate of the Reichsgericht (Reich Supreme Court), October 4, 1930, 12J 10/1930 XII H41/30.

The Constitution of the German Reich adopted by the German National Assembly in Weimar and promulgated by Federal Law of August 11, 1919, was subjected to heavy strains shortly after it came into force. Because of the pressure which the mighty victors exerted upon the Reich from the outside, because of the tension created internally by the Treaty of Versailles and by economic distress, and because of the changes in world philosophy among a large number of the people, radicalism among the Rightists and the Leftists increased. Instead of searching for the true causes of the desperate situation, people frequently laid the blame upon the Constitution and the government; and instead of leaving remedial measures to the government administration which had been appointed for this purpose by the people, one

had thought here and there to be able to end all the misery or bring about a new, happier era by establishing another regime by violence.

After a description of several attempts at the violent overthrow of the government in 1920, 1921, and 1923, the ruling continues:

All previously described attempts at high treason failed in the end because Army and Police, in spite of intensive luring, did not join the revolutionaries, but remained loyal to the constitutional government. This characterized the extraordinary importance which must be attributed to the Army and the Police in the fight for the existence of the State and in its battle against overthrow. A state which today desires to maintain itself internally and does not wish to surrender must, in order to succeed, consider its most important task to be to hold solidly on to its means of power, the army and the police, as instruments which stand above the parties and are loyal instruments of the Constitution.

The defendants, in their capacity as members of the army (Reichswehr), were charged with having attempted high treason in accordance with paragraph 86 of the penal code (StGB), by having tried to form National Socialist cells in the Reichwehr and by influencing the army (Reichswehr) to such an extent that in case of a putsch by the National Socialists it would not fire upon these, but would stand at ease instead; thus the defendants simultaneously violated paragraphs 92, 100, and 102 of the military penal code (MStGB).

As a result of the trial, the court regards the following facts as proved:

.... In compliance with the advice received from Held (the leader of the Ulm local group of the NSDAP) Scheringer and Ludin on November 1, 1929, went to Munich and there in a private residence and later at the official headquarters of the NSDAP, they entered into negotiations with Captain (ret.) Wilhelm Weiss, Editor of the *Voelkischer Beobachter*; with Captain (ret.) Dr. Otto Wagener; and the then chief leader of the Nazi Storm Troopers, Captain (ret.) von Pfeffer. They introduced themselves as officers of the army (Reichswehr) and said that they wanted information about the aims of the Party and that they were ready to establish connections between the army and the Party. They also mentioned that, if there would be internal trouble on the part of the communists, co-operation of the Reichswehr with the nationalistic organizations would be absolutely necessary....

. . . . the defendants (the two officers) were told they should see what they could do or that they should call again some time.

. . . . Scheringer, moreover, met Doctor Wagener in Munich several times, but allegedly only because Doctor Wagener was a friend of his deceased father. That Ludin in the judicial investigation at first denied being in touch with any political party is rather extraordinary; later he confessed that he and Scheringer had had discussions with National Socialist leaders in Munich, but then again retracted the statement that Scheringer had accompanied him; finally he acknowledged the trip to Munich as described above.

After their return to Ulm the defendants informed their comrade Wendt of what they had accomplished in Munich. In accordance with Ludin's statement made in the judicial investigation, a few other Ulm comrades also were in the secret; however, Ludin did not divulge their names. Together with Wendt and with these comrades, Scheringer and Ludin then agreed that they would get in touch with comrades in other garrisons, who they believed could be won over to the plans of the defendants. This was to be done with the object of first winning over, in several centrally located German cities, one person each, who would declare himself willing, if circumstances permitted it, to get in touch with a man to be designated by the NSDAP; this person was then to probe into the attitudes of the comrades as well as of the superiors. That this was really the plan of the defendants, that the plan of the defendants went even much further than that, was disclosed later in the trips they undertook and from that which they designate here as the ultimate goal of their whole plan. Ludin said he visioned the ultimate goal as follows: either they would be successful in winning over to their plans the whole officers' corps or else the majority of the young officers would refuse to fire if an attempt at revolution should be made from the Rightists' side. During the trial itself Ludin said his ultimate aim had been that the majority of the young officers should refuse to fire, if the whole officers' corps could not be won over.

Regarding these trips, the court states as follows:

The witness Lieutenant Wintzer of Artillery Regiment 6, Hannover, during the years 1926 and 1927 had been with Ludin in Ohrdruf and in Jueterbog, as well as in Grafenwoehr for three weeks in May of 1929. At the end of November, 1929, Wintzer received a letter from Ludin, in which Ludin informed him that he would like to meet

Wintzer in Hannover; if Wintzer knew a dependable comrade who shared his views, he should bring him to the meeting.

Ludin told Wintzer:

In any event the army must be prevented from running into any such conflicts as it had done in the Hitler putsch; the nationalistic organizations and the National Socialists would not enter into anything if they knew that the army would oppose them. But should it come to premature action, troops would have to be prevented, under all circumstances, from firing on the nationalist organizations. Furthermore, Ludin declared he would introduce Wintzer and Lorenz to a National Socialist who was well informed about everything; he himself did not know the man in question; he would be only the intermediary. The gentleman would get in touch with Wintzer and Lorenz of his own accord and attend to further details; for the present Wintzer and Lorenz would have nothing to do but to gain information about the attitude of the comrades and to determine which officers displayed an especially passionate nationalist attitude; the main thing was first of all that there be available a few dependable people in each military district, through whom connections with the NSDAP could be established. . . .

The witness Lieutenant Lorenz of Artillery Regiment 6 in Hannover made essentially the same statement as the witness Wintzer with regard to the conversation he had with Ludin. When Wintzer informed Lorenz that Ludin was coming, Wintzer remarked that it concerned an important national matter. In accordance with the depositions made by the witness Lorenz regarding the conversation with Ludin, the latter has specifically said the following: It was unreasonable to think that the army would have recourse to weapons should the National Socialists undertake anything; for the time being, of course, nothing would happen, but perhaps during the next few months—not, however, if the army intended to oppose the National Socialist Party; if that was the situation, the National Socialists would not attempt anything; for the present it was most important that there be available in each military district a few “glowingly patriotic officers.”

About Wendt's trip to Hannover, the following was stated:

As Ludin had said to Wintzer and Lorenz, Wendt had traveled to Hannover for the same reason as Ludin. At one of the Hubertus celebrations in Munich, Wendt had become acquainted with Captain

Jaeger of the Infantry Regiment 18 in Muenster. Wendt first intended to meet Jaeger in Kassel but then by wire arranged to meet him in Hannover, traveling thither with Ludin from Ulm. Jaeger surmises that Wendt turned to him because he knew that Jaeger once had been penalized while in Infantry School for not having shown the required reserve in his dealings with members of patriotic organizations. While Ludin discussed matters with Wintzer and Lorenz, Wendt held his conversation with Jaeger at another place. As he himself admits, Wendt explained the attitude of the Ulm officers' corps to Jaeger and asked him what the attitude was in North Germany and also what his personal views were on questions of the day.

The court made the following statement regarding Ludin's trip to Berlin:

Having been in Jueterbog, Ludin knew Lieutenant Loehr of the Artillery regiment in Jueterbog. At the end of November, 1929, Loehr received a letter from Ludin, in which Loehr was requested to come to Berlin on the following Sunday (it was the 1st of December) on an important or worthwhile mission. To the letter was added the request, "Please burn!" Loehr was surprised about this, but answered that he would come and designated the Hotel Koburger Hof in the Friedrich Strasse as the meeting place.

. . . . On the way to the Rheingold (restaurant in Berlin), Loehr asked what it was all about. Thereupon Ludin answered him to the effect that he might directly disclose the main part (or even the whole) of the matter, which concerned the actions of the Reichswehr if the National Socialists wanted to overthrow the government by violence. Loehr is supposed to have declared this idea absurd and coming from a fanatic mind. Ludin then asked what was to be done if the Reichswehr was used in case of a National Socialist action; he also asked Loehr whether he was willing to influence his comrades in Jueterbog so that if it came to a conflict between the National Socialists and the Reichswehr, the latter would not fire upon the National Socialists. Loehr is supposed to have declined to answer the questions from a military viewpoint and to have emphasized that probably none of his comrades would be in favor of violence; he himself, perhaps, would not shoot. Loehr then asked what were the ultimate intentions; and Ludin replied the object was to replace the present government, which was not national at all, by another one, to do away with the Treaty of Versailles and the lie about Germany's responsibility for the war, and to create a better order in general.

In the Rheingold Ludin and Loehr met Lieutenant Joachim Fuerssen of Artillery Regiment No. 2, in Stettin.

The witness Fuerssen at the end of November, 1929, had received a letter from Ludin, requesting him to be in Berlin the following Sunday in an *urgent* or *important* matter. Fuerssen had answered that he would be in the Rheingold around 1 o'clock. There he met Ludin and Loehr, who were already there. During the trial Fuerssen maintained that, during their discussion in Berlin, Ludin was anxious about the following six points:

1. Loehr's and Fuerssen's names should be reported to Munich. The witness would not commit himself as to whether it had been said that the names should be reported "to a central office in Munich."
2. Loehr and Fuerssen were to receive a National Socialist in order to have him inform them about the aims of National Socialism; the young officers were too weak and, therefore, needed the backing of a nationalist party.
3. The officers' corps as a whole was to be nationalistically influenced by Loehr and Fuerssen.
4. Loehr and Fuerssen were to solicit the support of a few qualified officers who would make their influence felt along the same lines.
5. The troops were to be nationalistically educated and firmly placed in the hands of the leaders.
6. If violent disturbances between government and National Socialists occurred, the time of which could not yet be stated, the Reichswehr was not to turn against the National Socialists.

Speaking of the intent of the defendants, the court ruled as follows:

The defendants referred to their statement: "that one had learned a lesson from the Kapp and the Hitler putsches; the National Socialists would undertake nothing if they knew that the army would oppose them; no opposition could be allowed to develop between army and National Socialists." With that the defendants meant to say that they had not figured on a putsch. But their statements cannot be interpreted in that way. If the defendants had been convinced that the National Socialists would not attempt another putsch, all their tactics and their discussions about what was to be done if there would be a putsch were lacking in sense. The sentence that the National Socialists will do nothing if they know that they have the army against them can, from a rational point of view, mean only that the National Socialists are ready for a putsch if the army does not oppose them.

The defendants' conviction that a National Socialistic putsch, if not immediately imminent, still was to be expected within a reasonable

space of time brought about conflict as to what the Reichswehr was to do, should it come to that. They knew that the Hitler Putsch of November 9, 1923, had failed because the Bavarian State Police (*Landespolizei*), contrary to Hitler's expectations, did not join him, but followed the command of their leader and fired upon the National Socialist troop on November 9, 1923, in front of the *Feldherrnhalle* in Munich. It was the intention of the defendants not to let this happen again in another putsch; therefore it would have to be arranged that the Reichswehr should refuse to fire upon National Socialists engaged in a putsch. That that was the motive of the defendants is just as indubitably proved as their assumption that a putsch was imminent was proved by the discussions with the witnesses mentioned previously, by their attitude, and by the statements made by the defendants at the judicial investigation and at the trial. Let us mention here only the statement of the witness Fuersen to the effect that the last nationalist movement could not be allowed to be suppressed by the Reichswehr.

By "nationalist movement," only a National Socialist movement could be meant. This can be concluded from all the circumstances, e.g., that the names of the officers who were willing to assist were to be reported to Munich by the defendants. These officers were to get in touch with a National Socialist who would contact them, etc.

. . . . The actions of the defendants elucidated above represent as a whole a conspiracy of high treason according to Article 86 of the Penal Code (*StGB*).

With the conspiracy of high treason the defendants have also acted contrary to the order of the Reichswehr Minister of January 31, 1923-April 29, 1927, which forbade soldiers to participate in any unconstitutional activities.

By the disregard of this order the troop's readiness for battle was endangered, because the attempts of the defendants to induce other comrades to further a putsch diminished the battle-strength of the troop: herewith the conditions of paragraph 92 of the military penal code (*MSTGB*) were fulfilled. The defendants further attempted to cause dissatisfaction with their military duties among their comrades. Thus they are guilty of violation of paragraph 102 of the military penal code (*MSTGB*).

Document D2

Re: Prussian State *versus* Major of Gendarmerie Kummer
Unpublished Decision of the Prussian Disciplinary Tribunal

If an official works for a political party which intends the violent overthrow of the constitutionally existing order of the State, he thereby transgresses against the loyalty he owes the State, because of his position as official, and thus commits a disciplinary offense. The defendant, Major of Gendarmerie Kummer, has engaged in such activity by recruiting for and financially supporting the purposes of the NSDAP. The question comes up whether the aim of this party is the violent overthrow of the existing order of the State. This question was carefully examined and convincingly answered in the affirmative in the decision of the Disciplinary Board for Public Servants in Berlin in the session of March 9, 1931, in the disciplinary investigation against Government Inspector Erich Hasse, D.70.30/9. The Disciplinary Board summed up the proof as follows:

After all, it may be regarded as proved that the NSDAP is working with violent methods for a revolution, the aim of which is the establishment of a National Socialist dictatorship and, through it, the national Third Reich.

But if it is clear that the NSDAP seeks to reach its goal even by the use of force, then, by activity for the Party as stated above, the conditions of a disciplinary offense are objectively fulfilled.

But the defendant also knew very well that he was fulfilling the inner conditions of a disciplinary offense. In his capacity as officer in charge of the gendarmerie of a government district, he knew the revolutionary efforts of the NSDAP and its means of fighting the State. Besides, according to his own testimony, he had provided himself with this knowledge from the National Socialist literature and the National Socialist press, which he followed closely. As a former army officer, he was very familiar with the effect of his attitude on the other police officials in the Koeslin district.

Accordingly, the defendant has been guilty of a continued violation of No. 2, par. 1, of the Disciplinary Law of July 21, 1852; he has violated No. 2 (unworthiness of trust) as well as No. 1 (lapse of loyalty). Whether or not there exist the conditions of No. 2, par. 2, of the Disciplinary Law in the version of the law of August 4, 1922 (*Prussian Legal Register*, p. 208), which is a special case of No. 2, par. 1, No. 1, need not be decided.

At the same time the activity of the defendant for the NSDAP represents an infringement of the Circular Order of the Ministry of the Interior of July 3, 1930, and thus a lapse of obedience which for the above-mentioned reasons is to be regarded as a particularly serious disciplinary offense.

Any one of these disciplinary offenses would in itself be sufficient to penalize the defendant with dismissal. In judging the seriousness of the violation, one must give special consideration to the position of the defendant as chief of an executive unit. As inspecting and supervisory official for the gendarmerie of an entire government district, he was the superior of a large number of gendarmerie officers and officials for whom, in his loyalty to the State, he should have set a special example. Though it was his duty to educate the gendarmerie officials of his district to the concept of the State, he himself acted in a manner extremely injurious to the State. If the fact that the defendant held a high position postulates a particular loyalty, we must also add the fact that we are concerned here with an executive unit of which the defendant was the head. Indeed his duty was to further the striking power of the executive and its continual championing of the State, and not to undermine systematically the confidence of the officials in the State by seditious activity. The seriousness of the disciplinary offense makes it impossible for the defendant to remain in the service of the Prussian State.

Document D3.

Re: Prussian State *versus* Police Captain Guenther Seupel
Unpublished Decision of the Prussian Disciplinary Tribunal
(II R II Seu XII)

The defendant, Police Captain Seupel, has also been guilty of another serious violation of duty. When, after the events of October 2, 1930, Police Sergeant Gildisch expected to be dismissed from the Schutzpolizei (Uniformed Police), he went to Police Captain (ret.) Migge, who at that time had a leading position in the NSDAP, and asked Migge to give him a job after his dismissal. It even came to a meeting in which Migge, Gildisch, and the bookkeeper Kroelke participated. In this meeting, which took place on November 3, 1930, it was decided to give Gildisch a position as night watchman on the estate of a member of the former imperial house, the administration of which had relations with Captain Migge of the NSDAP. At the suggestion

of Police Captain (ret.) Migge, Gildisch was to get in touch with a person who would put in a good word for him. Gildisch proposed to draw the defendant, Captain Seupel, into this. There was also a meeting between Migge and the defendant, Seupel, in a restaurant. The witness Kroelke testified that Seupel and Migge greeted each other very briefly; Kroelke received the impression that they already knew each other well. On this occasion the defendant recommended the witness Gildisch to Police Captain (ret.) Migge for employment. This recommendation of an official whose imminent discharge for serious violation of duty was known to the defendant, Seupel, constitutes a serious disciplinary offense. By his intervention for Gildisch, the defendant wanted to weaken the effect of the measures taken against Gildisch by the superior authorities.

This violation is all the more serious because the defendant knew, or in the circumstances must have assumed, that his recommendation of Gildisch was made in the interest of a party inimical to the State.

The various serious violations of duty on the part of the defendant lead to the motion that he be dismissed.

RECOMMENDATIONS. INTERNAL-SECURITY PROGRAM FOR OCCUPIED GERMANY

This study should stress the political significance of the possible and probable misuse of restored civil liberties in the future. In fact, the techniques used between 1928 and 1932 in Germany and after 1933 in other countries are the blueprint of the political *modus operandi* of Nazi subversive groups in occupied Germany and other countries.

We must realize that the military defeat of Germany has not brought the complete extinction of the National Socialist Party and its military units. The fate of many tens of thousands of Nazis is so highly dependent upon the fate of National Socialism in the world that they will strive to save themselves by reorganizing the remnants of the Party apparatus. Even though their ranks are greatly depleted on the battlefields and on the home front, even though tens of thousands are ready to swear lip-allegiance to any new authority, there remains a great army of dyed-in-the-wool Nazis and political desperados who secretly carry the torch of National Socialism. The behavior and activities of these Nazis inside and outside Germany reveal that they

go underground in a physical and psychological sense. The nucleus of the new secret movement will be formed by key men and women from the Party ranks, by male and female officials of the Hitler Youth, and by political, economic, and scientific propagandists who camouflage their activities as preservers of European culture.

Another type of Nazi underground is formed by the survivors of the SS Elite Guards, of the Security Service of the SS (the SD), of the Secret Police (Gestapo), of the German military intelligence, and of organizations such as the SS-ruled N. S. Reichskriegerbund-Kyffhaeuserbund, the Nazi Motor and Air Corps, as well as by other "patriots." Among them will be many who went through a similar experience after World War I. These included discharged officers, adventurers, professional gunmen, and misguided patriots, who escaped into the twilight of nationalistic leagues or of the Free Corps, some of them known as Werewolves, into the sabotage squads working against the occupational armies, or into the darkness of the Black Reichswehr, the illegal military formations sponsored by the German Reichswehr Ministry and by heavy industry contrary to the provisions of the Treaty of Versailles.

Despite the fact that the intelligence forces of the Allies and the few democratic officials of the internal security system of the Weimar Republic foresaw the menace of these leagues and semi-military units, they were not outlawed and destroyed. One significant reason for this historic failure was the disunity of the Allies after the First World War in their dealings with Germany. A second was the lack of political courage and initiative on the part of many leaders of the Weimar Republic. Therefore they did not dare to dismiss the old Imperial bureaucracy and the army generals who supported any movement camouflaged by patriotic flag-waving if it was directed against the growth of the political strength of the Weimar Republic. In fact, the State financed such activities inside and outside of Germany by paying pensions to officers and officials who were known as Nazi conspirators. The State also supported subversive organizations in Germany and abroad for their alleged patriotic activities.

But the main reason was that the government of the Weimar Republic did not have enough political vision to realize how political freedom could be misused by the enemies of political freedom. Finally, the executives did not have enough administrative experience to apply

adequate administrative and law enforcement methods in combating subversive activities when disguised as exercise of civil rights.

Under these circumstances, the National Socialists could gain control of the Reich by legally camouflaged illegal methods after the last restrictions imposed by the Allies were practically lifted in 1928. The consequences of these facts are now a matter of history. They are the background against which the American policy towards defeated Germany has to be formed.

This time, the occupational authorities of the United Nations have already taken the necessary precautions in order to prevent history's repeating itself: the Nazi Party and affiliated organizations have been outlawed, Nazi laws are abolished, Nazi officials are dismissed, rules on disarmament are enforced, trials of war criminals are in progress, and other security measures have been taken. But it is this author's opinion that further measures must be added.

The first measure should be the abolishment of the existing German police organization, in order to prevent the centralized police from again becoming a machinery for re-armament and totalitarian methods. For this reason, the entire public-safety system in Germany must be changed from the system of national police to that of independent local government public-safety units. The other change must be the restriction of the future local-government police organizations to the field of public safety. This means that the present jurisdiction of the police in such fields as public hygiene and welfare must be transferred to the departments of health, welfare, labor, and so forth. Furthermore, there is the problem of whether or not the detective forces should be transferred from the police administration to the public prosecutor's jurisdiction. The present police laws, statutes, and so forth, must be entirely changed.

So far as individual public-safety measures are concerned, they must be directed against the two techniques used by anti-Allied forces in Germany:

(1) Sabotage, such as assassinations of and attacks or threats against Allied or Allied-appointed German officials, the destruction of institutions and installations, and the hiding of weapons. Such activities will be performed by individuals or organizations like the Werewolves, founded in 1919.

(2) Infiltration, which means complying outwardly with occupational rules, but abusing the newly established liberties by putting

clandestine adherents of Nazi principles into German governmental, organizational, and economic life.

As effective internal-security measures for counteracting these techniques, the following are suggested:

(1) Fingerprinting the entire German population, in order to establish a new identification system. Checking the newly obtained fingerprints against the existing records.

(2) Classification of the *entire* German population—not only of Nazi Party groups—in order to become acquainted with the political, occupational, and personal background of the population.

(3) As repressive or preventive measures adequate to the classification of the respective persons, the following are suggested:

- a) Prosecution of Nazi criminals who are not under Allied jurisdiction.
- b) Compulsory labor in areas to be reconstructed.
- c) Residence restrictions.
- d) Exclusion from German territory or internment of dangerous Nazi propagandists from abroad.
- e) Restriction of the freedom of home, of speech, of assembly; restriction of postal, telegraph, and telephone secrecy.
- f) Control of movement and emigration.
- g) Confiscation of property.
- h) Exclusion from public service, certain professions or occupations.
- i) Denying of drivers' or pilots' licenses.

(4) Dissolution of *all* existing organizations and clubs, whether political or non-political, e.g., sport, women's, or relief societies. Introduction of a license system for new organizations.

(5) Abolition of the pension laws for officers, soldiers, civil servants, veterans, widows and orphans. Introduction of a system which takes into account the political, labor, economic, and eugenic policy of the occupational governments.

(6) Abolition of German laws endangering the co-operation between Germans and the governments of the United Nations, such as the treason and espionage acts.

(7) Promotion of persons in favor of the United Nations to key positions in government, business, and organizational life. In appointing public officials, proper use should be made of former inmates of

concentration camps and Germans exiled by the Nazi regime. Former German nationals who are now citizens of one of the United Nations should be used in advisory and liaison capacity.

(8) Abolition of the existing German system of life-time civil service and gradual introduction of the democratic method of electing public officials.

(9) Equal application of all punitive and security measures to the female population. Ban of legal, administrative, and other devices for the increase of the German birth rate.

(10) Within the territories of the United Nations: dissolution of all organizations and societies which are detrimental to the above-outlined internal-security program for occupied Germany, e.g., hyphenated organizations in the United States which might organize relief to dangerous Nazis or pan-Germanists.

(11) Establishment of a military and civilian internal-security force for occupied Germany as a career service.

(12) Co-ordination of the internal-security precautions with the military, economic, educational, and relief measures for a period of thirty years.

These proposals should be regarded as mere suggestions. The writer is convinced that certain provisions have already been taken along these or similar lines.

APPENDIX A

PERTINENT SECTIONS OF GERMAN CRIMINAL LAW.

The following sections of German criminal law are the legal basis of this report:

I

Section 81, StGB

(Strafgesetzbuch fuer das Deutsche Reich of May 15, 1871)

Whoever undertakes, in addition to the instances of Section 80:

1. (Abolished.)
2. to change the Constitution of the German Reich or of one of the States by force, or
3. to incorporate by force, the territory of the States into a foreign State, entirely or in part, or to separate one part from the whole, or
4. to incorporate the territory of one State in full or in part, by force, into another State, or to separate one part of a State from the whole,

shall be punished for high treason with life imprisonment at hard labor, or with life confinement in a fortress.

In case of extenuating circumstances, the confinement in a fortress may be reduced to not less than five years.

In addition to confinement in a fortress, public offices held by the prisoner and all rights resulting from public elections may be cancelled by court ruling.

II

Section 82, StGB

(Strafgesetzbuch fuer das Deutsche Reich of May 15, 1871)

Every act contributing to the execution of the plan is to be regarded as an undertaking by which the felony of high treason is consummated.

III

Section 86, StGB

(Strafgesetzbuch fuer das Deutsche Reich of May 15, 1871)

Every other act in the preparation of an undertaking of high treason will be punished with a maximum of three years' imprisonment at hard labor or confinement in a fortress for the same length of time.

In case of extenuating circumstances, the punishment will be confinement in a fortress from six months to three years.

IV

Section 128, StGB

(Strafgesetzbuch fuer das Deutsche Reich of May 15, 1871)

The participation in an organization the existence, constitution, or purpose of which is to be kept secret from the Government, or in which obedience is pledged to unknown superiors or implicit obedience of known superiors, is punishable by imprisonment up to six months for the members and from one month to one year for the founders and officers.

Public officials may be deprived of the right to hold public office for a period of from one to five years.

V

Section 129, StGB

(Strafgesetzbuch fuer das Deutsche Reich of May 15, 1871)

The participation in an organization the purposes or activities of which include the obstruction or invalidation by illegal means of administrative measures or of the enforcement of law, is punishable by imprisonment up to one year for the members and from three months to two years for the founders and officers.

VI

Section 4, RepSchG

(Gesetz zum Schutze der Republik of March 25, 1930)

1. Whoever participates in or supports an organization which is secret or hostile to the State (Sections 128, 129, StGB) and which pursues the objective of undermining the constitutionally established republican form of government of the Reich or of a State:

2. Whoever joins an organization which is secret or hostile to the State (Sections 128, 129, StGB) and which itself or the members of which illegally possess arms

is punishable with imprisonment of not less than three months, if other laws or statutes do not provide heavier penalties.

APPENDIX B

IMPORTANT DATES IN THE DEVELOPMENT OF THE NATIONAL SOCIALIST PARTY

1918

Nov. 9.—Founding of the German Republic. Friedrich Ebert becomes first President.

1919

Jan. 5.—Founding of the Deutsche Arbeiter Partei.

June 28.—Signing of the Treaty of Versailles.

Aug. 11.—Constitution of the German Republic accepted in Weimar.

Sept. 16.—Adolf Hitler, a confidential agent for the Army, joins the Deutsche Arbeiter Partei as member No. 7. He was born April 20, 1889, in Braunau, Austria, third son of a third marriage of Alois Hitler, formerly Schicklgruber.

1920

Feb. 24.—Hitler explains the 25 points of his Party program at a mass meeting in the Hofbraeuhaus in Munich.

Mar. 13-17.—The Kapp Putsch, an attempt of high treason against the young Republic, is made by Generallandschaftsdirektor Kapp, and Generals von Luettwitz and von Ludendorff. Hitler arrives in Berlin from Munich after the failure of the Putsch.

April.—Hitler resigns from his position as confidential propagandist and informant of the Army.

Dec. 17.—Hitler buys the *Voelkischer Beobachter*, which becomes the official organ of the National Socialist Party.

1921

July 29.—Hitler is appointed a Leader of the National Socialist Party by a general assembly. The "Fuehrerprinzip" (leadership principle) is introduced.

Aug. 3.—Founding of the SA Storm Troops.

1922

Mar. 10.—The Bavarian Cabinet considers Hitler's expulsion as an undesirable alien.

June 24-27.—Hitler serves part of a three months' prison term for disturbing the public peace.

1923

Jan. 11.—Occupation of the Ruhr Valley by the French.

Jan. 27-29.—First Party Convention of the NSDAP.

- Nov. 8-9.—Hitler Putsch in the Buergerbraeukeller, Munich; proclamation of a national dictatorship of Hitler and General Ludendorff; failure of the revolt.
Nov. 11.—Hitler taken into protective custody by the Bavarian General State Commissar von Kahr.

1924

- Feb. 26.—Trial before the People's Court of Munich for high treason. Defendants were Adolf Hitler, General Erich Ludendorff, Police President Ernst Poehner, Dr. Wilhelm Frick, Dr. Friedrich Weber, Captain (ret.) Ernst Roehm, First Lieutenant (ret.) Wilhelm Brueckner, Lieutenant Robert Wagner, Lieutenant Colonel (ret.) Hermann Kriebel, Lieutenant Colonel Heinz Pernet, and others. The Court pronounced varying sentences against these persons.
Apr. 12.—Hitler serves part of his term of five years in the Landsberg Fortress, until his parole, contrary to the recommendation of the Bavarian State Police, dated Munich, Sept. 22, 1924.

1925

- Feb. 26.—Hitler proclaims the general directives for the revival of the Nazi Party in the first issue of the revived *Voelkischer Beobachter*.
Feb. 28.—Death of the first Reich President, Friedrich Ebert.
Mar. 27.—Hitler appears again as speaker in Munich after his release from the fortress.
Apr. 26.—General Field Marshal von Hindenburg is elected as Reich President with the votes of the Nationalists and the National Socialists.
July 18.—Publication of Volume I of Hitler's book, *Mein Kampf*, written in the Landsberg Fortress.

1926

- July 3.—Founding of the Hitler Youth.
Nov. 1.—Dr. Paul Joseph Goebbels becomes Gau Leader of the Berlin-Brandenburg Gau of the NSDAP.

1927

- May 7.—NSDAP activities outlawed in Berlin.
July 4.—First issue of *Der Angriff*, published by Doctor Goebbels, appears as the National Socialist organ in Berlin.

1928

- Jan. 2.—Gregor Strasser becomes Chairman of the Organizational Committee of the NSDAP.
Mar. 31.—Revocation of the decree of May 6, 1927, prohibiting the NSDAP in Berlin and Cologne.
Sept. 28.—Revocation of the decree prohibiting Hitler from speaking in Prussia.
Nov. 16.—First mass meeting in the Berlin Sport Palace with Hitler as speaker.

1929

- Jan. 6.—Heinrich Himmler is appointed as Chief of the SS Elite Guards.
July 9-Mar. 12, 1930.—A united political campaign of the National Socialists, the German Nationalists, and the Stahlhelm against the Young Plan.

1930

- Jan. 23.—Dr. Wilhelm Frick becomes Minister of the Interior and Education in Thuringia, thus being the first National Socialist to become a member in the cabinet of a German State.
- Feb. 23.—The Berlin Storm Troop Leader, Horst Wessel, author of the text of the Horst Wessel song, was killed. The police investigation revealed that Horst Wessel, a pimp, was killed as a result of a fight with Ali Hoehler, another pimp. Hoehler was sentenced to a six-year term and killed in prison after the Nazis came to power.
- Mar. 30.—Reich President von Hindenburg appoints Dr. Heinrich Bruening as Reich Chancellor.
- Apr. 1.—A new official National Socialist magazine, *Nationalsozialistische Monatshefte*, appears under the editorship of Alfred Rosenberg.
- May 21.—Otto Strasser, formerly a prominent editor of National Socialist newspapers, leaves the Party after a feud with Hitler. Under the slogan "The Socialists Leave the National Socialists," he founded a new group under the name Kampfgemeinschaft Revolutionaerer Nationalsozialisten (Fighting Brotherhood of Revolutionary National Socialists), which later became the Black Front.
- August.—Confidential report of the Prussian State Police Administration submitted to a number of government agencies requesting the prosecution of the National Socialist Party and its officers for high treason and secret conspiracy.
- Sept. 14.—The German Reichstag elections. The National Socialist Party gets 6,400,000 votes (18.03%) and 107 seats out of 577.

Comparative figures of Nazi votes in Reichstag elections:

May 4, 1924	1,910,000 votes;	32 deputies out of 472.
Dec. 7, 1924	900,000 votes;	14 deputies out of 493.
May 20, 1928	810,000 votes;	12 deputies out of 491.
Sept. 14, 1930	6,400,000 votes;	107 deputies out of 577.
July 31, 1932	13,740,000 votes;	230 deputies out of 608.
Nov. 11, 1932	11,740,000 votes;	196 deputies out of 583.
Mar. 5, 1933	17,280,000 votes;	288 deputies out of 647.

- Sept. 25.—Hitler makes a statement under oath about the legality of the National Socialist Party during the trial of three Reichswehr officers for high treason.

1931

- Oct. 10.—Hitler and his political representative, Hermann Goering, have their first conversation with Reich President von Hindenburg.
- Nov. 25.—Confiscation in Hessen of the so-called *Boxheimer Dokumente*, containing administrative plans of the Nazi Party for taking over the control of the State, and decrees establishing death penalty against the enemies of the Nazis. The Reich Attorney General refused to prosecute the author, Dr. Werner Best, for high treason. In 1933, Doctor Best became Deputy Chief of the Gestapo.

1931

- Dec. 11.—Deportation of Hitler from Prussia as an undesirable alien is contemplated by Albert Grzesinski, Police President of Berlin; Reich President von Hindenburg blocks the plan.

1932

- Jan. 29.—Reichswehr Minister Groener allows National Socialists to enter the Reichswehr.
- Feb. 25.—Hitler becomes a German citizen through his appointment as Government Councilor by the National Socialist Minister Klagges of the State of Braunschweig.
- Apr. 10.—Von Hindenburg is re-elected as Reich President for a second seven-year term, with 19,350,000 votes (53%). Hitler receives 13,410,000 votes (36.8%). The Communist candidate, Ernst Thaelmann, receives 3,700,000 votes (10.02%).
- Apr. 13.—Prohibition of the Storm Troops (SA) and the Elite Guards (SS) by Reich Chancellor Heinrich Bruening.
- May.—Secret meeting between Reichswehr Minister von Schleicher and Hitler in Berlin.
- June 1.—Franz von Papen, saboteur of the First World War, becomes Reich Chancellor after Bruening's dismissal by Reich President von Hindenburg.
- June 17.—Readmittance of the SA and SS.
- July 20.—Reich Chancellor von Papen destroys the main bulwark against National Socialists by taking over the Prussian Government of Otto Braun and Karl Severing. He bases his illegal action on Article 48, the emergency section of the Weimar Constitution.
- Aug. 7.—Reich Attorney General Karl August Werner declines to prosecute the NSDAP.
- Aug. 30.—Hitler holds a conference with Reich Chancellor von Papen and Reichswehr Minister von Schleicher about reorganization of the cabinet. Hitler declines to become Vice-Chancellor.
- Nov. 17.—Reich Chancellor von Papen resigns.
- Dec. 3.—General von Schleicher becomes Reich Chancellor.

1933

- Jan. 4.—Secret meeting of Hitler and former Reich Chancellor von Papen in the home of the banker Von Schroeder in Cologne; Heinrich Himmler is present.
- Jan. 30.—Reich President von Hindenburg appoints Hitler as Reich Chancellor; Dr. Wilhelm Frick, National Socialist, as Reich Minister of the Interior; Hermann Goering, National Socialist, as Reich Minister for Air and Prussian Minister of the Interior (Police); Dr. Paul Joseph Goebbels, National Socialist, as Reich Minister of Public Enlightenment and Propaganda (March 15). Other cabinet members are Franz von Papen, Vice-Chancellor; Lieutenant General Werner von Blomberg, Defense Minister; Konstantin Freiherr von Neurath, Foreign Minister; Lutz Graf Schwerin von Krosigk, Minister of

Finance; Alfred Hugenberg, Minister of Food, Agriculture and Economics; Paul Freiherr Eltz von Ruebenach, Minister for Transportation and Mail; Commander of the Stahlhelm Franz Seldte, Reich Labor Minister; Franz Guertner, Minister of Justice; Rudolph Hess, Reich Minister and Deputy of the Fuehrer (Dec. 1); Ernst Roehm, Reich Minister and Chief of Staff of the Storm Troops (Dec. 1).

Feb. 27.—Reichstag fire set by the Nazis in order to obtain emergency powers to stamp out all resistance to the new Nazi Administration.

Feb. 28.—“Decree for the Protection of People and State,” abolishing the rights guaranteed in the Weimar Constitution, and establishing the basis for imprisonment of people in concentration camps without judicial review.

Mar. 5.—Last Reichstag election—already under the terror system of the NSDAP.

Mar. 23.—Passing of the “Enabling Act,” granting legislative power to Hitler’s cabinet and abolishing the Reichstag as a legislative assembly.

July 14.—Law against the Formation of New Parties.

Dec. 1.—Enactment of the “Law Securing the Unity of the National Socialist Party and the German State.”

1934

June 30.—Hitler’s blood purge.

Aug. 2.—After the death of Reich President von Hindenburg, Hitler appoints himself as Fuehrer and Reich Chancellor.

Dec. 20.—Law against Malicious Attacks on the State and the Party.

1935

Sept. 15.—Law for the Protection of German Blood.

1937

Jan. 30.—Establishment of a Chief of the Foreign Organization of the NSDAP (AO) in the German Foreign Office.

1943

Aug. 24.—Heinrich Himmler, Reich Commander of the SS and of the German Police, is appointed General Commissar of the Reich Administration. The SS rules the home front.

1944

July 22.—Heinrich Himmler purges the Army and gains control of the Home Army.

1945

May 8.—Dissolution of the Nazi Party by General Eisenhower.

THE AUTHORSHIP OF *THE FATAL EXTRAVAGANCE*

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Professor of English

The Fatal Extravagance is generally attributed to Aaron Hill. *The Cambridge Bibliography of English Literature* has the following comment under Hill: "Given by Hill to Joseph Mitchell and ptd in the latter's name"¹; and it has a similar note under Mitchell: "Pbd as by Mitchell, but said to have been written by Aaron Hill and given by him to Mitchell."² Allardyce Nicoll states the question of authorship as follows:

Concerning the authorship of . . . *The Fatal Extravagance* (L.² April 1721), considerable doubt has prevailed. . . . It was published under the name of Mitchell, but seems actually to have been the work of Hill. Whincop says merely that the former "was said to be greatly obliged to Mr. Aaron Hill" in its composition, but Victor declares it was almost entirely by the latter, and it was reprinted (in one act) in the 1760 collected edition of Hill's dramatic efforts.³

Ten pages earlier, however, he remarks, "With Mitchell, a trifle later, he [Hill] seems to have collaborated in a bourgeois drama, *The Fatal Extravagance*."⁴ Dorothy Brewster says that Hill "wrote *The Fatal Extravagance*" and "permitted Mitchell to call himself the author."⁵ *The Dictionary of National Biography* boldly declares that the play was "written by Hill."⁶ The truth, however, probably is that, as the avowed author stated in the Preface (the pertinent paragraph of which will be quoted later), Hill's contribution consists of the general idea of the play and assistance "in the Scheme, in the Sentiments, and Language," and that Mitchell did most of the actual writing.^{6a}

The play was originally published in 1720, and the title page of the 1730 edition (called the "Fourth Edition Corrected") still states

¹ Ed. F. W. Bateson (Cambridge, Eng., 1941), II, 439.

² *Ibid.*, II, 322.

³ *A History of Early Eighteenth Century Drama 1700 to 1750* (Cambridge, Eng., 1925), p. 119.

⁴ *Ibid.*, p. 109.

⁵ *Aaron Hill* (New York, 1913), pp. 97-98.

⁶ Ed. Leslie Stephen and Sidney Lee (New York, 1885 ff.) XXVI, 389.

^{6a} While this paper was in press (it was announced in the 1939 and 1942 volumes of *Work in Progress* of the Modern Humanities Research Association [p. 68 and p. 83, respectively]), there appeared Paul S. Dunkin's "The Authorship of *The Fatal Extravagance* (*Modern Language Notes*, LX [1945], 328-30), in which the conclusion is as follows: "It is possible that the accounts in Cibber and in Victor were based only on a misinterpretation of Mitchell's preface, and that Hill and Mitchell did, indeed, collaborate in writing *The fatal extravagance*." It seems to me not merely possible but highly probable that the drama was not entirely or almost entirely the work of Hill.

expressly that the work was "Written by Mr. Mitchell." The Dedication (to "James, Duke Hamilton, Duke of Brandon, &") is signed by Mitchell. In the Preface, Mitchell acknowledges his indebtedness to Hill as follows:

I took the Hint (and only the Hint, as the Reader may see) of that Story, which I have fitted to the Moral of the following little Piece, from Shakespear's *Yorkshire Tragedy*, which was put into my Hands, on purpose, by my good Friend, Mr. Hill, to whom I take this Occasion of expressing my Gratitude, in the most publick manner I can; all Endeavours, beside Acknowledgements, being vain, to match the Instances of his Friendship, and that uncommon Humanity, and Frankness of Spirit, so peculiar to himself, in his manner of bestowing Favours: But 'tis needless, to tell the World, how much I am oblig'd to him, and what just Sense I have of his generous Regard to me. They, who know him well, and what a Waste of his important Time he has made for my Interest, will be beforehand with my Acknowledgements, and enumerate the Advantages, which I could not miss from his Friendship.— I owe much, in the Scheme, in the Sentiments, and Language, of this Piece, to the Direction of that accomplished Gentleman, who has either no Enemies, or they are such, because Strangers to his good Qualities; for 'tis only necessary to *know* him, to be, by Choice, or Obligation, made inviolably his own.— I embrace this Opportunity of thanking him for his excellent Prologue, which so well prepared the Audience for the Representation. Nor can I help thanking him even for the Epilogue, tho' not less pleasant on my self, than on my Adversaries among the *Scots* Clergy; for who would not be contented under a Stroke, or two, of his Satyr, whose Praise (as *Juba* says of *Cato*) I would rather have, than Worlds for my Admirers?

The only evidence for attributing *The Fatal Extravagance* entirely to Hill seems to be the following statement in Theophilus Cibber's *Lives of the Poets of Great Britain and Ireland*, published in 1753:

Once, when Mr. Mitchel was in distress, Mr. Hill, who could not perhaps conveniently relieve him by pecuniary assistance, gave him a higher instance of friendship, than could be shewn by money. He wrote a beautiful dramatic piece in two acts, called *The Fatal Extravagant* [sic], in which he exposed the hideous vice of gaming. This little dramatic work is planned with such exquisite art, wrought up with so much tenderness, and the scenes are so natural, interesting and moving, that I know not if Mr. Hill has any where touched the passions with so great a mastery. This play met the success it deserved, and contributed to relieve Mr. Mitchel's necessities, who had honour enough, however, to undeceive the world, and acknowledge his obligations to Mr. Hill, by making mankind acquainted with the real author of the *Fatal Extravagant*. As this was a favour never to be forgotten, so we find Mr. Mitchel taking every proper occasion to express his gratitude, and celebrate his patron. Amongst the first of his poems, is *An Ode*, addressed to Mr. Hill, which is one of the best of his compositions.¹

¹ (London), IV, 349-50. A footnote states concerning the biography of Hill, "This was sent us by an unknown hand."

This evidence is highly suspicious, inasmuch as it is to be found only in the biographical sketch of Mitchell, which is rather unsympathetic toward him. The statement could easily have been based on Mitchell's Preface to *The Fatal Extravagance*, for it sounds like a remark of a person who trusts too much to memory and does not check carefully enough on the sources of his information. The twenty-four-page biography of Hill in Cibber's *Lives* makes no mention of *The Fatal Extravagance*, whereas, if Mitchell had declared Hill to be the sole author, a person preparing such an elaborate and thorough account should have had the information. Likewise, in 1747 in the play list added to Thomas Whincop's *Scanderbeg*, the piece is still assigned to Mitchell—with the remark that "the author was said to be greatly obliged to Mr. Aaron Hill for his assistance in this play"⁸; one should note that Hill, who died in 1750, was still living when this work appeared. Mitchell had died in 1738, and as late as November 25, 1734, a benefit performance of the tragedy had been given for him as the author.

To be sure, Benjamin Victor in 1761 said that Hill "writ the *Fatal Extravagance* for Mr. Mitchell, (a Gentleman of his Acquaintance then in Distress) got it acted, and supported on the supposed Author's third Night."⁹ Again, the editor of *The Dramatic Works of Aaron Hill, Esq.*¹⁰ in 1760 included the piece as one of Hill's plays. These persons, however, presumably received their information or misinformation from Cibber's *Lives*.

The 1753 edition of *The Fatal Extravagance*, which has not been discussed by the scholars dealing with the problem of the authorship of the play, seems to be very rare; the British Museum has a copy, and I have one, but I have not found it in any of the twenty-eight American libraries which I thought would be most likely to have it. It contains only the title page, the cast of characters, and the text of the play proper—omitting Mitchell's Dedication, his Preface, the two Prologues, and the Epilogue. The title page reads: "The / *Fatal Extravagance*. / A / Tragedy. / As it was formerly acted at the Theatre in Lincoln's-Inn Fields. / By *Aaron Hill, Esq*; / London: / Re-printed in the year 1753, and sold by the Booksellers of *London and Westminster*." The fact that Hill's name is printed on

⁸ (London), p. 261.

⁹ *History of the Theatres of London and Dublin* (London, 1761), II, 123.

¹⁰ (London, 2 vols.).

the title page of this edition is probably not very significant. Inasmuch as he had been dead for three years, the listing of his name as the author may well have been the result of the statement in Cibber's *Lives* that he had written the play and given it to Mitchell outright. Thirty-three years after the composition of the drama, members of his family (one son and a daughter were still living in 1753¹¹) could hardly be expected to have first-hand knowledge as to whether he had written the piece entirely alone or whether he had merely advised and assisted Mitchell—especially because his wife was dead before the publication of Cibber's *Lives* (1753)¹². During the same year *The Works of the Late Aaron Hill, Esq.*¹³ was published for the benefit of the family.

The evidence, then, is not sufficient to justify a positive statement that *The Fatal Extravagance* is entirely the product of Hill. In fact, there is a strong probability that Mitchell did at least an appreciable part of the work.

¹¹ Cibber, *op. cit.*, V, 255.

¹² *Ibid.*, V, 255, 265, 274-75.

¹³ In four vols.

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