

Office of U. S. Chief of Counsel

TRIAL BRIEF - WILHELM KEITEL

10 November 1945

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None

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A. SECTION OF INDICTMENT

"The defendant KEITEL between 1938 and 1945 was: Chief of the High Command of the German Armed Forces, member of the Secret Cabinet Council, member of the Council of Ministers for the Defence of the Reich, and Field Marshal. The defendant KEITEL used the foregoing positions, his personal influence and his intimate connection with the Fuhrer in such a manner that: he promoted the military preparations for war set forth in Count One of the Indictment; he participated in the political planning and preparation of the Nazi conspirators for Wars of Aggression and Wars in Violation of International Treaties, Agreements and Assurances set forth in Counts One and Two of the Indictment; he executed and assumed responsibility for the execution of the plans of the Nazi conspirators for Wars of Aggression and Wars in Violation of International Treaties, Agreements and Assurances set forth in Counts One and Two of the Indictment; he authorized, directed and participated in the War Crimes set forth in Count Three of the Indictment and the Crimes against Humanity set forth in Count Four of the Indictment, including particularly the War Crimes and Crimes against Humanity involved in the ill treatment of prisoners of war and of the civilian population of occupied territories. "

B. LEGAL REFERENCES

Charter, Article 6

Hague Regulations, 1907, Articles 4 - 7, 43, 46 - 56

Prisoners of War Convention (Geneva, 1929), Articles 2, 3, 4, 6

C. STATEMENT OF EVIDENCE

I. POSITIONS HELD BY KEITEL

Chief of Wehrmachtsamt in Reichs- kriegsministerium. 1 October 1935 - 4 February 1938.	<u>Keitel Interrogation</u> , 13 October 1945, p.1.
Chef des Oberkommando der Wehrmacht (Chief of OKW), 4 February 1938.	<u>Keitel Interrogation</u> , 13 October 1945, p.1. Dokumente der Deut- schen Politik, 1938, Vols. I & II, pp. 616, 617.
Member of Geheime Kabinettsrat, 4 February 1938.	1938 <u>Reichsgesetzblatt</u> , Vol. I, p.112 (2031-PS).
Member of Reich Defense Council, 4 September 1938.	Reich Defense Law of 4 September 1938, (2194-PS).
Member of Ministerrat fur die Reichs- verteidigung, 31 August 1939.	1939 <u>Reichsgesetzblatt</u> , Vol. I, p.1539.
Field Marshal, July 1940	

II. FUNCTIONS OF KEITEL'S POSITIONS

As Chief of the Wehrmachtsamt, Keitel was Chief of Staff for the Minister of War Von Blomberg (Keitel Interrogation, 13 October, 1030, p.1), who was also Supreme Commander of the Armed Forces (1954-PS, Keitel Deposition, 3 August 1945). As Chief of Staff for Von Blomberg, Keitel was in charge of rebuilding the army (Keitel Interrogation, 31 August 1945, pp. ²⁷24 - 24).

As Chief of OKW, Keitel was the highest military authority, next to Hitler, who assumed the position of Supreme Commander (Jodl Interrogation, 17 August 1945, pp. 2 - 3). The position of War Minister was abolished, but Keitel performed some of the duties of that position (1954-PS, supra; Jodl Interrogation, 17 August 1945, pp. 7 - 8). The authority of the OKW was derived from Hitler, and it could not make independent decisions without Hitler's approval (Jodl Interrogation, 17 August 1945, pp. 2 - 3). The three branches of the Wehrmacht (air force, army, and navy) were subordinated directly to Hitler, and Keitel had no power of command over them, his position

being more that of a chief of staff (1954-PS, supra; Keitel Interrogation, 1 September 1945, p. 3). Keitel was not entitled to issue direct orders over his own signature to the three branches of the Wehrmacht, but he signed orders for which he had received special authorization from Hitler. Details of the orders were worked out by the appropriate units of the Wehrmacht (Keitel Interrogation, 1 September 1945, p. 2).

The functions of the Geheime Kabinettsrat were honorary and unimportant, so Keitel's connection with it is immaterial.

The Reich Defense Council had the task in peacetime of deciding on all measures for the preparation of Reich defense. As Chief of OKW, Keitel was a permanent member of the Council, and the two plenipotentiaries for Reich Administration and for Economy, who were also on the Council, were required to carry out the demands of the OKW. Keitel also presided over the Council's working committee (Reichsverteidigungsausschuss), which prepared the Council's decisions, saw that they were executed, and obtained collaboration between the armed forces, the chief Reich offices, and the party. Keitel regulated the activities of this committee and issued directions to the plenipotentiaries and certain Reich ministries to assure uniform execution of the Council's decisions.

2194-PS, supra

The Ministerial Council for the Defense of the Reich was formed from the Reich Defense Council, and became the highest permanent organ of the Reich with comprehensive jurisdiction, responsible only to Hitler. It had the power to issue decrees with the effect of law. Keitel was liaison between the Council and the armed forces, it being primarily his duty to coordinate the measures for civilian defense in the area of administration and economy with the genuine military measures for the defense of the Reich.

2608-PS - Speech delivered by Frick on 7 March 1940

III. COUNT ONE

The charges against Keitel under this Count are that

"he promoted the military preparations for war set forth in Count One of the indictment; he participated in the political planning and preparation

of the Nazi conspirators for Wars of Aggression and Wars in Violation of International Treaties, Agreements and Assurances set forth in Counts One and Two of the Indictment; he executed and assumed responsibility for the execution of the plans of the Nazi conspirators for Wars of Aggression and Wars in Violation of International Treaties, Agreements and Assurances set forth in Counts One and Two of the Indictment."

The particular allegations of Count One which relate to Keitel are the following:

III

IV (A); (B); (E)5; (F); (G); (H).

Keitel's adherence to the general conspiracy cannot be shown by a formal joining of the Nazi Party, though he has stated that the Party considered him a member after ~~his receipt of a Party Association~~ in the autumn of 1944, that his political connections were those of National Socialism, and that he was a loyal follower of Hitler.

1964-PF, supra.

The extent to which Keitel's eminent positions in the High Command, and in the Reich Defense Council and the Ministerial Council for the Defense of the Reich, connect him with the military and political preparations for war, are developed in the briefs on the Reich Cabinet and on the General Staff and German High Command.

Keitel's close participation in the planning and initiation of aggressive war is also shown in the brief on Foreign Aggression. The documents cited below are samples of his part in these activities:

388-PF - Memorandum of 20 May 1938 from Keitel to Hitler, submitting strategic revisions of the case "Green" (invasion of Czechoslovakia), made necessary by the annexation of Austria.

C-72 Set of orders signed by Keitel and Jodl over the period between 7 November 1939 and 9 May 1940, fixing and postponing the date for the attack on Holland.

C-120 - Directives from Hitler and Keitel, April - June 1939, preparing for the invasion of Poland.

1811-PS - Copy of Jodl's diary from 13 October 1939 to 30 January 1940.

447-PS - Order of 13 March 1941, signed by Keitel, containing detailed instructions about the projected attack on the USSR (case "Barbarossa").

1780-PS - Jodl's diary from 4 January 1937 to 22 August 1939, which contains references to Keitel's part in preparing for the annexation of Austria and the invasion of Czechoslovakia.

1809-PS - Jodl's diary from February to May of 1940, concerning the invasions of Norway, Denmark, Holland, Belgium, and France.

IV. COUNT TWO

The charges against Keitel under this Count are that

"he participated in the political planning and preparation of the Nazi conspirators for Wars of Aggression and Wars in Violation of International Treaties, Agreements and Assurances set forth in Counts One and Two of the Indictment; he executed and assumed responsibility for the execution of the plans of the Nazi conspirators for Wars of Aggression and Wars in Violation of International Treaties, Agreements and Assurances set forth in Counts One and Two of the Indictment."

Since the same wars are involved in Counts One and Two, the same evidence will establish Keitel's guilt under both counts. This evidence (as pointed out above) is to be found in the briefs on Foreign Aggression, Crimes Against Peace, the Reich Cabinet, and the General Staff and German High Command.

V. COUNT THREE

The charges against Keitel under this Count are that

"he authorized, directed and participated in the War Crimes set forth in Count Three of the Indictment."

The particular allegations of Count Three which relate to Keitel are the following:

VIII (A) pp. 11, 12, 14; (B); (C); (D); (E); (G); (H); (J).

(1) Murder and ill Treatment of Civilian Populations of or in Occupied Territory and on the High Seas - Indictment VIII (A).

The brief on this subject deals with the killing of civilians.

in operational areas in the East, chiefly Russia. The killings took place without trial, often on the pretext that the victims were connected with partisan bands. Keitel is involved in these crimes, because he issued general orders that such acts were to be performed.

On 13 May 1941 Keitel, as Chief of OKW, signed an order by Hitler providing that Russian civilians suspected of offenses against German troops should be shot or ruthlessly punished without a military trial, and that prosecution of German soldiers for offenses against Russian civilians was not required.

C-50 - Copy of order from Fuehrer Headquarters, dated 13 May 1941, signed by Keitel, with copies of letters of transmittal from Fuehrer Headquarters on 14 May 1941, and from Naval War Staff 17 June 1941.

C-51 - Order issued by Fuehrer Headquarters 27 July 1941, signed by Keitel.

On 23 July 1941 Keitel signed an order concerning the administration of occupied Russia, which provided that legal punishments were inadequate in so great an area, and that troops should use terrorism in crushing the population's will to resist.

C-52

The brief also deals with the so-called "Nacht und Nebel" decree mentioned in the Indictment at the beginning of VIII (A).

The decree was issued on 7 December 1941, and signed by Keitel. It provided that in occupied territories of the West civilians would be tried for offenses against the German state only if the death sentence was likely to be carried out within a few days of arrest. Otherwise the accused would be taken to Germany, and no information would be given about them in reply to any inquiries. A communication of 12 December 1941 signed by Keitel states

that Hitler believed terrorization could be achieved only by capital punishment, or by withholding all news from relatives. Copies of the decree, of this communication, and of a decree of the OKW providing that prisoners transferred to Germany would be delivered to the RSHA were forwarded to the commanding officer of the Security Police and SD in Lorraine-Saar Palatinaten.

L-90

On 2 February 1942 Admiral Canaris issued instructions to the Abwehr to punish crimes against the Wehrmacht in accordance with the Nacht and Nebel decree. At first the order was to apply only to Norway, Holland, Belgium, and France.

833-PS

The Chief of the Sipo and SD reported to OKW on 24 June 1942 that a Frenchman had died while awaiting trial in Germany, and that, in order to create anxiety in accordance with the decree, his family had not been notified. The OKW approved of this procedure, which had been established for such cases by an OKW order of 16 April 1942.

668-PS

The decree was not only applied, but its scope was extended. This is apparent from a letter written to OKW on 10 August 1944, in which the German Armistice Commission reported that inquiries had been made about French political prisoners to Germany; in the past such inquiries had not been answered, but now they had greatly increased, since there were more political prisoners, and persons had been deported to Germany as a preventive measure, rather than for the commission of specific offenses.

834-PS

The defendant Rosenberg was appointed by Hitler on 20 April 1941 "Deputy for a centralized treatment of problems concerning the Eastern Territories." The highest Reich authorities were to cooperate fully, and Keitel was asked to designate a representative of OKW with Rosenberg. Jodl was appointed as Keitel's representative with Warlimont as his deputy, and Keitel wrote to Rosenberg on 25 April 1941 to say that Jodl and Warlimont would be the OKW representatives.

865-PS - Fuehrer Order of 20 April 1941; letter from Lammers to Keitel; letters from Keitel to Lammers and Rosenberg, 25 April 1941.

Responsibility for crimes committed under Rosenberg's authority should thus attach to Keitel and Jodl as well. Such crimes are set out in the briefs on this section of the Indictment.

(2) Deportation for Slave Labour and for other Purposes of the Civilian Populations of and in Occupied Territories - Indictment VIII (B).

Keitel is connected with the forced labor program by a decree he signed on 21 April 1942, with Hitler and Lammers, for the appointment of Sauckel as general deputy for the labor supply of Germany and all territories under German influence.

1666-PS - 1942 Reichsgesetzblatt, Vol. I, p. 179.

Keitel's connection with the Rosenberg administration of Eastern territories also makes him responsible for crimes committed by that administration and considered in the other briefs on this section of the Indictment.

865-PS, supra

(3) Murder and Ill Treatment of Prisoners of War, and of other Members of the Armed Forces of the Countries with which Germany was at War, and of Persons on the High Seas--Indictment VIII (C).

The brief on this subject contains a full discussion of the order issued by Hitler on 18 October 1942 for the killing of commando troops, not only in battle, but in flight or while attempting to surrender.

498-PS

An order regulating the treatment of paratroopers had been issued by Keitel about a month earlier. It provided that captured paratroopers were to be turned over to the SD.

563-PS - Secret order of 4 August 1942, signed by Keitel.

The Hitler order was distributed with supplementary instructions signed by Jodl to the effect that the order was for commanding officers only and must not fall into enemy hands.

503-PS - Mimeographed copy (No. 21) of Jodl's letter of 19 October 1942, with instructions on Hitler's commando order of the day before.

On 23 June 1944 Supreme Command West reported that the commando order had been carried out, but requested instructions redefining its scope. In view of the extensive landings in Normandy, it had become difficult to decide which paratroops should be considered sabotage troops under the terms of the order, ~~and which should be considered sabotage troops under the terms of the order, and which should be considered as engaged in normal combat operations.~~ The question was answered by an order of 25 June 1944, one copy of which was signed by Keitel, reaffirming the full force of the original order.

551-PS - Teletype from Supreme Command West to OKW/WFST,

23 June 1944.

551-PS - Keitel's order of 25 June 1944.

Several cases are known in which the order was carried out.

508-PS - A memorandum of 21 November 1942 from Fuehrer Headquarters reporting that the crew of a British freight glider had been captured, and that "Fuehrer order has been carried out." Von Falkenhorst, in his interrogation of 24 October 1945, said that the glider troops mentioned in 508-PS had been shot in accordance with the commando order, by express verbal direction of Keitel.

509-PS - Telegram to the Wehrmacht Führungstab reporting that three captured British commandos had been given "special treatment."

The commando order was reaffirmed by a telegram from the WFST to various military headquarters on 24 June 1944, stating that paratroop-saboteurs would be treated as commandos, whether in uniform or not.

532-PS

Keitel extended the application of the commando order to members of Anglo-American and Russian "military missions" taken in the fighting against the partisans in the Southeast and Southwest.

537-PS - Order of 30 July 1944 from Fuehrer Headquarters signed by Keitel.

The brief on war crimes against military personnel deals also with the lynching of allied fliers by German civilians. The police had instructions not to punish civilians for these acts, or to protect the fliers. A proposal was considered to order the shooting without court-martial of enemy airmen who had been shot down after engaging in specified "acts of terror". There is correspondence to show that Keitel was willing to issue such an order if Goering would approve a definition of the "Acts of Terror", but nothing to show that such an order was in fact ever issued.

R-118D - Letter of 17 June 1944 from Keitel to the Foreign Office, requesting the latter's approval of the definition of acts of terror.

R-118E - Letter from Keitel to Goering containing a request similar to that in R-118D.

The murder and mistreatment of prisoners of war is also covered in the brief on this part of the Indictment. There was a particular policy against Russian prisoners of war, and the politically undesirable ones were segregated from the rest and shot. ~~This was done mainly by the police.~~ However, the OKW regulations for which Keitel must be considered responsible authorize acts which are contrary to the Geneva Convention, such as the free use of fire arms against the prisoners, and a broad interpretation of the guards' right of self-defense.

1519-PS - Circular by Bormann containing OKW order of 8 September 1941 on treatment of Russian prisoners of war.

695-PS - OKW order of 24 March 1942 revising 1519-PS.

656-PS - OKW order of 29 January 1943 signed by Reinecks, on self defense against prisoners of war.

That Keitel knew of the appalling treatment of Russian prisoners of war, and the high death rate among them, appears from the statements in a letter sent to him by Rosenberg on 28 February 1942. The letter stressed the need for better treatment of the Russians, so that they would be well impressed by the Germans.

081-PS

An OKW order provided that escaped officers and non-working non-commissioned officers other than Americans and British were to be turned over to the SIPO and SD upon recapture. The SIPO and SD, upon instructions from their Chief, would then transport the men to the Mauthausen concentration camp under operation "Kugel".

L-158 - Instructions from Chief of SIPO and SD, containing text of OKW order.

Such prisoners were executed at Mauthausen upon arrival.

2285-PS - Affidavit of 13 May 1945 by two French army officers.

Americans and British who were recaptured might be turned over to the SIPO and SD, upon decision of the "W.Kdos" from the OKW/o.i.c.

L-158, supra

(4) Killing of Hostages - Indictment VIII (D).

There are two documents which directly involve Keitel. On 16 December 1941 he signed an order which stated that uprisings among German troops in occupied territories must be considered as inspired by a communist conspiracy, and that the death of one German soldier must mean death for fifty or one hundred communists.

629-PS

On 5 May 1942 Keitel signed an order which specified that hostages should be well known, and that they should come from Nationalist, Democrat, or Communist political factions. After each act of sabotage hostages belonging to the saboteur's group should be shot. This was reiterated in a teletype letter from Keitel to the military commanders in France and Belgium.

1530-PS

(5) Plunder of Public and Private Property - Indictment VIII (E).

The looting of cultural property is covered in the brief addressed to this portion of the Indictment. Such work was carried on chiefly under Rosenberg by an organization established for that purpose, the Einsatzstab Rosenberg. Keitel ordered the military authorities to cooperate in this program.

137-PS - Order from Keitel to the commanding general of the Netherlands on 5 July 1940.

138-PS - Order from Keitel to the Commanding General of France on 17 September 1940.

A memorandum of 17 May 1944 in the Rosenberg Ministry states that the Wehrmacht was one of the principal agencies engaged in removing treasures from Russia. 1107-PS

Keitel was also connected with the removal of machine tools, foodstuffs, and other materials from occupied territories. Such activities are described in detail in the brief on spoliation of property.

1161-PS - OKW order of 31 May 1940 setting up economic reconnaissance teams to procure all important stocks of materials in Belgium, Holland, and Northern France.

743-PS - Two teletypes from Keitel to various military commands, 5 and 8 September 1944, ordering cooperation with Gauleiter Koch in the economic exploitation and evacuation of the Ostland.

(6) The Exaction of Collective Penalties - Indictment VIII (F).

This part of the Indictment alleges that collective penalties were exacted from the population for acts of individuals for which it could not be held responsible. That Keitel advocated such measures appears from correspondence on acts of sabotage in the shipbuilding yards.

C-48 - Order signed by Keitel on 30 November 1944 stressing the need for energetic countermeasures against sabotage to dockyards and ships in Norway and Denmark, and providing for the gravest consequences to the relatives of saboteurs.

870-PS - Report of December 1944 from Terboven, suggesting that relatives be shot, with a marginal comment of approval by Keitel.

871-PS - Letter of 6 December 1944 from Keitel to Terboven agreeing that reprisals are successful only when ruthless.

(7) Conscription of Civilian Labor - Indictment VIII (H).

Keitel is connected with the forced labor program by the fact that he joined with Hitler and Lammers in signing a decree for the appointment of Sauckel as general deputy for the German labor supply from occupied areas.

1666-PF - 1942 Reichsgesetzblatt, Vol. I, p. 179, supra

(8) Germanization of Occupied Territories - Indictment VIII (J)

A memorandum by General Friderici reports a conversation in the Office of the Reich Protector of Bohemia and Moravia in which K. H. Frank announced Hitler's approval of a plan to assimilate Czech nationality into Germany by absorbing the better half of the population into Reich territory (through increased labor draft and dispersal) and expelling the other half. This document was initialed by Keitel.

662-PF

Keitel's connection with the Rosenberg administration of Eastern territories also makes him responsible for crimes committed by that administration and considered in the other briefs on this section of the Indictment.

665-PF, supra

VI. COUNT FOUR

The charges against Keitel under this Count are that

"he authorized, directed and participated in " " the crimes against Humanity set forth in Count Four of the Indictment, including particularly the " " Crimes against humanity involved in the ill treatment of prisoners of war and of the civilian population of occupied territories."

The particular allegations which relate to Keitel are the following:

X (A); (B)
XI

For the most part, the evidence to establish Keitel's responsibility for crimes against Humanity under Count Four will be the same as that used to show his responsibility for War Crimes under Count Three, and reference is here made to that evidence and to the briefs already mentioned under Count Three.

In addition, Keitel's connection with the persecution of minorities in Germany appears from the fact that, with Hitler, Goering, and Lammers, he signed a decree on 7 October 1939 which provided that foreigners must be eliminated from Germany.

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He must have agreed also with the Nazi treatment of Jews, for he stated that the struggle against Bolshevism necessitated a ruthless proceeding against the Jews; the Wehrmacht was not to use them for any service, but they could be placed in labor-columns under German supervision.

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D. ARGUMENT AND CONCLUSION

Keitel's position in the German state was an exceptionally important one. In his military capacity as Chief of Staff to the Minister for War, and then as Chief of OKW since February 1938, he must have known of and participated in all matters of military policy and planning conducted by the German Government. He was also a member, with the rank of Reichsminister, of the two highest cabinet councils which passed on matters of the defense of the Reich. His continued service in posts where he must have known and shaped the military policies of the German Government, together with the documentary evidence which indicates his direct role in planning for war, shows that he adhered to the Nazi conspiracy with knowledge of its aims, and that he is guilty, with the other defendants, of causing the wars specified in Counts One and Two.

With respect to Counts Three and Four, the documentary evidence shows that Keitel ordered the commission of acts that are War Crimes and Crimes against Humanity. Besides, his position in the army and government was such that he must have known of any general policy regarding the commission of such acts. He is, therefore, responsible for such crimes with the other defendants, and guilty of the charges alleged in Counts Three and Four.