

# Law and the Holocaust

United States Holocaust Memorial Museum



Judges of the Berlin courts swear allegiance to Adolf Hitler. Berlin, Germany, October 1936. Judges swore this oath:

“I swear I will be true and obedient to the Führer of the German Reich and people, Adolf Hitler, observe the law and conscientiously fulfill the duties of my office, so help me God.” *Reich Law Gazette I*, 1934, page 785.

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## LAW AND JUSTICE IN THE THIRD REICH, 1933-1945

In 1933, less than a month after Hitler's rise to power, the Nazis enacted "protective detention" (*Schutzhaft*) in the aftermath of a fire that destroyed the Parliament (Reichstag) building. Hitler claimed the Communists set the fire as a signal for an uprising against the state. In Nazi terminology, protective detention meant the arrest--without judicial review--of potential and real opponents of the regime and their incarceration in concentration camps without specific charge or trial. The police alone judged whether an arrest was necessary because of some "potential" danger to the security of the Reich. In 1938, the Secret State Police or Gestapo (*Geheime Staatspolizei*) became the sole agency to authorize "protective detention." Prisoners were sent to concentration camps on the basis of a protective detention order, signed by the appropriate Gestapo official. Permission to execute a prisoner required a signed order from the chief of the Security Police and SD (*Sicherheitsdienst* or Security Service) in Berlin.

At first, most protective detention prisoners were political opponents of the Nazi party: Communists, Socialists and trade unionists. Later, protective detention prisoners came to include so-called "racial enemies," especially Jews and also smaller groups, like the Jehovah's Witnesses, who for reasons of religious conviction, refused to swear an oath to the Nazi German state or to serve in the armed forces. In 1936-1937, the police forces in the Third Reich began to round up large groups of "Asocials" (panhandlers, "habitual criminals," vagrants, marginally disabled persons, prostitutes, pimps, persons unable to obtain or maintain steady employment, Gypsies, homosexuals, and others perceived not to be maintaining a healthy standard of social behavior). The standard "legal" tool employed by the Criminal Police was "preventive arrest" (*Vorbeugende Verhaftung*). "Preventive arrest" permitted criminal police detectives to take persons suspected of participating in criminal activities into custody without warrant or judicial review of any kind. Both "protective detention" and "preventive arrest" meant indefinite internment in a concentration camp.

Alongside the arbitrary power of Hitler and the police, the judicial system continued to function, at least at first, as it had in the Weimar Republic. Yet, like most areas of public life after the Nazi rise to power in 1933, the German system of justice underwent an alignment with Nazi goals (*Gleichschaltung*). All professional associations involved with the administration of justice were merged into the National Socialist League of Law Guardians (NSRWB). Nazi discipline and indoctrination soon became part and parcel of a legal career. The Nazis required all law students to undergo Nazi indoctrination; jurists spent six weeks studying Nazi concepts like race and the community spirit of the nation. This schooling in Nazi legal concepts continued under the auspices of the NSRWB throughout their career.

In April 1933, the Nazis dismissed Jewish and left-oriented judges, lawyers, and other court officers from their positions. The largest German state, Prussia, had employed

about 6,500 judges and prosecutors; of these the Nazis removed 850. About one-third of those removed were Jewish. The new civil service law, which was the basis for the dismissals, required that judges, states attorneys and other judicial officials “show at all times their willingness to defend and support the National Socialist state” or face removal from their posts. To maintain at least the appearance of judicial independence, judicial decisions could not be used as evidence of anti-Nazi behavior that was required to remove judges and other judicial officials from office. Despite Nazi indoctrination and the purge of Jewish and politically unacceptable jurists, most jurists were not Nazi but conservative. Conservative jurists thought they could remain at their posts, paying lip service to Nazi demands for loyalty, while continuing to judge cases on the actual merits.

However, Hitler determined to maximize the political reliability of the courts. In 1933 he established Special Courts throughout Germany to try politically sensitive cases. Hitler later ordered the creation of the People’s Court (*Volksgerichtshof*) (Berlin, 1934) to try treason and other key "political cases" because he was dissatisfied with the 'not guilty' verdicts rendered by the Supreme Court (*Reichsgericht*) in the Reichstag Fire Trial. (The Nazi charge that the Communists were responsible for the arson could not be sustained before the Supreme Court.) The Nazis attempted to gain control over important court sentences by appointing Nazi judges to both the Special Courts and the People’s Court. Before the war, the impact of the Special Courts and the People’s Court, however, was relatively marginal. The People’s Court, for example, tried only 1,026 cases of treason between 1935 and 1937, less than the number of defendants tried in a single year before the Supreme Court in the Weimar Republic. Until November 1938, the competency of the Special Courts extended only to political crimes and these were only marginally important in the criminal justice system. Between 1936 and 1939, the Special Court in Hamburg, for example, accounted for only 16 percent of all sentences handed down by Hamburg’s State Courts.

Having secured independent police authority and a parallel system for trying political cases, Hitler and Nazi jurists moved to incorporate Nazi legal concepts into German law. Judges were enjoined to free themselves from the shackles of civil law, and let "healthy Folk sentiment" (*gesundes Volksempfinden*) guide them in their decisions---by which the Nazis really meant jurists should anticipate Hitler’s will. The effects of this campaign are evident in the court’s interpretation of the Nazi race laws.

The Supreme Court, especially, made an important contribution to the enforcement of the Law for the Protection of German Blood and German Honor, which prohibited marriages and sexual relations between Jews and Germans. Supreme Court decisions eased the difficulties in implementing anti-Jewish policies. The Supreme Court provided precise definitions and practical guidelines for the application of Nazi law in individual cases. Further, the Supreme Court’s acceptance and application of the race laws conferred legitimacy on racial discrimination and persecution and also served propaganda purposes. The Court explicitly recognized the racial laws as a central act of National Socialist legislation and consistently broadened the application of the law. The Court agreed that every step must be taken to prosecute those who violated the law. The Supreme Court never decided an appeal of the race laws in favor of the defendant. It readily applied the

principle of racial inequality throughout German civil and criminal law and did so on its own initiative, under no apparent pressure from the Nazi state or the Ministry of Justice.

Before the World War II, Hitler accepted court decisions with which he did not agree as the price for the cooperation of conservative jurists. By the winter of 1941-42, when it became clear that the war would be protracted, Hitler no longer tolerated lenient court sentences. He demanded that judges impose death sentences as broadly as possible to protect the home front from rising criminality and defeatist provocateurs.

In a speech before parliament on April 26, 1942, Hitler harshly criticized the way the courts operated in Germany. He accused judges of sentencing criminals much too leniently. He "requested" and got a resolution formally recognizing his right to remove judges at will. He declared he would use this power to take immediate action against every "incorrect" court decision and remove any judge from office who did not "recognize the requirements of the hour."

On August 20, 1942, Hitler appointed a radical Nazi, Otto Thierack, Reich Minister of Justice and, at the same time, to head all the party legal offices. (The NSRWB and to assume the presidency of the Academy of German Law.) For the first time, one individual controlled all the important party and state posts in the administration of justice. On the same day as Thierack's appointment, Hitler appointed a radical Nazi, Roland Freisler, to the presidency of the People's Court in Berlin.

The appointments of Thierack and Freisler heralded the end of an independent judiciary in Nazi Germany. Less than six weeks after his appointment as Reich Minister of Justice, Thierack issued the first in a series of so-called "letters to be issued to all judges." These letters were actually official guidelines to be used in sentencing. The letters presented the position of the state on political questions and on the legal interpretation of Nazi laws, especially on the imposition of the death sentence. In practice, these letters tended to compel judges, who were under constant threat of removal, to decide cases according to the examples in the letters.

In addition to the radicalization of the judiciary through these letters to the judges, Thierack altered the relationship between the Ministry of Justice and the SS. In September 1942, Thierack agreed to the systematic transfer of specific categories of prisoners from the jurisdiction of the Ministry of Justice to the SS--all Jews, Gypsies, Russians, and Ukrainians as well as those Poles, Czechs and Germans convicted of serious crimes. Thierack affirmed that these prisoners were to be worked to death in the concentration camps.

While Thierack restructured the Ministry of Justice according to Hitler's wishes, Freisler transformed the People's Court into an instrument of mass terror. Freisler considered the Court to be the mechanism for the continuous self-purge of the German people and presided over the trial of all important cases, especially over attacks on the Fuhrer and defeatism. In the pre-war period (1934-39), there were 72 death sentences. Between 1941 and 1945, the People's Court sentenced more than 5,000 people to death.

This radicalization of sentencing is also reflected in the civil courts of Nazi Germany. Between 1933-40, civil judges sentenced about 1,000 people to death; between 1941 and 1945, about 15,000 were sentenced to death.

## **Arrests without Warrant or Judicial Review (Protective Detention) in Nazi Germany**

“Protective Detention” (Schutzhaft) authorized the police to indefinitely incarcerate without specific charge or trial persons deemed to be potentially dangerous to the security of the Reich. In Prussia alone, there were more than 25,000 protective detention prisoners by March-April 1933. Such persons included political opponents and, later, Jews as such. They also included smaller groups, like the Jehovah’s Witnesses, who, for reasons of religious conviction, refused to swear an oath to the Nazi German state or to serve in the armed forces. “Protective Detainees” were incarcerated either in Gestapo prisons or in concentration camps. On the site of each main German concentration camp was stationed a Gestapo official who (1) maintained the prisoner arrest records; (2) recommended release or longer incarceration of prisoners; and (3) requested or received authorization for punishing or executing prisoners. Political prisoners were sent to concentration camps on the basis of a Protective Detention Order (see below), signed by the appropriate Gestapo official. Permission to execute a prisoner required a signed order from the chief of Security Police and SD in Berlin.

### Order of Protective Detention

Based on Article 1 of the Decree of the Reich President for the Protection of People and State of February 28, 1933 (Reichsgesetzblatt I, Page 83), you are taken into protective detention in the interest of public security and order.

Reason: Suspicion of activities inimical toward the State.

From: International Military Tribunal, *Trial of the major war criminals before the International Military Tribunal, Nuremberg, 14 November 1945-1 October 1946*. Nuremberg, Germany; 1947-49; "Blue Series," Vol. 3, p. 497

The potential for abuse of protective detention was immense. Attempts to limit the arbitrary arrest of individuals failed because the police alone determined if a person posed a danger to the state and they did not have to explain why. Here is an early attempt by Wilhelm Frick to impose some measure of order on political arrests.

Wilhelm Frick, Reich Minister of the Interior,  
Decree on Protective Detention Measures  
April 13, 1934

In order to remedy abuses that have occurred during the imposition of protective detention, the Minister of the Interior, in his instructions to the provincial governments and to the Reich governors of April 12, 1934, has determined that:

Protective Detention orders may be issued only

a) for the prisoner’s own protection [protective custody]

b) if the prisoner, through his behavior, especially by [engaging in an] activity hostile to the state, directly endangers public security and order.

Accordingly, insofar as these conditions do not currently exist, the imposition of protective detention is not authorized, especially

a) against persons who merely make a claim (for example, filed a charge against someone, filed a suit, or filed a grievance) to which they are entitled under civil or public law;

b) against attorneys for representing the interests of their clients;

c) in regard to personal matters, like, for example, insults;

d) in regard to any economic measure (wage issues, dismissal of employees and similar issues)

Furthermore, protective detention is not authorized as a tool to investigate criminal acts, for this is the jurisdiction of the courts. In addition, protective detention may not be imposed solely because a person behaves in an asocial or otherwise objectionable manner, unless such behavior creates agitation in the population and, as a result, protective detention becomes necessary to protect the prisoner.

From: International Military Tribunal, *Trial of the major war criminals before the International Military Tribunal, Nuremberg, 14 November 1945-1 October 1946*. Nuremberg, Germany; 1947-49; "Blue Series," Vol. 26 pp 297-299



## Preventive Police Arrest in Nazi Germany

Just as the Secret State Police, Gestapo, arrests individuals who it determines constitute a threat to the state, the Criminal Police, Kripo, arrests individuals if it determines them to be criminal and a threat to public order. As with those arrested by the Gestapo (protective custody prisoners) those under preventive police arrest have no recourse, no lawyer and no trial. They are interned directly in a concentration camp for a period determined by the police alone. By the end of 1939, there were more than 12,000 preventive arrest prisoners interned in concentration camps in Germany.

The following guidelines for the use of preventive police action against crime comes from Werner Best, *Der Deutsche Polizei* (Darmstadt: L.C. Wittich Verlag, 1940), pages 31-33.

### Guidelines for Preventive Police Action Against Crime

“...In the internal distribution of responsibilities of the Police, prevention of “political crimes” is assigned to the Secret State Police [Gestapo]. In other cases the criminal police is responsible for the prevention of crime. The German criminal police operates according to guidelines in the prevention of crime according to the following principles:

The tools used in the prevention of crime is systematic police surveillance and police preventive arrest.

Systematic police surveillance can be used against those professional criminals who live or have lived entirely or in part from the proceeds of their criminal acts and who have been convicted in court and sentenced at least three times to prison or to jail terms of at least three months for crimes from which they hoped to profit.

Further habitual criminals are eligible if they commit crimes out of some criminal drive or tendency and have been sentenced three times to prison or jail terms of at least three months for the same or similar criminal acts. The last criminal act must have been committed less than five years ago. The time the criminal spent in prison or on the run is not counted. New criminal acts which leads to additional convictions suspends this time limit.

All persons who are released from preventive police arrest must be placed under systematic police surveillance.

Finally systematic police surveillance is to be ordered despite these regulations if it is necessary for the protection of the People’s community (*Volksgemeinschaft*.)

In the application of systematic police surveillance the police can attach conditions such as requiring the subject to stay in or avoid particular places, set curfews, require the subject to report periodically, forbid the use of alcohol, or other activities, in fact,

restrictions of any kind may be imposed on the subject as part of systematic police surveillance.

Systematic police surveillance lasts as long as is required to fulfill its purpose. At least once every year the police must reexamine whether the surveillance is still required.

Preventive police arrest can be used against the following:

Professional and habitual criminals who violate the conditions imposed on them during the systematic police surveillance of them or who commit additional criminal acts.

Professional criminals who live or have lived entirely or in part from the proceeds of their criminal acts and who have been convicted in court and sentenced at least three times to prison or to jail terms of at least three months for crimes from which they hoped to profit.

Habitual criminals if they have committed crimes out of some criminal drive or tendency and have been sentenced three times to prison or jail terms of at least three months for the same or similar criminal acts.

Persons, who have committed a serious criminal offense and are likely to commit additional crimes and thereby constitute a public danger if they were to be released, or who have indicated a desire or intention of committing a serious criminal act even if the prerequisite of a previous criminal act is not established.

Persons, who are not professional or habitual criminals but whose anti-social behavior constitutes a public danger.

Persons, who refuse to or falsely identify themselves if it is concluded that they are trying to hide previous criminal acts or attempting to commit new criminal acts under a new name.

Normally, police preventive arrest is to be used against these persons if it is concluded that the more mild measure of systematic police surveillance will unlikely be successful.”

## The German Supreme Court and the Nazi State in 1933

*What the New Year will bring is uncertain. That it will be good is hardly to be expected; all signs indicate new attacks and struggles over the nature of law and judicial independence are coming. Loyal fulfillment of duty will give us the strength and the courage to meet these challenges successfully.*  
Supreme Court Justice Karl Linz, January 15, 1933.<sup>i</sup>

*I am deeply mortified, that I am to leave office, before I reach the mandatory retirement age, under such humiliating circumstances, after I have felt and acted my whole life like a “real” German. Loyalty can be found in every religion and every race. I think statesmen should preserve loyalty like a holy flame, regardless of where they may find it.*  
Supreme Court Justice Alfons David, shortly before his removal from the court because he was Jewish, March 1933.<sup>ii</sup>

On January 15, 1933 Supreme Court Justice Karl Linz, in his capacity as head of the German Judges League, made an appeal to all German judges. He wrote that he expected another tumultuous year for judges in Germany, “a new struggle over the nature of law and judicial independence.”<sup>iii</sup> Linz made this statement just two weeks before Hitler’s unexpected appointment as Chancellor and could not have been referring to an expected struggle with a “Nazi” state.<sup>iv</sup> Like most Germans, Linz expected that the Weimar Republic would continue, despite the constitutional deadlock that had paralyzed the government since 1930.<sup>v</sup>

Linz’s appeal to German judges referred instead to the struggle between Communists and Nazis over the fate of the Republic. Most Supreme Court justices expected the political disturbances that had flooded the Supreme Court with treason cases in 1932 would worsen in 1933. Treason trials invariably embroiled the court in political struggles. Both right and left wing parties attacked the decisions of the Supreme Court and demanded judicial “reform.” Linz was warning judges that 1933 would be a year of severe trials and urged judges to prepare themselves for the coming struggle over judicial independence.

Less than a month after Hitler became Chancellor, he orchestrated the end of the legislative authority of Parliament and the creation of a police state. (Through the Enabling Act of March 1933, the Parliament transferred its legislative authority to the executive.) Supreme Court judges, like most judges, proved willing to sacrifice for a Nazi state, at least in part, the same judicial principles that Linz had urged them to defend in mid-January 1933. Supreme Court judges compromised their long cherished principles because they believed the Nazi regime offered great advantages to the administration of justice. They believed that the Nazis would put an end to divisive political turmoil in Germany.

The Supreme Court first took official notice of Hitler's government on March 29, 1933, when the court issued a public statement welcoming Hitler's affirmation of judicial independence.<sup>vi</sup>

*The Supreme Court welcomes thankfully the recognition of judicial independence made by the Reich Chancellor [in Parliament] during the governmental declaration of March 23, 1933 [in support of the Enabling Act]. Only the surety of their independence can give judges the inner freedom they require for the fulfillment of their high office. Enjoying such freedom, subject only to the law, they hold together the community of the People (Volksgemeinschaft) through their court decisions. This is the real job of judges.*<sup>vii</sup>

This statement was extraordinary. The Supreme Court had not considered it necessary to issue similar statements to any of the preceding three chancellors, Bruening, von Papen and von Schleicher. Further, Hitler had not declared his support for judicial independence, indicating merely that judicial independence must be paired with a willingness among judges to depart from the letter of the law and to apply Nazi principles in deciding legal issues.<sup>viii</sup> In reality, the Supreme Court publicly thanked Hitler for guarantees he had never really made in the hope that he would honor them. The Court took this extraordinary action because it recognized that the fundamental nature of government in Germany had changed, not when Hitler was appointed chancellor in January, but when the Enabling Act was passed.

Hitler called the Enabling Act the "Law for the Relief of the Distress of the People and the Reich," a blatantly deceptive use of language.<sup>ix</sup> Parliament passed the law by more than the two-thirds majority required to alter the Constitution, because the Nazis intimidated and persecuted the representatives. The Nazis prevented all eighty-one Communist and twenty-six of the one hundred and twenty Social Democratic representatives from taking their seats and stationed SA and SS storm troopers in the chamber to intimidate potential opposition during the vote. In the end the law passed 441 to 94, with only the Social Democrats voting against the measure. The Enabling Act gave Hitler the right to enact laws, including ones violating the Weimar Constitution, without approval of either Parliament or the Reich President, freeing him from dependence on either.

Supreme Court judges had reason to be concerned about the changes Hitler might make in the judicial system. In March, Nazi party radicals had begun a campaign against Jewish professionals, even dragging Jewish judges out of courtrooms and humiliating them in the streets. Violent attacks on courts were particularly shocking to judges, who regarded violence in open court as a direct attack on the German state. They feared that SA attacks on the courts signaled Hitler's intention to restructure the court system. Judges were fully conscious of Hitler's authority and wary of Nazi radicals with a will to violence. The realization that Hitler had the authority, will, and power to restructure the government merged with their own serious concerns that Nazi party radicals would replace the judicial system with their own revolutionary courts. This realization led Linz

and other justices to send a delegation of judicial officials to meet with Hitler. They met in Berlin on April 7, 1933.

It should be emphasized that Linz was by no means a Nazi sympathizer. He had been a member of the Catholic Center party in the Weimar Republic and never joined the Nazi party, even after Hitler's rise to power.<sup>x</sup> Further, he had unsuccessfully attempted in 1933 to maintain the independence of the German Judges' Association and to prevent its merger into the Nazi organization of jurists, the National Socialists League of German Jurists (BNSDJ).<sup>xi</sup>

After his meeting with Hitler, Linz issued a statement in the *German Judges' Gazette* calling on all judges to support Hitler's government.<sup>xii</sup> He wrote that he believed that Hitler could restore order and provide security, as well as ensure Germany's economic, military, and political recovery.<sup>xiii</sup> Linz personally assured Hitler that he could count on the support of judges and their traditional sense of duty to the state. Linz declared that judges were willing to work with Hitler against the Communists, asking only that Hitler maintain the traditional independence of the judiciary.<sup>xiv</sup> Linz's conference with Hitler revealed important reasons for the overwhelming support that judges gave the Third Reich in 1933.

First, judges recognized Hitler's government as legitimate. He had been confirmed in office by the Reich president, and had taken the oath to uphold the Constitution. In the court's opinion, Hitler had legitimate power to issue constitution-altering legislation, since it was a power voted him by a two-thirds majority of the Reichstag in the Enabling Act. The court overlooked the absence of the Communist delegation and the many Social Democrats who were under arrest.<sup>xv</sup> Judges were so convinced of the legitimacy of Hitler's authority that they were confused by the proclamation of the so-called "Nazi Revolution." How could Hitler's government be revolutionary if it were constituted according to constitutional requirements? Erich Schultze, one of the first Supreme Court judges to join the Nazi party, ended the confusion by declaring that the term "revolution" did not refer to the legitimacy of the government in this case, but to Hitler's radically different ideas.<sup>xvi</sup> Since German judges viewed Hitler's government as legitimate and regarded themselves as state servants, they therefore owed him their obedience and support.<sup>xvii</sup>

Secondly, judges supported Hitler because they approved of his decisive action against the left. In March and April 1933, the Nazis ruthlessly arrested their political opponents. In Prussia alone at least 25,000 people were arrested and detained without trial.<sup>xviii</sup> Above all, the Nazis targeted the Communist political organization and prominent Social Democrats, Trade Unionists and Pacifists. The Supreme Court applauded the end of the Communist menace. In the Weimar Republic, the court had led judicial prosecution of Communists, declaring that there was a Communist conspiracy to overthrow the traditional order of society.

Third, Judges regarded Hitler as the restoration of a traditional authoritarian government, believing he would end the almost constant criticism of the administration of justice, which had come from leftists and Republican circles and, above all, from the floor of the

Reichstag. The Nazi leadership, especially Hans Frank, the leader of the Nazi Jurists' League, played upon their desires for security.<sup>xix</sup> Frank declared that the Nazi regime was authoritarian and strong enough to ensure that the judges received the respect that they deserved by virtue of their service to the state.<sup>xx</sup> After the constant criticism of the Supreme Court in newspapers and in parliament during Weimar, these words came as a relief to Supreme Court justices.

Finally, judges hoped that Hitler would maintain the traditional independence of the German judicial system. Usage of the word "independence" referred to the impossibility of removal or transfer of judges, except on the basis of a court decision; to the prohibition of all government instructions concerning the interpretation of legal codes; and meant the insulation of judges, both spiritually and structurally, from the political influence of the state. Hitler promised that these basic principles would be maintained, that he would uphold judicial independence, but he indicated some "temporary" exceptions might have to be made. Hitler's vague promises and the retention of a traditional conservative jurist, Franz Gürtner, as Minister of Justice, convinced judges that any violation of the rule of law, or of judicial independence, would be temporary. Judges would once again be pillars of an authoritarian state.

From the start the Supreme Court sought to accommodate itself to the Nazi state. Its members recognized the legitimacy of Hitler's government and upheld Hitler's right to enact legislation that violated the Weimar constitution and established legal practice. The court willingly submitted to and even facilitated the purge of Jews and politically unacceptable judges. The purges violated the principle of judicial independence, which held that no judge could be removed from office without judicial process. Recognizing the Nazi emphasis on racism and antisemitism, the Supreme Court readily accommodated itself to Nazi antisemitic legislation. It furthered both the removal of Jewish judges and aided substantially in the identification and prosecution of Jews who violated race laws. In this the court readily accepted the inequality of the races before the law. What had begun as a "temporary" compromise, ended in the self-abnegation of the Supreme Court before the Nazi state.

Excerpted from: William Frederick Meinecke, Jr., *Conflicting Loyalties: The Supreme Court in Weimar and Nazi Germany, 1918-1945* (Dissertation: University of Maryland at College Park, 1998)

## The Supreme Court and Race Defilement Cases

The Supreme Court's rejection of "political necessity" as an overriding factor in determining the verdict of the Reichstag fire trial<sup>xxi</sup> (1933) was tantamount to a declaration that the Court would not bow to blatant government direction. The Nazis could not use the Supreme Court to stage politically important show trials. Yet even in the Reichstag fire case the Court made every effort to comply with Nazi demands within the limits set by normal judicial practice. Following the trial and the emergence of a strong Nazi regime the Court became more obliging to the Nazis, especially in the interpretation and application of their racial legislation.

Most Supreme Court decisions made in the Third Reich were not related to Nazi ideology nor were they politically important. Hitler and the Nazis were not interested in most civil and trade law appeals. Nor were the Nazis inclined to intervene in "normal" criminal appeals, at least before the war. The Supreme Court operated as usual in those fields of law. Nevertheless, Hitler and the Nazis were intensely interested in infusing court decisions with Nazi racial ideology. The entire legal order in Germany was full of special regulations for Jews, to lend legitimacy to Nazi policies persecuting Jews. The Supreme Court quickly accepted the inequality of the races and adopted it in all fields of civil and criminal law.<sup>xxii</sup>

Even before the Nazis enacted racial legislation, the Supreme Court began to use racial consideration in its decisions. As early as December 1934, the Fourth Civil Senate, for example, recognized the dissolution of a marriage on racial grounds well before any revision of the divorce laws permitted annulment on those grounds.<sup>xxiii</sup> The case involved a man who sought to divorce his wife on the grounds that she was not racially acceptable. She was born Jewish and had converted to Protestantism. Her husband brought suit in November 1934 claiming the marriage was based on mistaken circumstances and was therefore void. The State Superior Court in Hamburg ruled that this was an obvious attempt on the part of the husband to use the changed political circumstances in Germany to rid himself of his wife and rejected the appeal.<sup>xxiv</sup> The Supreme Court expedited the appeal because of its obvious importance to the Nazis. The Fourth Criminal Senate overturned the lower court decision and granted the divorce stating that once the Nazi state informed the husband of the importance of racial issues, he realized his marriage was not legitimate. Dissolution of the marriage on racial grounds was now legitimate.

The importance of the 1935 racial legislation to the Nazis was underlined by the circumstances of its enactment. Hitler called a special session of parliament at the 1935 Nazi party congress in Nuremberg. In this special session the Reichstag passed two landmark race laws, often referred to simply as the "Nuremberg Laws."<sup>xxv</sup> The first of the Nuremberg Laws, the Reich Citizenship Law, deprived Jews of their civil rights. It defined "Jews" on the basis of ancestry: thus persons having one or more Jewish grandparents were categorized as Jewish or of "mixed" race. The second of the two, the Law for the Protection of German Blood and German Honor, prohibited marriages and sexual relations between Jews and Germans.<sup>xxvi</sup>

In Hitler's view the principle of the inequality of the races applied to all areas of civil and criminal law and was thus the natural province of the Supreme Court, whose decisions superseded those made by all lower courts. Soon, Supreme Court decisions eased the difficulties inherent in implementing anti-Jewish policies that lacked adequate definitions and practical guidelines for their application across a broad

spectrum of law, from divorce cases to criminal race defilement. Further, the Supreme Court's acceptance and application of the race laws served an important propaganda purpose. In accepting racial principles and applying them in appellate decisions, the Supreme Court conferred legitimacy on racial discrimination and persecution.

Even before the first appeal involving the Nuremberg race laws reached the Supreme Court in 1936, the Court had signaled its willingness to apply Nazi racial legislation without reservations. In October 1935, President Bumke ordered the retention of records relevant to the determination of "racial" health and descent. Prior to 1935 these records were destroyed, but now they were routinely transferred to the Government Health Office. These records included court rulings and supporting documentation dealing with paternity, marriage, name changes, and guardianship, but also included criminal records involving juveniles.<sup>xxvii</sup> Further, President Bumke indicated at a November 1936 meeting of justice officials called to discuss the race laws that the Supreme Court could accept the interpretation of those laws favored by Dr. Roland Freisler, who at that time was still a state secretary in the Ministry of Justice. Freisler advocated extending the interpretation of the law as much as possible. As he put it "the Law for the Protection of German Blood and German Honor is a regulation which establishes the very foundation of the German people, which we do not seek to narrow but to broaden for the protection of our race."<sup>xxviii</sup>

While Bumke did not promise in November that the Supreme Court would interpret the law as broadly as possible, in one of the first important rulings on the interpretation of the race laws, the Court did precisely that. Less than a month after the conference, on December 9, 1936, the Reich Prosecutor requested that the Court clarify precisely what was meant by the term "sexual relations" in the Law for the Protection of German Blood and German Honor. The Law proscribed "sexual relations" between Jews and those of German or related blood. The Supreme Court had previously interpreted sexual relations to mean sexual intercourse or actions mimicking sexual intercourse.<sup>xxix</sup> This definition made it extremely difficult to prosecute sexual violations, since the practice typically occurred between consenting adults in private. The Supreme Court aided the Nazis in overcoming this difficulty by broadening the meaning of the terms "sexual relations" and "German Honor."

In a landmark ruling, the Great Senate for Appeals in Criminal Cases of the Supreme Court interpreted "sexual relations" to mean more than sexual intercourse.<sup>xxx</sup> According to the justices, it referred to any natural or unnatural sexual act between members of the opposite sex, in which sexual urges are in any way gratified. The Supreme Court indicated such an extensive interpretation of the law was required because the equation of the terms "sexual intercourse" and "sexual relations" would have set almost insurmountable barriers to prosecution by making the production of evidence of a crime very difficult. Further, the law was intended to protect not just the purity of German blood, but also German honor. This required, according to the Court, the proscription of all sexual acts between those of German or "related blood" and Jews, not just intercourse.<sup>xxxi</sup>

The Court moved again to force a harsh application of the laws on March 28, 1938. Here the Second Criminal Senate of the Supreme Court overturned a lower court ruling, granting leniency to a person convicted of violating the Law for the Protection of German Blood and German Honor. The lower court, State Court I in Berlin, had ruled that the sexual liaison between a Jew and a German girl had been ongoing before the enactment of the law prohibiting sexual relations between them. Thereafter the defendant had found it difficult to break off such a long-standing relationship. The lower court found this to be a reason for leniency since the defendant did not callously and with premeditation break the law.



The Supreme Court overturned this ruling, indicating that the circumstances really provided grounds for imposing maximum penalties. The Court insisted that the intentions of the individual were not the determining issue in deciding penalties for these cases. Instead, the penalties imposed had to reflect the importance of protecting the purity of German blood and honor. Even if the German in question was a prostitute, her honor was not in question, because the honor of the Germanic race as a whole was at stake.<sup>xxxii</sup> According to the Supreme Court, the continuing sexual relationship between the defendant and a German woman even though prohibited, indicated a blatant rejection of National Socialist legislation on the part of the defendant. This was evidence that supported increased, not reduced, criminal penalties.<sup>xxxiii</sup>

Almost a year later, on January 5, 1939, the Fifth Senate for Appeals in Criminal Cases broadened the application of the race laws further, declaring even the verbal proposition for sexual relations between Germans and those of Germanic blood and Jews constituted a violation.<sup>xxxiv</sup> Here the case involved a Jewish man who had propositioned a chambermaid in a hotel, offering a bracelet in exchange for sex. She refused. The Supreme Court ruled this constituted race defilement because the solicitation reflected actions inherently connected to sexual relations. Asking for sex, with the expectation that sexual intercourse would follow an affirmative answer by the prospective partner, was already a violation of the law. The Court emphasized that the negative answer on the part of the chambermaid legally had no effect in the determination of the commission of a crime.<sup>xxxv</sup>

Less than a month later, on February 2, 1939, the Second Senate for Appeals in Criminal Cases again extended the application of the law. This time the Court ruled explicitly that bodily contact was not a prerequisite for prosecuting individuals for violating the race laws. That is to say, race defilement could occur without any bodily contact between Jews and those of German or related blood. The Court again broadened its interpretation of the term “sexual relations,” ruling that sexual relations was any act which promoted sexual gratification and postulated that this was possible without physical contact.

Specifically, the Court ruled that masturbation when a person of the opposite sex was present, even without physical contact of any kind between the two, constituted a violation of the race laws. Masturbation was race defilement when three conditions were present: one party was Jewish and the other of German or related blood, when the presence of the other person contributed to sexual excitement of either party, and when both parties, at least tacitly, agreed to the practice. The Court held such acts violated “sound popular instincts” (*Gesundes Volksempfinden*) and were contrary to the government’s racial policy. Consequently “such unnatural acts” used as a substitute for sexual intercourse were violations of the Law for the Protection of German Blood and German Honor.<sup>xxxvi</sup>

In addition to broadening the interpretation of “German honor” and “sexual relations,” the Supreme Court stiffened criminal penalties by extending jurisdiction of German law abroad. On February 23, 1938, the Great Senate for Criminal Appeals ruled that a German Jew and a German who temporarily left the country in order to engage in sexual activities had violated the Law for the Protection of German Blood and German Honor.<sup>xxxvii</sup> The Court found that while the law did not explicitly forbid sexual relations abroad, the extension was necessary due to the importance of the legislation. The Court explicitly recognized the racial laws as central to the National Socialist agenda, serving the preservation of racial purity of the German people. Consequently, the Court ruled, every step required to prosecute those who violate the law, even if committed abroad, must be taken.<sup>xxxviii</sup>

Since it was the practice of the Supreme Court to assign appeals of criminal cases to particular senates by court districts, all Supreme Court senates dealing with criminal appeals were involved with the application of the Law for the Protection of German Blood and German Honor. This meant all the judges sitting on those senates contributed to Nazi racial persecution. After the war judges claimed the Nazis bypassed the ordinary court system, establishing Special Courts to apply Nazi laws. But this was never the case in the application of the Law for the Protection of German Blood and German Honor. The Supreme Court applied the law; Supreme Court judges, not special Nazi appointees, broadened its application. There was never a case in which the Supreme Court decided an appeal of the race laws in favor of the defendant.

Excerpted from: William Frederick Meinecke, Jr., *Conflicting Loyalties: The Supreme Court in Weimar and Nazi Germany, 1918-1945* (Dissertation: University of Maryland at College Park, 1998) pp. 153-161.

# Nuremberg Laws

Translated from the original German in the Federal Law Register (1935).

## The Reich Citizenship Law of September 15, 1935

The Reichstag has unanimously enacted the following law, which is promulgated herewith:

### Article 1

1. A subject of the State is a person who enjoys the protection of the German Reich and who in consequence has specific obligations towards it.
2. The status of subject of the State is acquired in accordance with the provisions of the Reich and State Citizenship Law.

### Article 2

1. A Reich citizen is a subject of the State who is of German or related blood, who proves by his conduct that he is willing and fit to faithfully serve the German people and Reich.
2. Reich Citizenship is acquired through the granting of a Reich Citizenship Certificate.
3. The Reich citizen is the sole bearer of full political rights in accordance with the Law.

### Article 3

The Reich Minister of the Interior, in coordination with the Deputy of the Führer, will issue the Legal and Administrative orders required to implement and complete this law.

Nuremberg, September 15, 1935  
At the Reich Party Congress of Freedom

The Führer and Reich chancellor  
[signed] Adolf Hitler

The Reich Minister of the Interior  
[signed] Frick

Translated from the original German in the Federal Law Register (1935).

## **The Law for the Protection of German Blood and German Honor of September 15, 1935**

Moved by the understanding that purity of the German Blood is the essential condition for the continued existence of the German people, and inspired by the inflexible determination to ensure the existence of the German Nation for all time, the Reichstag has unanimously adopted the following Law, which is promulgated herewith:

### Article 1

1. Marriages between Jews and subjects of the state of German or related blood are forbidden. Marriages nevertheless concluded are invalid, even if concluded abroad to circumvent this law.
2. Annulment proceedings can be initiated only by the State Prosecutor.

### Article 2

Extramarital relations between Jews and subjects of the state of German or related blood is forbidden.

### Article 3

Jews may not employ in their households female subjects of the state of German or related blood who are under 45 years old.

### Article 4

1. Jews are forbidden to fly the Reich or National flag or display Reich colors.
2. They are, on the other hand, permitted to display the Jewish colors. The exercise of this right is protected by the State.

### Article 5

1. Any person who violates the prohibition under article 1 will be punished with a prison sentence.
2. A male who violates the prohibition under article 2 will be punished with a jail term or to a prison sentence.
3. Any person violating the provisions under articles 3 or 4 will be punished with a jail term of up to one year and a fine, or with one or the other of these penalties.

### Article 6

The Reich Minister of the Interior, in coordination with the Deputy of the Führer and the Reich Minister of Justice, will issue the Legal and Administrative regulations required to implement and complete this Law.

Article 7

The Law takes effect on the day following promulgations except for Article 3 which goes into force on January 1, 1936.

Nuremberg, September 15, 1935

At the Reich Party Congress of Freedom

The Führer and Reich Chancellor  
[signed] Adolf Hitler  
The Reich Minister of the Interior  
[signed] Frick  
The Reich Minister of Justice  
[signed] Dr. Gürtner  
The Deputy of the Führer  
[signed] R. Hess

Reichsgesetzblatt I (1935) pp. 1146-1147

Translated from the original document in the Republic of Germany Federal Archives in Koblenz, Germany.

## **In the Name of the German People**

The Great Senate for Criminal Cases of the Supreme Court in its session of December 9, 1936 in which the following participated:

The President of the Supreme Court Dr. Bumke as presiding judge  
The Vice President of the Supreme Court Bruner  
Senate President Dr. Witt  
Justices Schmitz, Dr. Titel, Niethammer, Raestrup, Vogt, Dr. Hoffmann,  
Dr. Schultze

in the appeal of the State's Attorney under Article 137 subsection 2 of the Court Organization Act has decided the following:

The term "sexual relations" in the context of the Blood Protection Laws does not include every kind of illicit sexual action [Unzücht], but is also not restricted to sexual intercourse alone. It includes the entire range of natural and unnatural sexual relations that, in addition to sexual intercourse, include all other sexual activities with a member of the opposite sex that according to the nature of the activity is intended to serve as a substitute for sexual intercourse in satisfying the sexual needs of a partner.

### **Grounds:**

The question of law, which is to be decided by the Great Senate under article 137 subsection 2 of the Court Organization Act upon the appeal of the State's Attorney for the First Criminal Senate [of the Supreme Court] in two pending cases, is posed as follows:

Whether the term "sexual relations" in the context of article 11 of the first Ordinance for the Implementation of the Law for the Protection of German Blood and German Honor of November 14, 1935 (Federal Register I page 1334) is to be understood as referring only to intercourse, acts similar to intercourse or all illicit sexual acts.

The requirement of article 2 of the Law for the Protection of German Blood and German Honor, which forbids extramarital relations between Jews and citizens of German or related blood, is elaborated upon in article 11 of the First Implementation Ordinance to the extent that extra marital relations as defined here means only sexual relations. What is to be understood by the term "sexual relations" is left for the courts to decide.

"Sexual relations" is not to be made equivalent to all illicit sexual acts If the legislator had intended to encompass all illicit sexual acts in the prohibition then he would have

chosen to include in the wording of the law the word “Unzücht” [illicit sexual acts], which has long had clear and specific definition in jurisprudence. The term “Unzücht” [illicit sexual acts] encompasses much broader, and even one sided, acts of a sexual nature that by no means could be labeled “sexual relations.”

Additionally one has to look at the law as a whole in the interpretation of article 2. The proscription against marriages (article 1) and the proscription against employment (article 3) clearly shows that the intent of the legislator is to secure the maintenance of the purity of German blood through general proscriptions independent of the special circumstances involved in individual cases. The proscription against marriage is true even in those cases where both parties have ruled out the possibility of children resulting from the union; the proscription against employment is true even if in individual cases the Jewish member of a household, either because of age or illness, cannot be expected to make sexual advances. The comparison with these provisions leads to the conclusion that the provisions of Article 2 are valid not just in those cases involving extramarital sexual relations which result in pregnancy or which could have resulted in pregnancy.

Other difficulties argue against such a narrow definition equating “sexual relations” with “intercourse.” Such a definition would pose nearly insurmountable difficulties for the courts in obtaining evidence and force the discussion of the most delicate questions.

A wider interpretation is also required here because the provisions of the law serve not only to protect German blood but also to protect German honor. This requires that intercourse and such sexual activities –both actions and tolerations- between Jews and citizen of German or related blood be proscribed which serve to satisfy the sexual urges of one party in a way other than through completion of intercourse itself.

[Signed] Bumke Bruner Witt Schmitz Tittel  
Niethammer Raestrup Vogt Hoffmann Schultze.

Source: Bundesarchiv Koblenz Record Group R22 File 50.

# **Decision of the Nuremberg Special Court of March 13, 1942 in the Katzenberger Race Defilement Case<sup>1</sup>**

## **Verdict In the name of the German People**

The Special Court for the district of the Court of Appeal in Nuernberg with the District Court Nuernberg-Fuerth in the proceedings against Katzenberger, Lehmann Israel, commonly called Leo, merchant and head of the Jewish religious community in Nuernberg, and Seiler, Irene, owner of a photographic shop in Nuernberg; both at present in arrest pending trial the charges being racial pollution and perjury-in public session of 13 March 1942, in the presence of-

The President-Dr. Rothaug, Senior Judge of the District Court;  
Associate Judges-Dr. Ferber and Dr. Hoffmann, Judges of the District Court;  
Public Prosecutor for the Special Court-Markl; and  
Official Registrar: Raisin, clerk,

pronounced the following verdict:

Katzenberger, Lehmann Israel, commonly called Leo, Jewish by race and religion, born 25 November 1873 at Massbach, married, merchant of Nuernberg; Seiler, Irene, nee Scheffler, born 26 April 1910 at Guben, married, owner of a photographic shop in Nuernberg, both at present in arrest pending trial have been sentenced as follows:

Katzenberger-for an offense under section 2, legally identical with an offense under section 4 of the decree against public enemies in connection with the offense of racial pollution to death and to loss of his civil rights for life according to sections 32-34 of the criminal (penal) code.

Seiler-for the offense of committing perjury while a witness to 2 years of hard labor and to loss of her civil rights for the duration of 2 years.

The 3 months the defendant Seiler spent in arrest pending trial will be taken into consideration in her sentence.

Costs will be charged to the defendants.

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<sup>1</sup> See: Military Tribunal III Document NG-154 THE UNITED STATES OF AMERICA V JOSEF ALTSTOETTER, et al. In: TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS OCTOBER 1940-APRIL 1949 UNITED STATES GOVERNMENT PRINTING OFFICE WASHINGTON: 1951  
P 653



## Findings

### I

1. The defendant Katzenberger is fully Jewish and a German national; he is a member of the Jewish religious community.

As far as his descent is concerned, extracts from the birth registers of the Jewish community at Massbach show that the defendant was born on 25 November 1873 as the son of Louis David Katzenberger, merchant, and his wife Helene nee Adelberg. The defendant's father, born on 30 June 1838 at Massbach, was, according to an extract from the Jewish registers at Thundorf, the legitimate son of David Katzenberger, weaver, and his wife Karoline Lippig. The defendant's mother Lena Adelberg, born on 14 June 1847 at Aschbach, was, according to extracts from the birth register of the Jewish religious community of Aschbach, the legitimate daughter of Lehmann Adelberg, merchant and his wife, Lea. According to the Thundorf register, the defendant's parents were married on 3 December 1867 by the district rabbi in Schweinfurt. The defendant's grandparents on his father's side were married, according to extracts from the Thundorf register, on 3 April 1832; those on his mother's side were married, according to an extract from the register of marriages of the Jewish religious community of Aschbach, on 14 August 1836.

The extracts from the register of marriages of the Jewish religious community at Aschbach show, concerning the marriage of the maternal grandparents, that Bela-Lea Seemann, born at Aschbach in 1809, was a member of the Jewish religious community. Otherwise the documents mentioned give no further information so far as confessional affiliations are concerned that parents or grandparents were of Jewish faith. The defendant himself has stated that he is certain that all four grandparents were members of the Jewish faith. His grand-mothers he knew when they were alive; both grandfathers were buried in Jewish cemeteries. Both his parents belonged to the Jewish religious community, as he does himself.

The court sees no reason to doubt the correctness of these statements, which are fully corroborated by the available extracts from exclusively Jewish registers. Should it be true that all four grandparents belonged to the Jewish faith, the grandparents would be regarded as fully Jewish according to the regulation to facilitate the producing of evidence in section 5, paragraph 1 together with section 2, paragraph 2, page 2 of the ordinance to the Reich Civil Code of 14 November 1935 Reichsgesetzblatt, page 1333. The defendant therefore is fully Jewish in the sense of the Law for the Protection of German Blood.\* His own admissions show that he himself shared that view. The defendant Katzenberger came to Nuernberg in 1912. Together with his brothers, David and Max, he ran a shoe shop until November 1938. The defendant married in 1906, and there are two children, ages 30 and 34.

Up to 1938 the defendant and his brothers, David and Max, owned the property of 19 Spittlertorgraben in Nuernberg. There were offices and storerooms in the rear building, whereas the main building facing the street was an apartment house with several apartments.

The co-defendant Irene Seiler arrived in 1932 to take a flat in 19 Spittlertorgraben, and the defendant Katzenberger has been acquainted with her since that date.

2. Irene Seiler, nee Scheffler, is a German citizen of German blood.

Her descent is proved by documents relating to all four grand-parents. She herself, her parents, and all her grandparents belong to the Protestant Lutheran faith. This finding of the religious background is based on available birth and marriage certificates of the Scheffler family which were made part of the trial. As far as descent is concerned therefore, there can be no doubt about Irene Seiler, nee Scheffler, being of German blood. The defendant Katzenberger was fully cognizant of the fact that Irene Seiler was of German blood and of German nationality.

On 29 July 1939, Irene Scheffler married Johann Seiler, a commercial agent. There have been no children so far.

In her native city, Guben, the defendant attended secondary school and high school up to Unterprima [eighth grade of high school], and after that, for 1 year, she attended the Leipzig State Academy of Art and Book Craft.

She went to Nuernberg in 1932 where she worked in the photographic laboratory of her sister Hertha, which the latter had managed since 1928 as a tenant of 19 Spittlertorgraben. On 1 January 1938, she took over her sister's business at her own expense. On 24 February 1938, she passed her professional examination.

3. The defendant Katzenberger is charged with having had continual extra-marital sexual intercourse with Irene Seiler, nee Scheffler, a German national of German blood. He is said to have visited Seiler frequently in her apartment in Spittlertorgraben up to March 1940, while Seiler visited him frequently, up to autumn 1938, in the offices of the rear building. Seiler, who is alleged to have got herself in a dependent position by accepting gifts of money from the defendant Katzenberger and by being allowed delay in paying her rent, was sexually amenable to Katzenberger. Thus, their acquaintance is said to have become of a sexual nature, and, in particular, sexual intercourse occurred. They are both said to have exchanged kisses sometimes in Seiler's flat and sometimes in Katzenberger's offices. Seiler is alleged to have often sat on Katzenberger's lap. On these occasions Katzenberger, in order to achieve sexual satisfaction, is said to have caressed and patted Seiler on her thighs through her clothes, clinging closely to Seiler, and resting his head on her bosom.

The defendant Katzenberger is charged with having committed this act of racial pollution by taking advantage of wartime conditions. Lack of supervision was in his favor, especially as he is said to have visited Seiler during the black-out. Moreover, Seiler's husband had been called up, and consequently surprise appearances of the husband were not to be feared.

The defendant Irene Seiler is charged with having, on the occasion of her interrogation by the investigating judge of the local Nuernberg Court on 9 July 1941, made deliberately untrue statements and affirmed under oath that this contact was without sexual motives and that she believed that to apply to Katzenberger as well.

Seiler, it is alleged, has thereby become guilty of being a perjuring witness. The defendants have said this in their defense--

*The defendant Seiler*-When in 1932 she arrived in the photographic laboratory of her sister in Nuernberg, she was thrown completely on her own resources. Her sister returned to Guben, where she opened a studio as a photographer. Her father had recommended her to the landlord, the defendant Katzenberger, asking him to look after her and to assist her

in word and deed. This was how she became closely acquainted with the Jew Katzenberger.

As time went on, Katzenberger did indeed become her adviser, helping her, in particular, in her financial difficulties. Delighted with the friendship and kindness shown her by Katzenberger she came to regard him gradually as nothing but a fatherly friend, and it never occurred to her to look upon him as a Jew. It was true that she called regularly in the storerooms of the rear house. She did so after office hours, because it was easier then to pick out shoes. It also happened that during these visits, and during those paid by Katzenberger to her flat, she kissed Katzenberger now and then and allowed him to kiss her. On these occasions she frequently would sit on Katzenberger's lap which was quite natural with her and had no ulterior motive. In no way should sexual motives be regarded as the cause of her actions. She always thought that Katzenberger's feelings for her were purely those of a concerned father.

Basing herself on this view she made the statement to the investigating judge on 9 July 1941 and affirmed under oath, that when exchanging those caresses neither she herself nor Katzenberger did so because of any erotic emotions.

*The defendant Katzenberger*-He denies having committed an offense. It is his defense that his relations with Frau Seiler were of a purely friendly nature. The Scheffler family in Guben had likewise looked upon his relations with Frau Seiler only from this point of view. That he continued his relations with Frau Seiler after 1933, 1935, and 1938, might be regarded as a wrong [Unrecht] by the NSDAP. The fact of his doing so, however, showed that his conscience was clear.

Moreover, their meetings became less frequent after the action against the Jews in 1938. After Frau Seiler got married in 1939, the husband often came in unexpectedly when he, Katzenberger, was with Frau Seiler in the flat. Never, however, did the husband surprise them in an ambiguous situation .. In January or February 1940, at the request of the husband, he went to the Seiler's apartment twice to help them fill in their tax declarations. The last talk he ever had in the Seiler apartment took place in March 1940. On that occasion Frau Seiler suggested to him to discontinue his visits because of the representations made to her by the NSDAP, and she gave him a farewell kiss in the presence of her husband.

He never pursued any plans when being together with Frau Seiler, and he therefore could not have taken advantage of wartime conditions and the blackout.

## II

The court has drawn the following conclusions from the excuses made by the defendant Katzenberger and the restrictions with which the defendant Seiler attempted to render her admissions less harmful:

When, in 1932, the defendant Seiler came to settle in Nuernberg at the age of 22, she was a fully grown and sexually mature young woman. According to her own admissions, credible in this case, she was not above sexual surrender in her relations with her friends.

In Nuernberg, when she had taken over her sister's laboratory in 19 Spittlertorgraben, she entered the immediate sphere of the defendant Katzenberger. During their acquaintance she gradually became willing, in a period of almost 10 years, to exchange caresses and, according to the confessions of both defendants, situations arose which can by no means be regarded merely as the outcome of fatherly friendliness.

When she met Katzenberger in his offices in the rear building or in her fiat, she sat often on his lap and, without a doubt, kissed his lips and cheeks. On these occasions Katzenberger, as he admitted himself, responded these caresses by returning the kisses, putting his head on her bosom and patting her thighs through her clothes.

To assume that the exchange of these caresses, admitted by both of them, were on Katzenberger's part the expression of his fatherly feelings, on Seiler's part merely the actions caused by daughterly feelings with a strong emotional accent, as a natural result of the situation, is contrary to all experience of daily life. The subterfuge used by the defendant in this respect is in the view of the court simply a crude attempt to disguise as sentiment, free of all sexual lust, these actions with their strong sexual bias. In view of the character of the two defendants and basing itself on the evidence submitted, the court is firmly convinced that sexual motives were the primary cause for the caresses exchanged by the two defendants.

Seiler was usually in financial difficulties. Katzenberger availed himself of this fact to make her frequent gifts of money, and repeatedly gave her sums from 1 to 10 reichsmarks. In his capacity as administrator of the property on which Seiler lived and which was owned by the firm he was a partner of, Katzenberger often allowed her long delays in paying her rental debts. He often gave Seiler cigarettes, flowers, and shoes.

The defendant Seiler admits that she was anxious to remain in Katzenberger's favor. They addressed each other in the second person singular.

According to the facts established in the trial, the two defendants offered to their immediate surroundings, and in particular to the community of the house of 19 Spittlertorgraben, the impression of having an intimate love affair.

The witnesses Kleylein, Paul and Babette; Maesel, Joharm ; Heilmann, Johann; and Leibner, Georg observed frequently that Katzenberger and Seiler waved to each other when Seiler, through one of the rear windows of her flat, saw Katzenberger in his offices. The witnesses' attention was drawn particularly to the frequent visits paid by Seiler to Katzenberger's offices after business hours and on Sundays, as well as to the length of these visits. Everyone in the house came to know eventually that Seiler kept asking Katzenberger for money, and they all became convinced that Katzenberger, as the Jewish creditor, exploited sexually the poor financial situation of the German-blooded woman Seiler. The witness Heilmann, in a conversation with the witness Paul Kleylein, expressed his opinion of the matter to the effect that the Jew was getting a good return for the money he gave Seiler.

Nor did the two defendants themselves regard these mutual calls and exchange of caresses as being merely casual happenings of daily life, beyond reproach. According to statements made by the witnesses Babette and Paul Kleylein, they observed Katzenberger to show definite signs of fright when he saw that they had discovered his visits to Seiler's flat as late as 1940. The witnesses also observed that during the later period Katzenberger sneaked into Seiler's flat rather than walking in openly.

In August 1940, while being in the air-raid shelter, the defendant Seiler had to put up with the following reply given to her by Oestreicher, an inhabitant of the same house, in the presence of all other inhabitants: "I'll pay you back, you Jewish hussy." Seiler did not do anything to defend herself against this reproach later on, and all she did was to tell Katzenberger of this incident shortly after it had happened. Seiler has been unable to give an even remotely credible explanation why she showed this remarkable restraint in the face of so strong an expression of suspicion. Simply pointing out that her father, who is

over seventy, had advised her not to take any steps against Oestreicher does not make more plausible her restraint shown in the face of the grave accusation made in public.

The statements made by Hans Zeuschel, assistant inspector of the criminal police, show that the two defendants did not admit from the very beginning the existing sexual situation as being beyond reproach. The fact that Seiler admitted the caresses bestowed on Katzenberger only after having been earnestly admonished, and the additional fact that Katzenberger, when interrogated by the police, confessed only when Seiler's statements were being shown to him, forces the conclusion that they both deemed it advisable to keep secret the actions for which they have been put on trial. This being so, the court is convinced that the two defendants made these statements only for reason of opportuneness intending to minimize and render harmless a situation which has been established by witnesses' testimony.

Seiler has also admitted that she did not tell her husband about the caresses exchanged with Katzenberger prior to her marriage -all she told him was that in the past Katzenberger had helped her a good deal. After getting married in July 1939 she gave Katzenberger a "friendly kiss" on the cheek in the presence of her husband on only one occasion, otherwise they avoided kissing each other when the husband was present.

In view of the behavior of the defendants toward each other, as repeatedly described, the court has become convinced that the relations between Seiler and Katzenberger which extended over a period of 10 years were of a purely sexual nature. This is the only possible explanation of the intimacy of their acquaintance. As there were a large number of circumstances favoring seduction no doubt is possible that the defendant Katzenberger maintained continuous sexual intercourse with Seiler. The court considers as untrue Katzenberger's statement to the contrary that Seiler did not interest him sexually, and the statements made by the defendant Seiler in support of Katzenberger's defense the court considers as incompatible with all practical experience. They were obviously made with the purpose of saving Katzenberger from his punishment.

The court is therefore convinced that Katzenberger, after the Nuernberg laws had come into effect, had repeated sexual intercourse with Seiler, up to March 1940. It is not possible to say on what days and how often this took place.

The Law for the Protection of German Blood defines extramarital sexual intercourse as any form of sexual activity apart from the actual cohabitation with a member of the opposite sex which, by the method applied in place of actual intercourse, serves to satisfy the sexual instincts of at least one of the partners. The conduct to which the defendants admitted and which in the case of Katzenberger consisted in drawing Seiler close to him, kissing her, patting and caressing her thighs over her clothes, makes it clear that in a crude manner Katzenberger did to Seiler what is popularly called "Abschmieren" [petting]. It is obvious that such actions are motivated only by sexual impulses. Even if the Jew had only done these so-called "Ersatzhandlungen" [sexual acts in lieu of actual intercourse] to Seiler, it would have been sufficient to charge him with racial pollution in the full sense of the law.

The court, however, is convinced over and above this that Katzenberger, who admits that he is still capable of having sexual intercourse, had intercourse with Seiler throughout the duration of their affair. According to general experiences it is impossible to assume that in the 10 years of his tete-a-tete with Seiler, which often lasted up to an

hour, Katzenberger would have been satisfied with the "Ersatzhandlungen" which in themselves warranted the application of the law.

### III

Thus, the defendant Katzenberger has been convicted of having had, as a Jew, extra-marital sexual intercourse with a German citizen of German blood after" the Law for the Protection of German Blood came into force, which according to section 7 of the law means after 17 September 1935. His actions were guided by a consistent plan which was aimed at repetition from the very beginning. He is therefore guilty of a continuous crime of racial pollution according to sections 2 and 5, paragraph 11 of the Law for the Protection of German Blood and German Honor of 15 September 1935.

A legal analysis of the established facts shows that in his polluting activities, the defendant Katzenberger, moreover, generally exploited the exceptional conditions arising out of wartime circumstances. Men have largely vanished from towns and villages because they have been called up or are doing other work for the armed forces which prevents them from remaining at home and maintaining order. It was these general conditions and wartime changes which the defendant exploited. As he continued his visits to Seiler's apartment up to spring 1940, the defendant took into account the fact that in the absence of more stringent measures of control his practices could not, at least not very easily, be seen through. The fact that her husband had" been drafted into the armed forces also helped him in his activities.

Looked at from this point of view, Katzenberger's conduct is particularly contemptible. Together with his offense of racial pollution he is also guilty of an offense under section 4 of the decree against public enemies. It should be noted here that the national community is in need of increased legal protection from all crimes attempting to destroy or undermine its inner solidarity.

On several occasions since the outbreak of war the defendant Katzenberger sneaked into Seiler's fiat after dark. In these cases the defendant acted by exploiting the measures taken for the protection in air raids and by making use of the black-out. His chances were further improved by the absence of the bright street lighting which exists in the street along Spittlertorgraben in peacetime. In each case he exploited this fact being fully aware of its significance, thus during his excursions he instinctively escaped observation by people in the street.

The visits paid by Katzenberger to Seiler under the cover of the black-out served at least the purpose of keeping relations going. It does not matter whether during these visits extra-marital sexual intercourse took place or whether they only conversed because the husband was present, as Katzenberger claims. The motion to have the husband called as a witness was therefore overruled. The court holds the view that the defendant's actions were deliberately performed as part of a consistent plan and amount to a crime against the body according to section 2 of the decree against public enemies. The law of 15 September 1935 was promulgated to protect German blood and German honor. The Jew's racial pollution amounts to a grave attack on the purity of German blood, the object of the attack being the body of a German woman. The general need for protection therefore makes appear as unimportant the behavior of the other partner in racial pollution who, however, is not liable to prosecution. The fact that racial pollution occurred at least up to 1939-1940 becomes clear from statements made by the witness Zeuschel to whom the defendant repeatedly and consistently admitted that up to the end

of 1939 and the beginning of 1940 she was used to sitting on the Jew's lap and exchanging caresses as described above.

Thus, the defendant committed an offense also under section 2 of the decree against public enemies.

The personal character of the defendant likewise stamps him as a public enemy. The racial pollution practiced by him through many:- years grew, by exploiting wartime condition, into an attitude inimical to the nation, into an attack on the security of the national community during an emergency.

This was why the defendant Katzenberger had to be sentenced, both on a crime of racial pollution and of an offense under sections 2 and 4 of the decree against public enemies, the two charges being taken in conjunction according to section 73 of the penal code.

In view of the court the defendant Seiler realized that the contact which Katzenberger continuously had with her was of a sexual nature. The court has no doubt that Seiler actually had sexual intercourse with Katzenberger. Accordingly the oath given by her as a witness was to her knowledge and intention a false one, and she became guilty of perjury under sections 154 and 153 of the penal code.

#### IV

In passing sentence the court was guided by the following considerations:

The political form of life of the German people under National Socialism is based on the community. One fundamental factor of the life of the national community is the racial problem. If a Jew commits racial pollution with a German woman, this amounts to polluting the German race and, by polluting a German woman, to a grave attack on the purity of German blood. The need for protection is particularly strong.

Katzenberger practiced pollution for years. He was well acquainted with the point of view taken by patriotic German men and women as regards racial problems and he knew that by his conduct the patriotic feelings of the German people were slapped in the face. Neither the National Socialist Revolution of 1933, nor the passing of the Law for the Protection of German Blood in 1935, neither the action against the Jews in 1938, nor the outbreak of war in 1939 made him abandon this activity of his.

As the only feasible answer to the frivolous conduct of the defendant, the court therefore deems it necessary to pronounce the death sentence as the heaviest punishment provided by section 4 of the decree against public enemies. His case must be judged with special severity, as he had to be sentenced in connection with the offense of committing racial pollution, under section 2 of the decree against public enemies, the more so, if taking into consideration the defendant's personality and the accumulative nature of his deeds. This is why the defendant is liable to the death penalty which the law provides for such cases as the only punishment. Dr. Baur, the medical expert, describes the defendant as fully responsible.

Accordingly, the court has pronounced the death sentence. It was also considered necessary to deprive him of his civil rights for life, as specified in sections 32-34 of the penal code. When imposing punishment on the defendant Seiler, her personal character was the first matter to be considered. For many years, Seiler indulged in this contemptible love affair with the Jew Katzenberger. The national regeneration of the German people in 1933 was altogether immaterial to her in her practices, nor was she in the least influenced when the Law for the Protection of German Blood and Honor was promulgated in

September 1935. It was, therefore, nothing but an act of frivolous provocation on her part to apply for membership in the NSDAP in 1937 which she obtained.

When by initiating legal proceedings against Katzenberger the German people were to be given satisfaction for the Jew's polluting activities, the defendant Seiler did not pay the slightest heed to the concerns of State authority or to those of the people and decided to protect the Jew.

Taking this over-all situation into consideration the court considered a sentence of 4 years of hard labor as having been deserved by the defendant.

An extenuating circumstance was that the defendant, finding herself in an embarrassing situation, affirmed her-as she knew-false statement with an oath. Had she spoken the truth she could have been prosecuted for adultery, aiding, and soliciting. The court therefore reduced the sentence by half despite her guilt, and imposed as the appropriate sentence 2 years of hard labor. (Sec. 157, par. I, NO.1, of the Penal Code.)

On account of the lack of honor of which she was convicted, she had to be deprived of her civil rights too. This has been decided for a duration of 2 years.

Taking into consideration the time spent in arrest pending trial:  
Section 60, Penal Code. Costs: Section 465, Code of Criminal Procedure .

Certified:

[Signed] ROTH AUG  
DR. FERBER  
DR. HOFFMANN

Nuernberg, 23 March 1942

The Registrar of the Office of the Special  
Court for the district of the Nuernberg Court  
of Appeal with the District Court Nuernberg-Fuerth  
[Stamp]

District Court  
Nuernberg- Fuerth

[Illegible signature]  
Justizinspektor



## **Antisemitic Legislation 1933-1939**

During the first six years of Hitler's dictatorship, government at every level—Reich, state and municipal—adopted hundreds of laws, decrees, directives, guidelines and regulations that increasingly restricted the civil and human rights of the Jews in Germany. Here are examples of anti-Jewish legislation in Nazi Germany 1933-1939:

1933

March 31 Decree of the Berlin city commissioner for health suspends Jewish doctors from the city's charity services.

April 7 Law for the Reestablishment of the Professional Civil Service removes Jews from government service

April 7 Law on the Admission to the Legal Profession forbids the admission of Jews to the bar.

April 25 Law against Overcrowding in Schools and Universities limits the number of Jewish students in public schools.

July 14 De-Naturalization Law revokes the citizenship of naturalized Jews and "undesirables."

October 4 Law on Editors bans Jews from editorial posts.

1935

May 21 Army law expels Jewish officers from the army.

September 15 Nuremberg Laws

1936

January 11 Executive Order on the Reich Tax Law forbids Jews to serve as tax-consultants.

April 3 Reich Veterinarians Law expels Jews from the profession.

October 15 Reich Ministry of Education bans Jewish teachers from public schools.

1937

April 9 The Mayor of Berlin orders public schools not to admit Jewish children until further notice.

1938

January 5 Law on the Alteration of Family and Personal Names forbids Jews from changing their names

February 5 Law on the Profession of Auctioneer excludes Jews from this occupation.

March 18 The Gun Law excludes Jewish gun merchants

April 22 Decree against the Camouflage of Jewish Firms forbids changing the names of Jewish-owned businesses

April 26 Order for the Disclosure of Jewish Assets requires Jews to report all property in excess of 5,000 Reichmarks (RM).

July 11 Reich Ministry of the Interior bans Jews from health spas

August 17 Executive Order on the Law on the Alteration of Family and Personal Names requires Jews to adopt an additional name—"Sara" for women and "Israel" for men

October 3 Decree on the Confiscation of Jewish Property regulates the transfer of assets from Jews to non-Jewish Germans.

October 5

The Reich Interior Ministry invalidates all German passports held by Jews. Jews must surrender their old passports, which will become valid only after the letter "J" had been stamped on them.

November 12 Decree on the Exclusion of Jews from German Economic Life closes all Jewish-owned businesses

November 15 Reich Ministry of Education expels all Jewish children from public schools

November 28 Reich Ministry of Interior restricts the freedom of movement of Jews

November 29 The Reich Interior Ministry forbids Jews to keep carrier pigeons.

December 14 An Executive Order on the Law on the Organization of National Work cancels all state contracts held with Jewish-owned firms

December 21 Law on Midwives bans all Jews from the occupation.

1939

February 21 Decree Concerning the Surrender of Precious Metals and Stones in Jewish Ownership

August 1 The President of the German Lottery forbids the sale of lottery tickets to Jews.

## **Karlsruhe District Court's Ruling of April 6, 1937 in the Guardianship Case of the Minor Willi Josef Seitz.**

More than 860 cases of the state removing Jehovah's Witness children from parental custody to homes of good "Nazis," children's homes and even penal institutions occurred between 1935 and 1938. The state usually based the removal on paragraph 1666 of the 1931 Civil Code of Germany. Paragraph 1666 stipulated that the endangerment of the child was proven if as a result of the father's custodial care the child was disadvantaged or guilty of immoral and dishonorable behavior. In such cases custody could be granted to another family or to a correctional home. Courts in Nazi Germany ruled that it was the "task of the parents to provide their children with an upbringing that does not alienate them from German ways, raising their children in German customs and beliefs that morally and intellectually reveal the spirit of National Socialism in the service of the Volk and the National Community."

In July 1936, Franz Josef Seitz was arrested together with other Jehovah's Witnesses by the secret state police (Gestapo). The Mannheim special court convicted him of continuing prayer meetings in secret and sentenced him to four months in prison. He was released in November. His son, Willi was suspended from school for refusing to use the "Heil Hitler" greeting and for refusing to participate in singing at school celebrations. The school superintendent gave Mr. Seitz eight days to convince his son to modify his behavior. Franz Josef backed his son's choice and convictions.

As a result of the Seitz family's noncompliance with the norms of Nazi education a case was brought against them in Juvenile court. The verdict was published as City of Karlsruhe vs Franz Josef and Willi Seitz on April 15, 1937. The Court sentenced Willi Seitz to a juvenile home in Flehingen as a delinquent because of his unwillingness to enroll in the Hitler Youth because of his family's Jehovah's Witness beliefs. Given a chance to recant his belief's. Willi replied "If you remove me from my parents' custody and place me in a juvenile correctional home, I will not join the Hitler Youth and will not use the German greeting: Heil Hitler."

The court based its decision in Paragraph 166 of the Civil Law code. Mr Seitz tried to appeal and at the same time secured for his son a passport and moved him into France. The French police refused Willi right of residence because he was an underage minor so his father moved him to a Jehovah's Witness home in Bern Switzerland.

Mr Seitz, who remained in Germany, received a draft notice for military service in late 1937. He explained to the induction officials that as a Jehovah's Witness he would not serve in the German military. He was again arrested and after serving a prison term was almost immediately deported to Buchenwald concentration camp, He was in Buchenwald until its liberation in 1945.

See Franz Josef Seitz, "Meine Erlebnisse im Dritten Reich" Buchenwald 1945 21 pages typed memoirs in USHMM Archive RG 32.008.01 (Willi Seitz Papers.)

### 1. Ruling of the District Court of Karlsruhe revoking parental custody

Ruling by the District Court B III, Karlsruhe, of April 6, 1937, before Justice Krall and his clerk Dechert, Case 3 X 40/37, in the matter of: guardianship of the minor Willi Josef

Seitz, born 11 March 1923 Karlsruhe, son of Josef Seitz and Anna Seitz, nee Panther, residillg at Kriegsstr. 171

The father Josef Seitz appears and after being again warned that today's state cannot allow a developing youngster to mature outside the national community, [Seitz] states:

I declare that I must only obey god and Jehovah, that I will exert no force on my son, that he has been apprenticed as an electrician, and that I will teach him privately, circumstances permitting.

We informed the father of the following ruling, pending appeal.

#### Judgment

- I. Under paragraph 1666 of the Civil Code, the father's custody rights over his son have been removed and that the boy is to be brought for observation to the juvenile home Schloss Flehingen.
- II. The municipal youth welfare office is assigned as official guardian and is to implement this judgment under para. 43 of the child welfare law, should the father not voluntarily deliver his boy to Flehingen by 9 April.

#### Justification

Based on notification from the Municipal School Office, Willi Seitz has been suspended from school because of his refusal to participate in national school celebrations, his refusal to use the German greeting or to sing the national anthem or Horst Wessel song. He explained that he pledges his faith to the leader who created heaven and earth.

The boy is uncooperative and rejects every guidance and during judicial questioning, referred to the fact that his father was fired from his municipal job.

The father served four months in prison after sentencing by the Mannheim Special Tribunal [Sondergericht] for activities for the prohibited Jehovah's Witnesses (violation of paragraph 4 of the decree of 28 February 1933 for the Protection of People and State prohibited meetings and missionary activities by Jehovah's Witnesses). He still rejects recognition of the Fuhrer [i.e. Adolf Hitler] as well as of the national socialist outlook through refusal to use the German greeting, since for religious beliefs he has pledged his obedience only to Jehovah.

It does not need to be emphasized that when the father allows himself such liberties placing himself outside the national community (Volksgemeinschaft), he violates his parental duty to educate his son within the national community by influencing his son to likewise stay outside this national community, thereby inflaming the patriotic feelings of his classmates and necessitating that the school authorities expel the boy. Through this inevitable reprimand, the youth is incapable of pursuing vocational and educational training mandated by German compulsory education laws and the parents are responsible for this damage.

Since the parents have rejected all advice, it is mandatory that we take action in guardianship court under paragraph 1666 of the Civil Code, placing the boy in other surroundings that will lead the child back into the national community.

The youth cannot be indefinitely removed from mandatory school attendance until a suitable foster home is found. The guardianship court, in consideration of the 10 March 1937 petition by the municipal school office, has removed familial custodial rights and recommended temporary commitment of the boy to an observation unit under paragraph 43 of the child welfare code.

This judgment against the father has been made in proceedings held under paragraph 16, subsection 3 of the juvenile welfare code and will be implemented without delay, even if the father exercises his legal remedy of an appeal.

After the sentence was read and the father instructed to sign the decision, the father stated: I confirm receipt of the sentence. I do not accept and will not sign anything.

Signed by Judge Krall and court clerk Dechert

2. Franz Josef Seitz Appeal before the Karlsruhe Superior Court.  
Decision of the Karlsruhe Superior Court, Civil Law Chamber I, Karlsruhe v. {Franz Josef Seitz} and Willi Seitz, 15 April 1937, case no. 1 ZFH 33/37

Superior Court, Civil Law Chamber I  
1 ZFH 33/37  
Karlsruhe, 15 April 1937

Re: Parental custody of Willi Josef Seitz, born 11 March 1923

Sentence:

The complaints of the heating maintenance worker Franz Josef Seitz, residing in Karlsruhe at Kriegsstrasse 171, against the decision of the Karlsruhe Magistrate's Court B III of 6 April 1937 is rejected and liability for court costs are [to be born] by the plaintiff.

Grounds:

On 6 April 1937 the Karlsruhe District Court B III withdrew parental custody and rights from the stoker Franz Josef Seitz for his son Wili Josef and simultaneously ordered that the boy be placed in the observation station of the reformatory at Schloss Flehingen. The circumstances that caused this ruling are found in the detailed account of the District's Court.

The father appealed, requesting a reversal of the sentence. He disputes that the prerequisites for prosecution under paragraph 1666 of the Civil Code are established. The spiritual and physical welfare of his son is not endangered and he does not abuse his rights of custody. The son has been strictly raised and has a religious personality. Since his suspension from school, he has become apprenticed. Complaints about his son were not present when he attended school, nor in his apprenticeship. He does not deny that his

son refused to participate in national ceremonies, to use the German greeting and to raise or salute the flag. This cannot be attributed to parental influence. He did not order his son to do this and left the decision about his behavior up to his son's discretion. He had formerly belonged to the Jehovah's Witnesses and today still professes this belief. The details of the complaint are referenced from the records.

After the accuracy of the allegations was confirmed that the youth had refused to participate in national school ceremonies, to salute the flag, to use the German greeting, and to sing national songs. The boy informed the school director that he would not be a soldier and wrote two essays revealing his opinions about contemporary events. The minor is incapable of feeling German, of appreciating the deeds of great German men, or cognizant of his duties to his compatriots and country, based on his conduct and the beliefs expressed in his two school essays. It is the unequivocal duty of parents to educate their children in a manner that does not alienate them from their German nature, to raise their children with German customs and beliefs that morally and intellectually reveal the spirit of National Socialism in the service of the Volk and the national community (preamble and paragraph 2 of the Law about Hitler Youth, 1 December 1936, Reichsgesetzblatt 1, p. 913). This violation of parental duties is a subjective infraction of para. 1666. The court is convinced, against the father's statement, that the son's beliefs are the result of parental influence. The father today still acknowledges that he is a Jehovah's Witness. He was fired from his job because of his activities as a Witness and was also prosecuted and punished for this. The mother has the same views as the father. It is clear that the minor did not get his beliefs independently, but his behavior and views are those of his parents. Moreover, the minor has been suspended from school, and it would be impossible for him to secure further education essential for a job.

These factors provide the preconditions for the magistrate's court to intervene based on paragraph 1666 of the civil code. The appeal is denied, since the sentence of the magistrate's court is commensurate with the particulars of this case.

The court order under para. 1666, part 1.2 is deemed temporary, but under para. 1666, part 1.1 it is an irrevocable ruling, and this does not contravene the circuit court (Kammergericht) ruling of 24 August 1934.

Signed: van Frankenberg, Hug, Kramer

Stamped with office seal of the Superior Court, Karlsruhe

## **Nazi Guidelines for Sentencing, 1942-1945**

On August 20, 1942, Hitler appointed a convinced Nazi, Otto Thierack, as Reich minister of justice. The appointment of Thierack heralded a disaster for the administration of justice in Germany. With free reign from Hitler, Thierack was responsible for the bloody injustice that characterized the administration of justice between 1942 and 1945. Less than six weeks after his appointment, Thierack issued the first in a series of so-called "letters to be issued to all judges." These letters were actually official guidelines to be used in sentencing. The letters presented the position of the state on political questions and on the legal interpretation of Nazi laws, especially on the imposition of the death penalty. These letters dealt with such varied cases as divorce, the legal determination of Jewish descent, the refusal to give the Nazi salute, the treatment of anti-social elements, and looters. In practice, these letters tended to compel judges, who were under constant threat of removal from office, to choose the safe path of least resistance and decide a case according to the examples in the letters. The letters were classified as state secrets because the Security Service of the SS was convinced that the intensification of state control over the judicial system would be extremely unpopular if it became public knowledge. In the SD report of May 30, 1943, the SD declared, "The people want an independent judge. The administration of justice and the state would lose all legitimacy if the people believed judges had to decide in a particular way."

Here is an excerpt from Thierack's first letter in which he demanded death sentences for all persons convicted under the so-called "Pest Law" (*Volksschädlingsgesetz*) of September 5, 1939. According to Article 4 of the law, a "Pest" was someone who purposely committed a crime by exploiting the extraordinary circumstances of the war. They could be sentenced to death regardless of the crime they committed, if judges determined "sound popular instinct" required the offender's death.

Letter to All Judges-Announcement of the Reich Minister of Justice- Nr.1

1. "Pests" (*Volksschädlinge*); especially "blackout criminals"  
Judgments of various courts from the years 1941-1942

1. Shortly after his hiring in the winter of 1941-1942, a 19-year-old worker who was employed on the Reich railway since 1941 exploited the blackout and stole from the baggage car of a long distance train, from parked mail carts and from packages. In total, he was involved in 21 cases [of theft]. The Special Court sentenced him as a "Pest" to four years in prison.

2. At the end of 1941, a 34-year-old metal worker tried to commit a purse snatching during a blackout. In a darkened street, he attacked a woman, ripping her purse from her arm. He was chased down and arrested. The culprit had been previously convicted six times for, among other things, larceny, physical assault, and manslaughter. He was convicted for physical assault in 1931 because he and a communist beat up a National Socialist with a gatepost.

The Special Court classified the crime as larceny rather than mugging because the women carried her handbag so loosely that the robber didn't have to use violence to take it. The court, however, did declare him a "Pest" because he posed a serious threat to the community. However, the punishment was only 2 years in prison.

3. In early 1941, a repeat offender, a "work-shy" 29-year-old worker tried to steal a handbag during a blackout. He had just been released from the hospital, where he had

been faking an illness and wanted to get some money. He pursued two women on a dark street and grabbed for a handbag as he passed them. He couldn't tear it away, however, because it was tightly held. A few men came rushing when they heard a cry for help and they captured the accused. The Special Court sentenced him to death for attempted robbery as a "Pest." The court indicated at sentencing that those walking on darkened streets require special protection in order to safeguard the people's feeling of public safety.

4. At the start of 1941, an 18-year-old culprit, W., who had previously led a faultless life, exploited the blackout to commit sexual assault on the wife of a soldier at the front. After visiting a bar and returning home around midnight, he and his 19-year-old girlfriend, P., spoke with a young woman who was just returning from work. She explained to the youths that she had to leave because her husband was away at the front and that she wanted to go home. A man standing close-by observed W. beat the victim repeatedly in the face without reason. He then pushed the women into a park; beating her and then raped her on a bench. He quelled her efforts at resistance by telling her he had a pistol. During the incident, P. was nowhere to be found. The Special Court sentenced W. to death for sexual assault as a "Volk Vermin" P. received a 5-year prison sentence as an accomplice.

#### Official Position of the Reich Minister of Justice

At a time when the best of our people are risking their lives at the front and when the home front is tirelessly working for victory, there can be no place for criminals who destroy the will of the community. Those in the administration of justice must recognize that it is their job to destroy traitors and saboteurs on the home front. The law allows for plenty of leeway in this regard. The home front is responsible for maintaining peace, quiet, and order as support for the war front. This heavy responsibility falls especially to German judges. Every punishment is fundamentally more important in war than in peace. This special fight is targeted especially against those designated by law as "Pest" Should a judge decide after conscientious examination of the criminal act and of the perpetrator's personality that a criminal is a "Pest," then the seriousness of this determination must also be firmly expressed in the harshness of the verdict. It is a matter of course that a plunderer, who reaches for the possessions of another after a terror attack [bombing] by the enemy, deserves only death. But every other culprit who commits his crimes by exploiting the circumstances of war also sides with the enemy. His disloyal character and his declaration of war [on the German people] therefore deserve the harshest punishments. This should especially be applied to criminals who cowardly commit their crimes during blackouts. "I don't want," the Führer said, " a German women to return from her place of work afraid and on the look-out; that no harm is done to her by good-for-nothings and criminals, after all a soldier should expect that his family, his wife and relatives are safe at home."

The majority of German judges have recognized the immediate needs of the moment. The death sentence that the Special Court handed out to the 18-year-old assailant of the defenseless soldier's wife, and to the "work-shy" purse-snatcher, placed the protection of



the people above all other interests. There are, however, still cases in which the personal circumstances of the culprits are placed above the interests of the necessary protection of the community. This is shown in the comparison of the judgments listed above. The cunning, nighttime handbag robbery perpetrated by a culprit with prior convictions and the twenty-one thefts committed by the 19-year-old worker were wrongly punished with four years in prison. The decisive factor [in sentencing] is not whether stealing the handbag was legally theft or robbery (which by the way, does not depend upon whether the bag was carried tightly or loosely); it is not whether the sex offender caused a specific damage with his offense. That he cowardly and cunningly attacked a defenseless woman, and endangered the security of the darkened streets, makes him a traitor. The protection of the community, above all, requires that punishment in such cases serve as deterrence. Prevention here is always better than reparation. Every sentence given a "Pest" which is too lenient sooner or later damages the community and carries in itself the danger of an epidemic of similar crimes and the gradual undermining of the military front lines. It is always better for the judge to quell such epidemics early than to stand helpless later against an infected majority. In the fourth year of his prison sentence the criminal should not get the impression that the community's fight against him is waning. On the contrary, he must always feel that German judges are fighting just as hard on the home front as the soldiers are with the foreign enemy on the military front.



## Testimony of Walter Meyer

WMT0859M

Born 1927, the Rhineland, Germany

As a youth, Walter questioned the German superiority and antisemitism he was taught. His father, an anti-Nazi, refused to allow Walter to enter one of the Adolf Hitler Schools, but did permit him to join the Hitler Youth. However, Walter's rebellious streak led him to hide a Jewish friend in his basement. He also formed a gang that played pranks on young Nazis and helped French prisoners of war. They called themselves Edelweiss Pirates (as did other groups of opposition youth in Germany). In 1943 Walter was caught taking shoes from a bombed-out store, arrested, and imprisoned. He was eventually deported to the Ravensbrueck concentration camp, where he was forced to work in the stone quarry. In 1945, Walter contracted tuberculosis and decided to escape before he was killed. Under cover of heavy fog, he reached a farmhouse. The farmer gave him his son's army uniform and helped him board a train home to Duesseldorf. Walter recovered after hospitalization, and later moved to the United States.

Describes his 1943 trial for looting, and the impact of his role in the Edelweiss Pirates on the sentence he received [1996 interview]

“On April the 12th, April the 12th, 1943, I was taken to court. By trial, the state attorney--I think they call it here, district attorney--state attorney, asked for the death penalty. My father--this was first time I saw my father and my mother--uh, my mother couldn't, couldn't control herself, so she was crying. My, my father didn't quite know what to do. They had two attorneys. When he recommended the death penalty, I know they kind of jumped over and held my arm and said, "That's not the last word." Then kind of the judge and the state attorney and somebody else, some functionary, they kind of argued about whether it was looting, or whether it was theft. The idea was that the two, uh, had different consequences. And, uh, so they retired then and when he came back, the judge decided, or had decided that it was--well, before that they had an argument and the state attorney said, uh, "I would call it theft, but this man, having had intimate contact with our enemy, and being the leader of, uh, the Edelweisspiraten [Edelweiss Pirates], having destroyed, uh, state goods, state property, does not deserve any kind of consideration." Well, when the judge came back and said, on the grounds of his outstanding, uh, involvement in, in athleticism, and considering, uh, the age and the circumstances, I condemn you to one to four years in prison.”

## The Massacre of Jews in Józefów, Poland



Members of Reserve Police Battalion 101 line up for inspection, Lodz, Poland, April, 1941.

On July 13, 1942, Reserve Police Battalion 101 massacred the Jewish population in Józefów, a small town near Zamość in the Lublin district of occupied Poland. Early in the morning, two platoons of Police Battalion 101 surrounded the village. They had orders to shoot anyone who tried to escape. The rest of the Battalion rounded up the Jewish population and took them to the marketplace. They shot on the spot those who were too frail or sick to walk, who offered resistance, or who were found in hiding. Once they assembled the Jews, part of one police platoon undertook a selection in the marketplace and then escorted male Jewish workers from the marketplace to a forced labor camp in the Lublin district. The rest of the battalion split into two groups: one proceeded into the forest to form firing squads while the other loaded the Jews onto the battalion's trucks and shuttled them from the marketplace to the execution site in the forest. The shooting continued without interruption until nightfall. By the end of the day, the personnel of Reserve Police Battalion 101 had shot about 1,500 Jewish men, women and children.

After the war, the crimes of Reserve Police Battalion 101 lay forgotten until the early 1960s. Beginning in 1962 and continuing on for a decade, the state prosecutor in Hamburg investigated and tried members of Police Battalion 101 for their part in the massacre of Jews in occupied Poland. More than 200 former members of the Battalion were interrogated during the investigation. The record of these statements allows for a deeper investigation into the massacre at Józefów, and if the testimonies are reliable, into the possible choices the perpetrators had when ordered to kill defenseless civilians.

Reserve Police Battalion 101 consisted of 11 officers and 486 noncommissioned officers and men. The vast majority of the men were from Hamburg and its environs. The battalion consisted of three companies of about 140 men each. The men had rifles and the noncommissioned officers had submachine guns. Each company had a heavy machine gun detachment. From May 1941 through June 1942 the Battalion underwent extensive training in Hamburg. During the training period they provided the police manpower required for the deportation of Jews in Hamburg to the East. They provided security for the assembly and transport of Hamburg's Jewish residents during the deportations.

On June 20, 1942, Reserve Police Battalion 101 left Hamburg for occupation duty in Poland. They arrived in Zamość in the Lublin district on June 25, 1942. Less than three weeks later, the battalion received the first order to kill Jewish civilians, in this case in Józefów. According to postwar statements, the commander of the battalion, Major Trapp, explained the orders to his men and then asked that any police officer that did not feel equal to the task step out. About 11 or 13 police officers excused themselves. They turned in their rifles to Trapp and awaited further orders. Trapp, a career policeman who was not regarded as SS material, gave the orders but also excused himself from implementing them. He made no secret of his feelings; one policeman heard him comment, "Oh, God, why did I have to be given these orders."

As the shootings started in Józefów, some of the men who had excused themselves from the shootings provided the escort for about 300 Jewish men selected for forced-labor from the town as they were transported to the work camp in the Lublin district. Other members of the battalion brought Jews in small groups to the execution site, made them lie down in rows and then shot them at close range in the back of the neck. At this point several other policemen requested to be excused from the killings. They were permitted to go to a different assignment--one that did not require them to shoot. Such assignments included guarding the assembled Jews before their execution, or providing security for the massacre site. Some sought other ways to evade the killings. They fired wildly, "shooting" past their victims. Others simply "stood around" rather than round up Jews in Józefów or shoot Jews in the nearby forests. Some preferred to continue the search for Jews in Józefów rather than be assigned to a firing squad. In light of Trapp's offer to excuse those policemen who could not kill unarmed civilians, the officers of the battalion were, for the most part, willing to find other assignments upon request from the policemen under their command. There were in any case sufficient men willing to serve in the firing squads. The killing continued for about 17 hours. They left the Jews lying unburied in the woods. They collected neither clothing nor valuables from the victims.

When they had killed all the remaining Jews the battalion left Józefów. The men were depressed, angered and shaken. They ate little but drank heavily. Major Trapp tried to console and reassure them, again placing responsibility for the killings onto higher authorities. Probably between 10 and 20 percent of the men were able to avoid killing Jews in Józefów either by asking directly for reassignment or through some subterfuge. 80 percent of the men accepted the assignment and spent the day shooting.

During their postwar depositions, those who did quit shooting in Józefów cited sheer physical revulsion as their prime motive. None expressed any ethical or political opposition to the killings. Such motives for opposing the Nazi anti-Jewish policy explicitly identified by policemen were relatively rare. Several policemen said they felt more able to refuse the order to kill civilians because they were not career policemen. They had businesses or professional careers back in Hamburg and were not concerned about promotions or advancement in the police. Several of the men requested and received transfers back to Hamburg after the killings at Józefów. One man who requested a transfer specifically stated he wanted to transfer because he was not "suited" to certain tasks "alien to the police" that were being carried out by his unit in Poland. Evasion was easily tolerated but opposition and obstruction of orders to kill the Jews was not.

*This account of the killings in Józefów is based on Christopher Browning, Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland, (New York: Harper Perennial, 1993)*

### **Assessing and Defining Individual and Professional Responsibility for the Holocaust**

How would you assess the “responsibility” of the following people for what happened in the world between 1933 and 1945. Indicate one of the following:

1. not responsible
2. minimally responsible
3. responsible
4. very responsible

- \_\_\_\_\_ 1. A General who endorsed Hitler’s orders to the army
- \_\_\_\_\_ 2. A volunteer in Hitler’s special elite (SS) who was a concentration camp guard
- \_\_\_\_\_ 3. A German industrialist who supported Hitler and profited from slave labor
- \_\_\_\_\_ 4. A doctor who sterilized the “mentally incompetent”
- \_\_\_\_\_ 5. A Supreme Court Justice who applied the Nuremberg Laws in court
- \_\_\_\_\_ 6. The Pope, who made no public statement condemning Nazi racial policy
- \_\_\_\_\_ 7. An American consul who restricted issuance of visas in 1936
- \_\_\_\_\_ 8. A German who voluntarily joined the Nazi party in the 1930’s
- \_\_\_\_\_ 9. An army conscript who swore the oath of loyalty to Adolf Hitler in 1935
- \_\_\_\_\_ 10. A shopper who avoided Jewish-owned stores during the boycott in April 1933
- \_\_\_\_\_ 11. A worker in a plant making Zyklon B gas
- \_\_\_\_\_ 12. A train engineer who drove trains to the killing centers
- \_\_\_\_\_ 13. A citizen who moved into an apartment confiscated from Jews
- \_\_\_\_\_ 14. A soldier on the Eastern Front who witnessed a massacre of Jewish civilians
- \_\_\_\_\_ 15. A family that paid a bargain price for a business sold by Jews
- \_\_\_\_\_ 16. A policeman who helped deport Jews to the occupied eastern territories
- \_\_\_\_\_ 17. A high school teacher who taught Nazi racial ideology
- \_\_\_\_\_ 18. The German citizen who avoided “politics” and minded his own business
- \_\_\_\_\_ 19. Parents who sent their children to attend Hitler Youth meetings
- \_\_\_\_\_ 20. A clergyman who provided documentation used to identify one’s racial status

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<sup>i</sup> Supreme Court Justice Karl Linz, “Zum neuen Jahre!” *DRiZ*, 25 (January 15, 1933): p. 3.

<sup>ii</sup> Reichsgericht Personalia 143, Bundesarchiv Potsdam (BAP).

<sup>iii</sup> Linz’s exact words are given as the first introductory quote of this chapter above.

<sup>iv</sup> For example, upon the news of Hitler’s appointment as Chancellor, Harry Graf Kessler wrote in his diary, “The bewilderment was great; I had not expected this solution [to the constitutional crisis], and so soon.” Wolfgang Pfeiffer-Belli ed., *Harry Graf Kessler: Tagebücher 1918-1933*, (Frankfurt am Main: Insel, 1961), p. 703.

<sup>v</sup> Parliamentary government ended in Germany in 1930. Since then a minority cabinet, without parliamentary majority, governed Germany dependant on the Emergency authority of the Reich President. There was no reason for Linz to expect this state of affairs to end, short of the restoration of a ruling majority in Parliament.

<sup>vi</sup> *DRiZ*, 25 (1933): p. 123. See also Horst Göppinger, *Der Verfolgung der Juristen jüdischen Abstammung durch den Nationalsozialismus* (Villingen: Ring Verlag, 1963), pp. 43-44.

<sup>vii</sup> *DRiZ*, 25 (1933): p. 123.

<sup>viii</sup> What Hitler actually said was “Der Unabsetzbarkeit der Richter auf der einen Seite muss eine Elastizität der Urteilsfindung zum Wohl der Gesellschaft entsprechen.” Hitler made no promise to uphold judicial independence. Max Domarus, *Hitler Reden und Proklamationen 1932-1945* Vol 1 Part 1 (Wiesbaden: Lowit, 1973), p. 233.

<sup>ix</sup> Gesetz zur Behebung der Not von Volk und Reich March 24, 1933. *RGBL* (1933) I: p. 141.

<sup>x</sup> Dr. Karl Linz was born on May 23, 1869 in Bingerbrück. He entered state service as an assessor in 1897 and was appointed to District Court Judge in 1901. He was promoted to the State Courts in 1906, State Superior Court in 1910 and the Supreme Court in 1910. He became Senate President in 1932. Reichsgericht Personalia 537, BAP. See also Lobe, *Fünfzig Jahre Reichsgericht*, p. 383; and Kaul, *Geschichte des Reichsgerichts*, pp. 279-80.

<sup>xi</sup> Hans Wrobel, “Der Deutsche Richterbund im Jahre 1933,” in Redaktion Kritische Justiz, *Der Unrechts-Staat II* (Baden-Baden: Nomosverlagsgesellschaft, 1984) p. 76. The BNSDJ later changed its name to the National Socialist League of Law Guardians (NSRWB).

<sup>xii</sup> *DRiZ*, 25 (1933): pp. 156-57.

<sup>xiii</sup> *Ibid.*

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<sup>xiv</sup> *Ibid.* pp. 155-56.

<sup>xv</sup> See Decision of the Supreme Court in the treason trial of van der Lubbe, Torgler, Dimitroff, Popoff, and Taneff December 23, 1933. A copy can be found in the MA 89/4, Institut für Zeitgeschichte Munich.

<sup>xvi</sup> Erich Schultze, “Richter und Staatsanwalt im Dritten Reich” *DRiZ*, 25 (October 25, 1933): p. 278.

<sup>xvii</sup> Hartung, *Jurist unter Vier Reichen*, p. 97; Hubert Schorn, *Der Richter im Dritten Reich: Geschichte und Dokumente* (Frankfurt am Main: V. Klostermann, 1959), pp. 8-9.

<sup>xviii</sup> Martin Brozat “Nationalsozialistische Konzentrationslager 1933-1945” in *Anatomie des SS-States* vol. 2 (Munich: Deutsche Taschenbuchverlag, 1967) p. 17 and Martin Weinmann ed. *Das Nationalsozialistische Lagersystem* (Frankfurt am Main: Zweitausendeins, 1990), p. XC.

<sup>xix</sup> Hans Frank joined the NSDAP in 1923 and took part in the Hitler Putsch. Frank studied law in Munich and defended Hitler in court several times. He became the party’s highest legal advisor. In 1933, Hitler appointed him Bavarian Minister of Justice, Reichsfuehrer of the National Socialist German Jurists’ League (NSDJB), and President of the Academy of German Law. Frank also headed the Nazi takeover of the judicial professional organizations. During the war, Frank became Governor General of Poland (1939-1945). The Nuremberg tribunal sentenced him to death and he was executed on October 16, 1946. Christoph Klessmann “Hans Frank: Party Jurist and Governor-General in Poland” in Ronald Smelser ed. *The Nazi Elite* (New York: New York University Press, 1993), pp. 39-46; and Wistrich, ed. *Wer war Wer*, pp. 73-74.

<sup>xx</sup> *DRiZ*, 25 (1933): p. 271.

<sup>xxi</sup> Despite the Nazis’ insistence that the Communist party was to blame for the Reichstag fire in February 1933, the Supreme Court decided on the evidence that the arsonist, Marinus van der Lubbe, a Dutch leftist-radical had acted alone. The court found his Communist co-defendants not guilty.

<sup>xxii</sup> See for example Uwe Diederichsen, “Nationalsozialistische Ideologie in der rechtsprechung des Reichsgerichts zum Ehe- und Familienrecht” in *Recht und Justiz im “Dritten Reich”* edited by Ralf Dreier and Wolfgang Sellert (Frankfurt am Main: Suhrkamp Verlag, 1989) pp. 257-270.

<sup>xxiii</sup> Angermund, *Deutsche Richterschaft*, pp. 115-117.

<sup>xxiv</sup> *Hanreatische Rechtszeitschrift* (1934): pp. 742-746.

<sup>xxv</sup> For the circumstances surrounding the enactment of the legislation see Schleunes, *Twisted Road*, pp. 122-126.

<sup>xxvi</sup> Reichsbürgergesetz, *RGBL* (1935) I: p. 1146 and Gesetz zum Schutze des deutschen Blutes und der deutschen Ehre, *RGBL* (1935): p. 1146.

<sup>xxvii</sup> Bumke’s order in Reichsgericht Generalia 13, BAP.

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<sup>xxviii</sup> Niederschrift über die Aussprache aus Anlass der Tagung betreffend die Blutschutzrechtsprechung vom November 13, 1936. R22 File 50, BAK.

<sup>xxix</sup> Reich Prosecutor Nagel admitted as much and argued against the general application of the new definition to civil law. There the term “sexual relations” continued to refer to intercourse. See his position paper on the court’s new interpretation of the meaning of “Sexual Relations” in R22, File 50, BAK.

<sup>xxx</sup> The Great Senate of the Supreme Court made the decision. Sitting justices were President Bumke, Vice President Bruner, Senate President Witt and Justices Schmitz, Tittel, Niethammer, Raestrup, Vogt, Hoffmann and Schultze.

<sup>xxxi</sup> Great Senate for Appeals in Criminal Cases December 9, 1936 *Entscheidung des Reichsgerichts in Strafsachen* vol. 70, pp. 375-377.

<sup>xxxii</sup> See also the decision of the Second Senate for Criminal Appeals of January 7, 1937 R22 50 BAK.

<sup>xxxiii</sup> Decision of the Second Senate for Criminal Appeals of March 28, 1938 R22 50 BAK.

<sup>xxxiv</sup> *Entscheidung des Reichsgerichts in Strafsachen* vol. 73, pp. 76-78.

<sup>xxxv</sup> *Ibid.*

<sup>xxxvi</sup> *Ibid.* pp. 94-97.

<sup>xxxvii</sup> *Ibid.* vol. 72, pp. 91-96.

<sup>xxxviii</sup> *Ibid*