

CROSSROADS AT ULM:  
POSTWAR WEST GERMANY AND THE 1958 ULM *EINSATZKOMMANDO* TRIAL

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## ABSTRACT

PATRICK TOBIN: *Crossroads at Ulm: Postwar West Germany and the 1958 Ulm Einsatzkommando Trial*

“Crossroads at Ulm” examines the intersection of politics, society, culture, and law in the 1958 Ulm *Einsatzkommando* trial. The largest Nazi crimes trial in West Germany since the International Military Tribunal at Nuremberg, the Ulm case convicted ten men for crimes of the Holocaust in 1941 Lithuania. The dissertation looks at different perspectives that various subcultures held on the trial. By exploring the involvement and attitudes of victims, perpetrators, investigators, prosecutors, public, media, and state and federal officials, the dissertation tells a broader story about conflicting and evolving West German attitudes towards the Nazi past in the 1950s. This multiperspective view of the trial offers insight into how and why West Germany came to rely upon its courts to address the aftermath of the Holocaust in the late 1950s. In the wake of the trial, the West German states created an agency for Nazi crimes investigations, appointing the Ulm trial’s prosecutor as its leader. Rather than explain this development as a result of top-down federal actions or bottom-up public criticism, the Ulm trial reveals a middle-out approach. Through the creation of a transnational network of critical voices, the Ulm trial prompted change first in the halls of local government offices. This then percolated to the top of government before filtering back down to the German streets. This study thus offers a new conceptualization of the relationship between government institutions, individual actors, and the formation of memorial cultures.

## ACKNOWLEDGMENTS

The completion of this dissertation is, in the end, more than the completion of a manuscript. It is the culmination of an entire academic career, a string of attending classes and doing work in pursuit of some kind of grade or degree stretching back as far as I can recall. As such, the origins of this project – and the debts of gratitude I owe for its completion – stretch well beyond the archives, the seminar table, and the advisor’s office. They begin, most importantly, with my family. They have kindled and sustained in me a passion for learning, research, and writing that I don’t fully understand myself. But what I know for certain is that none of this would have been possible without them.

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## **I. Prologue: The Destruction of the Jewish Community in Garsden, June 24, 1941**

*The victims were people who laughed, cried, loved, and worked, just like you and I – and just like the defendants themselves. For seventeen years, the sun has not shined for them anymore, and the victims have not even been allowed to rest in peace. Their graves were later ripped open, the bodies burned, and the ashes strewn in the wind to hide the traces of the atrocities.*

*– Erwin Schüle, Senior State Prosecutor, closing statements of the 1958 Ulm Einsatzkommando trial*

An emergency broadcast interrupted the late night programming on local Lithuanian radio to warn of an imminent full-scale German invasion.<sup>1</sup> Many were already asleep in the border town of Garsden (Lithuanian: Gargzdai; Yiddish: Gorzd). Feliksas Seputis, a Lithuanian photographer in his early thirties, had been up listening to the radio during that warm summer night when he heard the alarm.<sup>2</sup> He ran to wake his wife, shouted to alert any sleeping neighbors, and rushed to the brewery in the town center. The town council had designated its large cellar as a shelter for the residents of Garsden, who now hurried to its safety. Seputis and nearly one thousand Garsden citizens, one-third the total population, huddled together as the war came to life. Those still asleep in their homes soon awakened to the roar of gunfire that rumbled through their small town and shook the walls of their homes. In the hours after midnight on June 22, 1941, the German army crossed the Lithuanian border. Operation Barbarossa, the largest ground invasion in military history, was underway.

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<sup>1</sup> Statement by Feliksas Seputis (Augsburg, 22 February 1957), EL 322/II, Bü. 8, SL; all information unless otherwise cited comes from Urteil, EL 322/II, Bü 20, SL.

<sup>2</sup> Statement by Feliksas Seputis (Augsburg, 22 February 1957), EL 322/II, Bü. 8, SL.

That night, over three million Wehrmacht soldiers divided into three main armies – north, center, and south – launched an invasion of the Soviet Union that stretched from the Baltic to the Black Sea. The residents of Garsden, at the northernmost tip of this assault, found themselves among the first targets of Army Group North. Because Germany bordered only Lithuania among the Baltic States, the army had to first sweep through Lithuania in order to pivot through Latvia, Estonia, and on to Russia itself. Taking the border towns and securing all transportation lines comprised the mission of the first hours of the invasion. The army was to secure the bridge over the small Minge River east of Garsden by 4:10 in the morning. Although the invasion rolled through Lithuania, the German army encountered unexpectedly strong resistance in Garsden.

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On the eve of the invasion, Garsden embodied small town life in Eastern Europe. Little changed since the days of Tsarist rule before World War I, the town consisted of just a few streets. Carts traveled along the uneven cobblestones of the main Tomozhna road that led across the border to the port city of Memel (Lithuanian: Klaipeda) seventeen kilometers west of town. During the rainy season, the road and much of the town turned to mud.<sup>3</sup> Along the Tomozhna, wood-framed buildings with thatched roofs marked the homes of the town's relatively well-to-do, while the poorer residents lived by the alleys that branched off the main street. A small clearing in the town center served as a gathering place where the residents held market every Thursday. Most of the town was quite poor and commodities were few. As one resident recalled, "There were two kinds of poor men in Gorzd – those who did or did

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<sup>3</sup> Chaim Shoys, "Gorzd – A Shtetl in Lithuania," trans. by Gloria Berkenstat Freund, in *Gorzd Book: A Memorial to Jewish Community of Gorzd*, ed. Yitzhak Alperovitz (Tel Aviv: The Gorzd Society, 1980), site accessed 12 August 2012, <http://www.jewishgen.org/Yizkor/Gargzdai/gar017.html>.

not have a goat for milking.”<sup>4</sup> Historically, the economy relied on trade with Germany, selling livestock, animal skins, and vegetables. The main export was lumber, which the residents floated down the Minge to Germany. For a while, less honorable elements in town ran a black-market horse trade, which earned them the enmity of their neighbors and the nickname “the horse thieves of Garsden.”<sup>5</sup>

The town was also historically Jewish, one of the oldest communities in Lithuania with roots dating to the middle ages. At the time of the German invasion, Jews comprised nearly fifty percent of the population.<sup>6</sup> Through the end of the nineteenth century, the town had been a typical *shtetl* in Lithuania, with a majority Jewish population. The photographer Seputis described relations in Garsden between Jews and non-Jews as “at times good, at times bad.”<sup>7</sup> This sentiment could fairly be applied to centuries of uneven relations between Lithuanians and Jews. During the Tsarist period there were flare-ups of anti-Semitism in Lithuania that culminated in pogroms. In these times of crisis, the Garsden Jews had grown accustomed to fleeing across the border to the city of Memel. It was there that they found refuge under the protection of the Prussians.

The town’s long history and perpetual border status led to the development of a distinct Garsden Jewish culture. Because Garsden’s economic livelihood was historically dependent on Prussia, residents spoke a unique Yiddish-German dialect, but religiously and

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<sup>4</sup> Hershl Meyer, “Some Memories of Our Gordz Home and Town,” trans. by Gloria Berkenstat Freund, in *Gordz Book*.

<sup>5</sup> Raphael Julius, “Gordz (Gargzdai),” trans. by Barry Marks, *Encyclopedia of Jewish Communities, Lithuania*, ed. by Dov Levin (Jerusalem: Yad Vashem, 1996), site accessed 12 August 2012, [http://www.jewishgen.org/yizkor/pinkas\\_lita/lit\\_00187.html](http://www.jewishgen.org/yizkor/pinkas_lita/lit_00187.html).

<sup>6</sup> Aktennotiz über Einwohnerzahlen der Erschiessungsorte (14 December 1956), EL 322/II, Bü. 7, SL.

<sup>7</sup> Statement by Feliksas Seputis (Augsburg, 22 February 1957), EL 322/II, Bü. 8, SL.

culturally rejected other German influences. Born of economic difficulties, the Jewish community developed an ethos based on a hardscrabble pride in small town life. Growing up there in the interwar years, Hershl Meyer recalled, “It was a shtetl in which the greatest number of Jews lived in poverty and worried about their income. . . . But instead of servility, the poverty carried a certain dignity and even arrogance as something for which we would later be praised, or with confidence that we would be redeemed.”<sup>8</sup> Avraham Orenshteyn echoed these sentiments, celebrating the town’s cohesion in the face of difficulties: “Even though our city was small, I really loved her! It differed somehow from other *shtetlekh* of its size. I think even the people were different. More friendly and more sympathetic. They were devoted to each other. The entire shtetl grieved when some misfortune, God forbid, happened to someone. These were Gorzd Jews.”<sup>9</sup>

Though a poor town, there was a simplicity and harmony within the Jewish community that, looking back years later, Meyer could fondly remember with nostalgia for a community that once was. He described a scene of daily life in Garsden:

A shtetl of mainly sturdy fathers and mothers, busy with the burden of earning a living, with raising children – sometimes in tears at saying goodbye to a son, a daughter, sometimes with breathless hearts going for the mail, seeking a longed for letter from America. . . . Jews with weathered faces notched by the wind, muscular hands, healthy, folksy jokes and humor with the language of their trades: or with the speech of the roads and the highways to the villages, from hammering horseshoes, poles, blocks and from pulling loads. Here and there, a relaxed face of a “leader of the city,” or of a *gemara* [Talmud] teacher with soft, downy hands, an open face on which hovered a “the contrary is true” of an unfinished casuistic debate.<sup>10</sup>

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<sup>8</sup> Meyer, “Some Memories,” *Gorzd Book*.

<sup>9</sup> Avraham Orenshteyn, “My *Shtetl* Gorzd,” trans. by Gloria Berkenstat Freund, in *Gorzd Book*.

<sup>10</sup> Meyer, “Some Memories,” *Gorzd Book*.

For centuries, the Jews of Garsden had endured hardships of all kinds, but found ways to survive. The invasion that began on June 22 would shatter the community forever.

Despite the fond remembrances of a tranquil Garsden, which intensified in comparison with the horrors that followed, ethnic tensions roiled beneath the surface of interwar Lithuania, and the reality of life of Garsden on the eve of war was far from idyllic. Relative to many states in interwar Eastern Europe, the Lithuanian government had been broadly accepting and tolerant of its Jewish community during the interwar period.<sup>11</sup> But anti-Semitism was on the rise among elements of society. Lithuanian independence came through war with the Soviet Union after World War I, and this created a social climate deeply hostile to communism. Many Lithuanians came to believe in Judeo-Bolshevism and made false equivalencies between Jewish emancipation and the onset of communist rule. Over a decade later, Seputis still maintained that in Garsden “the Jews were the best comrades of the Russians.”<sup>12</sup> These tensions boiled over with the Soviet takeover of Lithuania in 1940. As the Nazis rolled into Garsden, they encountered a society divided against its Jewish members and eager to exact revenge against communists. The Nazis would quickly learn to tap this reservoir of hatred as it sought local participation in the Holocaust.

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After a sleepless night, the door to the brewery cellar opened, and Seputis and the others peered up as the morning light filtered through the dusty air. The sounds of gunfire were fainter now, as the war had passed over their heads while they hid. The voice calling out from the light to the Garsden residents was German. Their new occupier ordered them

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<sup>11</sup> Christoph Dieckmann, *Deutsche Besatzungspolitik in Litauen, 1941-1944*, Bd. 2 (Göttingen: Wallstein Verlag, 2011), 125-137.

<sup>12</sup> Statement by Feliksas Seputis (Augsburg, 22 February 1957), EL 322/II, Bü. 8, SL.

out of the brewery and into the town square. Irena Permiakova, a young Lithuanian, recalled her positive first impression of the Germans: “We greeted them. They seemed to be so friendly and official.”<sup>13</sup> The Jews of Garsden had a far different reaction. Slava Aranovits stated, “Two German motorized columns entered Gorzd on two sides with great pageantry. It did not take long until they captured the bridge over the river. We could no longer escape. The road east was cut off. The true hell began for the Gorzd Jews.”<sup>14</sup>

As they took in the scene around them, the civilians observed the devastation of their town. Homes destroyed, streets torn up, and bodies of soldiers lying in the fields. An unknown number of civilians died during the invasion. Soon, a fire picked up and coursed through the center of the town, destroying many more homes and buildings. Since it spread primarily through the Jewish quarter, many believed the fire to have been deliberately set by the Germans.<sup>15</sup> As he stood in the main square while the flames intensified, the thirteen year old Edvardas Cirtautas thought to himself, “In hell, things couldn’t be worse than this.”<sup>16</sup>

Though the town center had been captured, fighting continued on the outskirts. As fire approached the town square, the Wehrmacht soldiers relocated the civilians to the city park. There they were joined by many other residents of Garsden who had fled their homes. By the early afternoon, the German army finally broke the Soviet resistance and pushed on. The battle for Garsden had not gone as planned. Nearly one hundred German soldiers died during the fight, but these losses did not halt the German advance. The war moved beyond

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<sup>13</sup> Irena Permiakova, quoted in “Der Ulmer Prozess: SS-Einsatzgruppen vor Gericht,” directed by Eduard Erne, SWR (2006), 17”.

<sup>14</sup> Slava Aronovits, “A Bit of History,” trans. by Gloria Berkenstat Freund, in *Gorzd Book*.

<sup>15</sup> Hershl Meyer, “On the History of the Jews in Lithuania,” trans. by Gloria Berkenstat Freund, in *Gorzd Book*.

<sup>16</sup> Edvardas Citautas, quoted in “Der Ulmer Prozess,” 18”.

Garsden and left its citizens to discover what kind of peace the Nazis aimed to impose. All day and night, the residents of Garsden waited in the park, guarded by German soldiers.

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The previous decades had made Garsden's residents accustomed to the uncertainty of life on the border. Historically a town between Prussia and Tsarist-controlled Lithuania, Garsden became the western edge of the newly independent Lithuanian state following World War I. Challenges to its territorial claims attended the state's creation, and the new republic fought several wars of independence through the 1920s. One consequence of these wars was the expansion of Lithuania into the Memel region, which had initially been intended as a protectorate of the Entente following the Treaty of Versailles. This large, historically Prussian city sat just miles from Garsden and gave the state access to an important ice-free port on the Baltic. For the residents of Garsden, it opened up many new job opportunities. A bus began to run several times daily between the two, allowing many to commute to the more economically diverse Memel.<sup>17</sup> For the first time in centuries, Garsden was a border town no longer.

A resurgent Nazi Germany intent on reclaiming its pre-Versailles borders demanded the return of Memel in spring 1939. Confronted with little international opposition, Germany reclaimed the Prussian port, and Garsden found itself once again on the border. Its political situation grew more precarious with the invasion of Poland in September 1939. Under the revised terms of the secret pact between Germany and the Soviet Union in late September, Lithuania fell under the Soviet sphere of influence. The Lithuanians struck a Faustian bargain with the Soviets, who offered them Vilnius, the cultural capital of Lithuania that had

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<sup>17</sup> Aronovits, "A Bit of History," *Gorzd Book*.

remained under Polish control in the interwar period, in exchange for allowing Soviet troops to be stationed on Lithuanian soil. The Soviet military presence all but ended Lithuanian independence and culminated in official annexation to the Soviet Union in mid-1940.<sup>18</sup>

The Soviet Union immediately imposed a harsh new order on Lithuanian society. Thousands of “anticommunist elements” were rounded up and deported to gulags, and all non-communist groups and organizations were banned.<sup>19</sup> While some Lithuanians supported the regime and found new opportunities for advancement, the majority experienced the occupation as a year of horror. Lithuanian Jews also responded in a variety of ways to the Soviet system, some welcoming it as a way out of poverty, others hostile to its banning of organizational life.<sup>20</sup> But virtually all were aware that the alternative of a Nazi occupation would have been far worse for them. Despite the diversity of Jewish responses, many Lithuanians quickly came to associate the new government with Jews, and anti-Semitism rose markedly from 1940-1941.<sup>21</sup>

These political reversals compounded local problems in Garsden and left the town in an already precarious situation prior to the invasion. Once Memel joined the Third Reich, the Nazis immediately set about to declare the port city *judenrein* (free of Jews). Almost overnight, eighty percent of Garsden’s Jews lost their jobs.<sup>22</sup> Those commuting to Memel were now forced to remain in Garsden, and the town bloated with unemployed citizens. Meanwhile, many Jewish natives of Memel fled to Garsden, growing the population even

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<sup>18</sup> Dieckmann, 147-177.

<sup>19</sup> Dieckmann, 147-155.

<sup>20</sup> Dieckmann, 156-160.

<sup>21</sup> Dieckmann, 161-163.

<sup>22</sup> Aronovits, “A Bit of History,” *Gorzd Book*.



larger. Already overcrowded, Garsden was crippled in late summer 1939 when a fire broke out in the wooden town and destroyed 150 homes, mostly in the Jewish quarter.<sup>23</sup>

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On the morning of June 23, after the civilians had spent a sleepless night in the town park, several vehicles rolled into Garsden from Memel and arrived at the park where the residents were being held. Unlike the Wehrmacht soldiers on guard, these new arrivals wore the black uniforms of the SS. Confusion set in among the civilians. The non-military SS appeared to be giving orders to the Wehrmacht troops, though what all this meant for those encamping in the park remained unclear. After some discussion, the lead SS officer allowed the Lithuanian residents to return to their homes. For many, this came as a relief. Thankful to be alive, they could now begin to mend the damage from the battle and resume some semblance of normal life. Despite the destruction of much of their town, many of the inhabitants could now look forward to life free from Soviet domination.

Although the Lithuanians were told to return home, the SS officer ordered the Jews of Garsden to remain. Seputis and his wife, who were not Jewish but whose home had been destroyed in the invasion, remained in the park with nowhere else to go. They watched as the crowd dispersed. Left in the clearing were some six hundred Jews who lived in Garsden and now huddled together with their families.<sup>24</sup> Those standing before the SS unit in the town park numbered perhaps half of the Jewish population, the others had either fled Garsden or remained in hiding in homes and cellars throughout town.

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<sup>23</sup> Orenshteyn, "My *Shtetl* Gordz," *Gorzl Book*.

<sup>24</sup> Statement by Feliksas Seputis (Augsburg, 22 February 1957), EL 322/II, Bü. 8, SL.

The officer in charge gave no reason for detaining these Jewish civilians. Most of them were likely well aware by this point of the ghettos that had been created over the previous year in parts of occupied Poland. Certainly they knew of the rapid escalation of anti-Semitism once Nazis seized Austria and Czechoslovakia. Perhaps they believed that the Nazis now intended to segregate the Jews of Garsden from their Lithuanian neighbors. Yet once the SS had isolated the Jews from the rest of the civilians, the officer ordered the able-bodied male Jews to step forward and form rows. Over cries, protests, and mass confusion, over one hundred men were separated from their families. Now in lines, they were ordered to march west of town, back towards the German border. As they left the park, not knowing their destination or the Germans' intent, the Jewish men of Garsden looked on the faces of their wives and children for the last time.

Among the men was Max Feinstein, a soap manufacturer. Like many of the others in the group, Feinstein had only known Garsden for a short while. He had lived previously in Memel, but fled once the Nazis seized control.<sup>25</sup> Looking around, Feinstein saw many other Jews who had joined him from Memel in Garsden. Scheer, Funk, and the three Korfmann brothers were all Memel cattle-dealers. Bernstein and Tauer, both machinists, also marched in line with Feinstein. They and others who had fled German territory now began a slow walk to the edge of town against the border. Many Garsden natives, such as Rabbi Meir Levin, also numbered among the male Jews selected in the town center.<sup>26</sup> As a group, these men were clearly identifiable as Jews. They spoke their own dialect and accented Lithuanian and German. Many wore long beards and dressed in traditional clothing. In age they ranged

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<sup>25</sup> Joachim Tauber first connected Feinstein with a Memel soap maker through comparison of the census records. See, Joachim Tauber, "Garsden, 24. Juni 1941," *Annaberger Annalen*, v. 117 (1997), 128.

<sup>26</sup> Julius, "Gorzd," *Encyclopedia of Jewish Communities, Lithuania*.

from late teens to elderly men, though those physically impaired were spared from the selection on this occasion.

Less than a mile from the town center, the men were ordered into an enclosure in a field to the left of the road. The border office between Garsden and Memel in the village of Laugallen sat just ahead. As the prisoners arrived, a unit from the border patrol came out to meet with the SS officers in charge. The SS officer ordered the border patrol to remain there guarding the prisoners, while he led his men back to the town center. Once there, the SS rounded up the Jews remaining in the park, mostly women and children, and led them three hundred meters east – the opposite direction as the first group – and held them in a barn. House-by-house searches were then carried out. Jewish men as well as suspected communists were brought out to join the others in the improvised prison. By evening, there were nearly two hundred prisoners in the clearing outside town. They remained there all night under the guard of the border patrol.

In the late morning on June 24, barely two days since the war began, the SS officer in charge the day before returned to Garsden with a unit of SS men. At eleven o'clock, shortly after they arrived, a stream of eight to ten passenger vehicles crossed the border and entered Garsden. They carried sixteen Gestapo and ten SD officers. The respective heads of these units, two high-ranking officers, conferred and received a report from the lesser SS officer who had selected out the Jewish men the day prior. The commanding officers were strangers to the Garsden inhabitants. Their uniforms distinguished them as Nazi elite, but no one had seen their faces before. These two senior officers now surveyed the pockmarked border town. They saw the blackened walls throughout the town center, noted the cratered artillery pits

and dispersed debris, and walked among the bodies of German and Soviet troops that still lay scattered across the fields outside town.

Soon a third senior officer arrived in Garsden, one likely recognized by many of the Jewish prisoners. Bernhard Fischer-Schweder arrived on his own before noon. As the police director in Memel, appointed immediately after the area joined the Third Reich, Fischer-Schweder was among the more visible Nazi appointees in the area. A notorious self-promoter, he made himself known upon his arrival in Memel and was currently negotiating to have a new bridge there named in his honor.<sup>27</sup> When he appeared in Garsden, the police director was easily identified by his distinct SA uniform. He joined the two other senior officers in discussion.

Shortly after noon, a large passenger truck drove in from Memel. When it arrived at the gathering with the various other German units on hand, a group of twenty uniformed police officers climbed out of the vehicle. They were armed with rifles. These were ordinary members of the police from the Memel area, many born and raised there. Feinstein and other prisoners recognized a number of the young men from their time in Memel. As the police pulled ammunition from the truck and other supplies, they unloaded a number of spades and shovels. These were Fischer-Schweder's men, and they were the execution squad.

The senior SD and Gestapo officers now began to give orders to clear the area and make preparations for an execution. They had their men relieve the border patrol unit and take over guard duty of the prisoners. The prisoners were ordered to remove and surrender all valuables, which were gathered by the guards and given to the border patrol agents. Some Jews were then ordered to remove the bodies of Soviet soldiers still on the battlefield. If

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<sup>27</sup> "Eine neue Brücke am Aschhof," newspaper unknown (2 September 1941), EL 322/II, Bü 73, SL.

doubts had persisted among the prisoners about the Nazis' plans for them, these dissipated when a number of the Jewish men were led to a Russian tank trap near a horse pen outside town. They were given spades and shovels and told to enlarge the pit. Several Gestapo and SD officers took pleasure in the affair, striking the prisoners indiscriminately and yelling at them to dig faster. Rabbi Levin, the last rabbi of Garsden, was singled out for cruel abuse by the Nazis. Beaten when they cried out, the men were made to dig their own grave.

While these preparations were underway, Fischer-Schweder approached the lieutenant who arrived with the twenty police officers. The prisoners watched as he led the lieutenant onto the battlefield and stopped before a wrecked German motorcycle. Nearby were the corpses of two Wehrmacht soldiers. Fischer-Schweder pointed at the bodies, then directed the lieutenant's gaze towards the male Jewish prisoners and pointed. When they returned, word quickly spread among the police officers and then reached the prisoners' ears. These Jews, they were told, had been "snipers" responsible for the fierce resistance in Garsden. They were to be killed for their crimes against the German army.

For Feinstein, the Korfmann brothers, Rabbi Levin, and the rest, these charges were an outrage. They had hidden in basements since the battle broke out and had been under German guard since then. They were ordinary civilians with no partisan aspirations. There had been no civilian resistance of any kind in Garsden. Likely the prisoners saw through the thin veneer of these charges and recognized them as a fictive legal pretense to murder the men simply for being Jewish. As they began to shout and cry out, the guards lashed back with blows.

Once the pit had been dug out into a long and shallow grave, the prisoners were led behind a partially destroyed wall in the field, concealing them from view of the town. The

police officers then formed two rows of ten each, approximately twenty meters from the grave. The Gestapo men guarded the two hundred and one prisoners, now with one woman – the wife of a communist functionary – among them. SD officers secured the perimeter around the site to bar any escape. The two senior Gestapo and SD officers stood nearby, joined by Fischer-Schweder, the SS officer from the day before, and several other officials who had since arrived from Memel. Members of the border patrol and other units observed from beyond the cordoned area. On hand that day was a complex and confusing cross-section of Nazi organizations. With the exception of a few of the men from Memel, none of these officers were known in Garsden. From ordinary police to hardened SS men, from border patrol agents to city officials, the execution in Garsden drew on every available state organization to supply manpower and support for the pending massacre.

The executions began in the early afternoon, when a unit of Gestapo and SD men selected ten men from the prisoners. Yelling, they ordered the Jews to run to the grave and line up before it. “Faster, faster,” one shouted, “so we can call it a day sooner!” The cries and pleas for mercy from the men could be heard in town. Instructed to face the firing squad, each had two rifles pointed at him. The police lieutenant stood to the side of the shooters and addressed the victims: “You are being shot in the name of the Führer on account of crimes against the Wehrmacht.” After saying this, he gave the order to fire. The execution squad shot all ten men, in full view of the other prisoners. Their bodies fell into or along the edges of the grave. After the first salvo, Fischer-Schweder walked among the ten victims, some of whom were not yet dead. He and the lieutenant pulled their pistols and shot the still living in the head.

The next group of ten victims was then led out. They were ordered to place the bodies of the others in the grave and then to line up themselves before it. Again, the lieutenant stated the purpose for their execution and they were killed. Several Gestapo men now made sure all were dead. For the next several hours, twenty such executions took place. Each group was led out, made to place the previous victims in the grave, told they were being shot for crimes against the Nazi state, and killed. The ground became drenched in blood. On one occasion, a young teenager was among those shot. Still alive and writhing in agony, he pleaded, "One more!" A Gestapo officer shot him again with his pistol. One of the shooters became sick during the afternoon and had to be replaced. Seputis and the other Garsden residents heard the gunfire and screams at regular intervals as it echoed throughout the town.

In time, Feinstein the soap maker was selected and led to the grave. He placed the body of a neighbor in the grave and turned to confront the firing squad. While the lieutenant read out the execution order, he looked at the men aiming rifles at him and recognized one of the shooters. It was a young police officer he knew from Memel. Locking eyes with his acquaintance and killer, Feinstein called out just before the firing order, "Gustav, shoot well!"

Over a mile away, the Jewish women and children remained locked in a barn. They may not have been able to hear the shots. The Nazis assuaged their concerns by telling them that the men had been sent to a work camp and were being looked after. They readily accepted this lie, their minds unable to conceive of the alternative. Rahel Yamai, a Jewish woman locked away and the only one in the barn to survive the war, said that no one could truly imagine that these innocent men had been marched off to be shot.<sup>28</sup>

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<sup>28</sup> "The Destruction of the Jews of Gargzdai," trans. by Tina Lunson, in *Lite*, ed. Mendel Sudarsky and Uriah Katzenelenbogen (New York: Jewish-Cultural Society, 1951), accessed online 12 August 2012,

After several hours, all 201 prisoners had been killed. The SD officer confirmed the number killed with the senior Gestapo officer. Their bodies were covered in dirt. Later, concerns over the smell and public health risks led the Garsden residents to exhume the grave and pour in lime.<sup>29</sup> In mid-September, many of these German officers returned to Garsden. Lithuanian auxiliaries had replaced the policemen as the execution squad. This time, they targeted the Jewish women and children who had been held in a barn since the war's opening days. Subjected to forced labor and starved, they had resorted to eating grass in an effort to stay alive.<sup>30</sup> When the execution squad returned in the fall, this group was led to a clearing east of town and killed, like their husbands, fathers, and brothers before them.<sup>31</sup> Many of the town's remaining Jews were sent to the ghetto in Kowno, where the majority would perish.

By the end of the year, Garsden was declared *judenrein*. Half the town's population had been murdered and a community destroyed forever. All across Lithuania, Jewish communities suffered a similar fate. By the end of 1941, just six months after the German invasion, nearly eighty percent of all Lithuanian Jews had been murdered in open air shootings like that in Garsden. The loss was not just of life, but of a way of life that had persisted through centuries. As Aronovits, who had left Garsden before the invasion, later

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<http://www.jewishgen.org/yizkor/lita/lit1867.html>; In September, when the women and children were led east of the city and shot, Yamai escaped by pretending to be dead, then fleeing to the forest. She is the only known survivor of the Garsden massacres, and one of very few Garsden Jews to survive the Holocaust.

<sup>29</sup> Konrad Kwiet, "Rehearsing for Murder: The Beginning of the Final Solution in Lithuania in June 1941," *Holocaust Genocide Studies*, v.12 n.1 (1998), 8.

<sup>30</sup> "The Destruction of the Jews of Gargzdai," *Lite*.

<sup>31</sup> Dieckmann, 856.



wrote, “Who can imagine Gorzd without Jews? And who can imagine Gorzd without the Yiddish language on the streets and alleys of the shtetl?”<sup>32</sup>

It was late afternoon on June 24 when the execution squad began to pack up its equipment. The residents of Garsden watched the men prepare to leave. The killers had unfamiliar faces and came from unknown units and towns. Various officers had exerted influence over the execution, and no one could say for certain which – if any – of those present had ultimately been responsible for the murders. The witnesses to the massacre were now lying in a ditch on the edge of town. For anyone hoping to understand what had transpired, the only people now with answers were climbing into trucks on their way back to Germany. Overhead, a small Russian air raid had started against Memel, where smoke clouded the horizon. The war was just beginning. The colonnade pulled out of the field and back onto the main road to Memel. As civilians looked on, the vehicles rumbled out of Garsden, rounded a bend through the woods, and disappeared.

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<sup>32</sup> Aronovits, “A Bit of History,” *Gorzd Book*.

## II. Introduction: The 1958 Ulm *Einsatzkommando* Trial

*When first contacted about this case, one witness asked the detective, “Why are you digging up these old things?” This witness thus posed a question which has doubtless also been posed to you by your friends, namely, “Even if such atrocities were committed, why must we – the Germans – inflict wounds on ourselves by making a display of our own shame for all the world to see after seventeen years? And why must we once again rip open wounds that have barely healed since 1945?”*

*– Erwin Schüle, closing statements of the 1958 Ulm Einsatzkommando trial*

In the late spring of 1958 along the banks of the Danube in the West German city of Ulm, ten men appeared in court to stand trial for the murder of several thousand Jews in Lithuania. Since 1941, when these Holocaust perpetrators carried out their crimes, the defendants had experienced nearly four more years of war and then fanned out across West Germany and reintegrated into postwar society. Though they had carved various routes towards reintegration, their pasts bound them together and brought them all to Ulm seventeen years later to confront their crimes. For four months, dozens testified about the defendants’ role in *Einsatzkommando* Tilsit, a death squad responsible for destroying the Jewish communities along a stretch of the German-Lithuanian border. The trial showcased the fruits of a three-year investigation that at its peak employed three teams of detectives spread across the country and required a sustained international effort to find evidence and witnesses of these crimes. By the time it began, the trial in Ulm had become the largest Nazi crimes case to that point put before a West German court.<sup>1</sup>

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<sup>1</sup> The phrase “Nazi crimes” is used to refer to the umbrella category of all crimes committed under the Third Reich, in contrast to the terms “war crimes” or “Holocaust crimes.” The former refers to a particular set of laws focused on internationally agreed upon laws of war, while the latter misleadingly projects a Holocaust consciousness onto West Germans that was largely absent through the 1950s. As a result, the far broader term

In the end, the court found all ten defendants guilty. The verdict validated the extraordinary efforts of the investigators and inspired renewed discussions over the responsibility of the Federal Republic of Germany to prosecute perpetrators from the Nazi era. By October, little over a month after the trial's end, the justice ministers of West Germany agreed to create a new agency to coordinate Nazi crimes investigations, known as the *Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung national-sozialistischer Gewaltverbrechen* (Central Office of the State Justice Ministries for the Investigation of National Socialist Crimes of Violence). To lead the *Zentrale Stelle*, the ministers appointed the prosecutor of the trial in Ulm and staffed it with the case's lead investigators. Over the next decades, this organization launched thousands of investigations into hitherto unprosecuted Nazi crimes.<sup>2</sup> Within three years, the investigation that began as a small affair in a provincial town in southwest Germany had blossomed into a trial so prominent that it forced the West German judiciary down a path of ongoing prosecutions of Nazi criminals.

The significance and strangeness of this 1958 Ulm Einsatzkommando Trial, as it has since become known, becomes all the more apparent set against the dominant trends of the postwar period. Throughout the 1950s, prosecutions for Nazi crimes steadily declined to levels not seen again for several decades. An era of prosecutorial apathy reflected the dominant political interests of the time. The Federal Republic pursued a program of amnesty

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"Nazi crimes" includes conventional war crimes and crimes of the Holocaust, as well as other crimes prosecuted in the postwar period, such as denunciations, theft of Jewish property, and political persecution. See, Devin O. Pendas, "Seeking Justice, Finding Law: Nazi Trials in Postwar Europe," *The Journal of Modern History* 81, No. 2 (June 2009), 347–368.

<sup>2</sup> Within its first two years, over two-thousand new investigations were launched. These figures come from a data set recently compiled by the Institut für Zeitgeschichte in Munich and analyzed in a series of important articles by Andreas Eichmüller. They provide precise information on the nature and scale of war crimes prosecutions and the prosecutorial milieu from which the initial phase of the Fischer-Schweder investigation emerged. See, Andreas Eichmüller, "Die Strafverfolgung von NS-Verbrechen durch westdeutsche Justizbehörden seit 1945. Eine Zahlenbilanz," *Vierteljahrshefte für Zeitgeschichte*, v. 56, no. 4 (2008), 626.

and reintegration, rather than prosecution, of former Nazis in an effort to paper over social divisions and move the country out from under the shadow of Nazism. These desires found wide resonance among many West Germans, who preferred to consider themselves victims, not supporters, of Nazism. Through the 1950s, the interests of the courts, the government, and the public of West Germany converged in their willingness to forgo a critical assessment of the Nazi past in order to focus on the perceived needs of the present.

But if the Ulm trial sat uncomfortably among these prevalent attitudes of the 1950s, it seemed to herald the sea change in West German attitudes towards the Nazi era that came into full view by the 1960s. With the creation of the Zentrale Stelle in 1958, the courts began to engage more earnestly than ever before in prosecuting Nazi criminals. Moreover, where earlier crimes had often skewed to emphasize German victims of Nazis, crimes of the Holocaust came to dominate this new era of prosecutions. These changes inspired shifts throughout the West German government and society. The federal government agreed to extend the statute of limitations on the most serious crimes committed during the Third Reich, and a rising generation began to ask more critical questions about the country's response to the Nazi era. As a result, the issue of coming to terms with the Nazi past loomed much larger in public discourse during the 1960s than it had during the previous decade.

Thus the Ulm trial was – and has often been seen as – a crossroads in West German attitudes towards the Nazi past. Two major approaches to the Nazi past intersected at Ulm. One favored continuing the policies of the 1950s, which viewed the needs of the present as more important than extended prosecutions of Nazi crimes. The other argued that prosecutions and processing the Nazi past ought to be an integral part of West Germany's commitment to justice. Various groups within society also crossed paths in the course of the

Ulm trial. For the perpetrators, the Ulm trial signaled the end of their decade-long effort to reintegrate into postwar society and avoid prosecution for their crimes. For the investigators, the trial symbolized the culmination of three years of investigative struggles and successes in bringing these criminals to justice. Just as the Ulm trial marked the end of these stories, it opened space for the beginning of others. The government and to a lesser extent the public interpreted the trial in Ulm and its verdict as an opportunity for a wider discussion over the Nazi crimes issue in West Germany. All of these groups and subcultures within society thus approached Ulm from a different vantage. Because it was a point of intersection for this cross-section of society, the Ulm trial tells a much wider story about 1950s West Germany and debates over coming to terms with the Nazi past.

More than just a symbol of these debates, the Ulm trial also helped determine their outcome. Precisely because the trial brought together so many differing voices, certain groups began to speak with one another for the first time, which contributed to a critical minority voice within West Germany.<sup>3</sup> Eager prosecutors, skilled investigators, Jewish rights organizations, scholars, and others found common cause in the Ulm trial and used that experience to leverage state officials for a more concerted judicial confrontation with the Nazi era. They were able to accomplish this because the West German public exhibited a largely muted response to the trial. Public ambivalence created a discursive space for this vocal minority to promote its views within the government. As a model for understanding shifts in memorial culture, the Ulm trial shows a complex and nuanced process of coalition-building underway in West Germany. It was through the construction of a network of like-

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<sup>3</sup> Here I borrow from Herf's discussion of a critical minority tradition in West Germany since the end of the war. See, Jeffrey Herf, *Divided Memory: The Nazi Past in the Two Germanys* (Cambridge, Mass.: Harvard University Press, 1997).

minded actors – public and private, individuals and organizations – that reforms percolated to the top of the government before filtering back down to society at large.

### **The Ulm Trial in Legal, Cultural, and Transnational History**

By portraying the Ulm trial as both a symbolic forum of debate over the Nazi past and as a determining factor in the emergence of a critical memorial culture in West Germany, this dissertation contributes to three fields of historical scholarship. First, in the legal history of West Germany, the creation of the Zentrale Stelle in 1958 is widely regarded as the key moment of delineation between an apathetic and activist prosecutorial culture towards Nazi crimes. I argue that the Ulm trial was both the engine that drove the debates over the creation of the Zentrale Stelle and the blueprint for its design. Second, in regards to post-1945 cultural attitudes towards the Nazi past, I draw attention to the consequences of government programs favoring reintegration and public emphasis on German victimization. Though these attitudes aimed to create social stability, they created blindspots in society that allowed perpetrators to conceal themselves in plain sight for over a decade. Finally, I argue for the importance of the Ulm trial in transnational understandings of the emergence of Holocaust memorial cultures throughout Western Europe, North America, and Israel. Though a trial in the backwoods of West Germany, the Ulm case succeeded due to its reliance on a transnational network of actors actively coordinating their efforts to advance Holocaust awareness.

In the legal history of postwar West Germany, the Ulm trial occupies a prominent though ill-defined place. The size of the trial, the nature of the crime being prosecuted, and the verdict all contrasted with the major trends of prosecutions in the 1950s. The creation of the Zentrale Stelle in the wake of the trial cemented Ulm's place in the legal history of Nazi

crimes prosecutions, but the relationship between these three – 1950s prosecutorial culture, the Ulm trial, and the Zentrale Stelle – has remained unclear.<sup>4</sup> Scholarship has tended to focus on early trials before 1949 and after the 1960s, which has left trials of the 1950s, like that in Ulm, understudied.<sup>5</sup> I argue that the Ulm trial demonstrated the problems with hitherto dominant approaches to Nazi crimes cases and offered a plausible alternative approach. It was this plausible alternative that became the inspiration for the Zentrale Stelle.

To understand this argument, it is necessary first to explain how and why prosecutions were at an all time low by the mid-1950s. Nazi crimes investigations in West Germany had undergone two starkly different phases prior to the Ulm trial.<sup>6</sup> The first, from 1945-1949, corresponded to the era of Allied occupation and witnessed the most robust period of Nazi crimes prosecutions since 1945. Besides the prominent International Military

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<sup>4</sup> Currently the best available information on the history of the trial comes from two historians, Michael von Miquel and Claudia Fröhlich. Both lean heavily on the legacy of the trial, with less attention paid to its origins and evolution. See Marc von Miquel, *Ahnden oder Amnestieren?: Westdeutsche Justiz und Vergangenheitspolitik in den sechziger Jahren* (Göttingen: Wallstein, 2004), 150-162; and Fröhlich, Claudia. “Der ‘Ulmer Einsatzgruppenprozess’ 1958. Wahrnehmung und Wirkung des ersten großen Holocaust-Prozesses,” in *NS-Prozesse und Deutsche Öffentlichkeit: Besatzungszeit, frühe Bundesrepublik und DDR*, ed. by Jörg Osterloh and Clemens Vollnhals. Vandenhoeck & Ruprecht, 2011.

<sup>5</sup> While the major trial at Nuremberg has long been subject to historical scholarship, in recent years several major monographs have addressed the successor and other Allied trials. See, Hilary Earl, *The Nuremberg SS-Einsatzgruppen Trial, 1945-1958: Atrocity, Law, and History*. Cambridge University Press, 2009; Valerie Hebert, *Hitler’s Generals on Trial: The Last War Crimes Trial at Nuremberg* (Lawrence: Kansas State University Press, 2010); and Tomaz Jardim, *The Mauthausen Trial: American Military Justice in Germany* (Cambridge, Mass.: Harvard University Press, 2012). Similarly, the scholarship on trials in the 1960s has continued to flourish. The fiftieth anniversary of the Eichmann brought several new monographs, notably Deborah Lipstadt, *The Eichmann Trial* (New York: Schocken, 2011); and the forthcoming Lawrence Douglas, *Reflections on the Glass Booth*. Two other major works in the past decade have addressed the massive Frankfurt Auschwitz trial, which surpassed the Ulm trial as the largest Nazi crimes case in West German history; see, Devin O. Pendas, *The Frankfurt Auschwitz Trial, 1963-1965: Genocide, History, and the Limits of the Law* (Cambridge: Cambridge University Press, 2006); and Rebecca Wittmann, *Beyond Justice: The Auschwitz Trial* (Cambridge, Mass.: Harvard University Press, 2005).

<sup>6</sup> My periodization follows that of Norbert Frei, who delineated three eras of judicial coming to terms with the past – Allied prosecutions, amnesty and reintegration years, and the wave of 1960s prosecutions. See, Norbert Frei, “Nach der Tat: Die Ahndung deutscher Kriegs- und NS-Verbrechen in Europa – eine Bilanz,” in Norbert Frei, ed., *Transnationale Vergangenheitspolitik: Der Umgang mit deutschen Kriegsverbrechern in Europa nach dem Zweiten Weltkrieg* (Göttingen: Wallstein, 2006), 7-36.

Tribunal at Nuremberg and the successor trials, West German courts were actively prosecuting Nazi crimes. Investigators opened files on 14,406 crimes during this period, and prosecutors issued indictments for 13,333.<sup>7</sup> No other four year period in post-1945 German history witnessed more than a quarter of these numbers.

The sheer quantity of these cases, however, is misleading. In cases that led to indictments, nearly half resulted in acquittals.<sup>8</sup> The crimes prosecuted in these cases were also fairly uniform. Eighty-five percent of the cases pursued crimes committed in Germany, and over half were for *Endphase* crimes, or crimes committed during the chaotic months of retreat and collapse in the final stage of the war.<sup>9</sup> In just under two-thirds of the cases, Germans were the primary victim group, with crimes of the Holocaust, in which the victims were Jewish, accounting for half of the remaining one-third. A disproportional relationship emerged between the types of crimes committed under the Third Reich and those prosecuted after the war, in which crimes against German civilians became overrepresented relative to those targeting non-Germans in the east.<sup>10</sup>

The reasons for the high acquittal rate and the focus on crimes committed against Germans in the early phase of prosecutions can largely be attributed to Allied control over postwar prosecutions. The Nuremberg trials in particular dominated legal proceedings. Their scope, sense of finality, and international composition lent them a primacy over all others.

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<sup>7</sup> Eichmüller, "Zahlenbilanz," 626.

<sup>8</sup> 3,703 resulted in acquittals and 4,667 in convictions for a rate of 44 percent. Eichmüller, "Zahlenbilanz," 626.

<sup>9</sup> For a more detailed discussion of the legal restrictions on prosecutions and other particularities in the legal system of postwar West Germany, see Henry Friedlander, "The Deportations of German Jews: Postwar German Trials of Nazi Criminals," *Leo Baeck Institute Yearbook*, 29:1 (1984), 201-226.

<sup>10</sup> Dick de Mildt, *In the Name of the People: Perpetrators of Genocide in the Reflection of Their Post-war Prosecution in West Germany* (The Hague: Martinus Nijhoff, 1996), 22-26.



The trials of Nazi elite at Nuremberg served a broad public role in the Allied program of denazification and reeducation.<sup>11</sup> The subsequent trials carried out in each Allied zone continued to mix this role of trial as public spectacle and tool of justice. The Allies also limited West German courts to investigating only crimes committed by Germans against other Germans in the jurisdictional region of the prosecutors.<sup>12</sup> As a result, the vast majority of Nazi crimes, which took place outside Germany and targeted non-Germans, fell outside the jurisdiction of West German courts.

Throughout the postwar period, these factors contributed to a distorted image of crimes in the Third Reich. The Allied trials and the surrounding media attention they received failed to distinguish between the singular nature of the crimes committed against Jews, for instance, and traditional war crimes. Consequently, this confusing muddle of conventional war crimes and uniquely Nazi crimes obscured the particular thrust of crimes against European Jews.<sup>13</sup> When crimes against Jews were prosecuted, the perpetrators were characterized as sadists and ideological fanatics, thus further deflecting any culpability away from ordinary West Germans.<sup>14</sup> By limiting West German courts to prosecuting crimes committed against Germans, the Allies also fueled a narrative of German victimization by

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<sup>11</sup> Frank Buscher, *The U.S. War Crimes Trial Program in Germany* (New York: Greenwood Press, 1989); Michael Marrus, *The Nuremberg War Crimes Trial, 1945-46: A Documentary History* (Boston: Bedford, 1997).

<sup>12</sup> Adalbert Rückerl, *Die Strafverfolgung von NS-Verbrechen 1945-1978: Eine Dokumentation* (Heidelberg: C.F. Müller, 1979), 32-39.

<sup>13</sup> Rückerl, *Strafverfolgung*, 35-36; and Peter Steinbach, *Nationalsozialistische Gewaltverbrechen: Die Diskussion in Der Deutschen Öffentlichkeit Nach 1945* (Berlin: Colloquium Verlag, 1981), 45-46.

<sup>14</sup> Marc von Miquel suggests that prosecutors and judges wanted to “defend German society against feelings of guilt” by “viewing the accused as individual perpetrators who had acted outside the social norms of the Nazi era”; Marc von Miquel, “Explanation, Dissociation, Apologia: The Debate over the Prosecution of Nazi Crimes in the 1960s,” in *Coping with the Nazi Past: West German Debates on Nazism and Generational Conflict, 1955-75*, edited by Philipp Gassert and Alan E. Steinweis, translated by Andrew Oppenheimer (New York: Berghahn Books, 2006), 55-56.

deemphasizing crimes that targeted other ethnic groups. The resulting legacies from these aspects led many Germans both to associate crimes against Jews with “victor’s justice” and to develop a narrative of German suffering at the hands of the *Führer*.<sup>15</sup>

These attitudes coupled with the creation of the Federal Republic of Germany in 1949 led to the beginning of a second phase of prosecutions from 1949 to 1950, when new cases sharply declined. Rates of investigations dropped by fifty percent between 1949 and 1950 to 1,951 and fell another fifty percent the following year. In all, the nine year period prior to the Ulm trial resulted in just 4,996 new investigations. Prosecutors filed only 2,252 indictments during this same stretch, and nearly 1,400 of these came in the single year of 1950 as a result of investigations already begun before the creation of the Federal Republic.<sup>16</sup>

To a large extent, this decline reflected the dominant belief that the majority of serious offenders had already been sought out and punished. The federal government did not make further prosecutions a priority, so a declining number of new cases emerged randomly and with no oversight or coordination from the government.<sup>17</sup> Prosecutors took a passive approach and did little to initiate investigations. The cases that did begin occurred often as a result of coincidental encounters between victims and perpetrators. Other trends continued. Crimes committed in Germany constituted over seventy percent of all trials, and *Endphase* crimes just under half.<sup>18</sup> Moreover, these cases were extraordinarily difficult, as they required

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<sup>15</sup> See for example, Pendas, *Frankfurt Auschwitz Trial*, 10-13; Michael S. Bryant, *Confronting the “Good Death”: Nazi Euthanasia on Trial, 1945-1953* (Boulder: University of Colorado, 2005), 6-9; and de Mildt, *In the Name of the People*, 22-26.

<sup>16</sup> Eichmüller, “Eine Zahlenbilanz,” 626-630.

<sup>17</sup> See Norbert Frei, *Adenauer’s Germany and the Nazi Past: The Politics of Amnesty and Integration*, translated by Joel Golb (New York: Columbia University Press, 2002).

<sup>18</sup> Eichmüller, “Eine Zahlenbilanz,” 626-630.

great efforts to uncover evidence of criminality that had taken place years before and often in parts of Europe now behind the Iron Curtain. By the middle of the decade, all signs indicated that Nazi crimes prosecutions were coming to an end.

To most outside observers, the surprising emergence of a massive trial in Ulm in 1958 seemed a complete aberration from this trend. In fact it proved the first indication that this trend would quickly reverse itself. The creation of the Zentrale Stelle in the wake of the trial initiated a new era of prosecutions, when new investigations were launched in numbers not seen since the first years after 1945.<sup>19</sup> Because the agency was created just months after the verdict in Ulm and because the prosecutor in Ulm became its first president, historians have widely recognized the importance of the trial in the creation of the agency. Two views in particular have emerged to explain this relationship. The traditional explanation, put forward in the 1970s, argued that the Ulm trial prompted a public outcry that spurred the government into taking more serious action against Nazi criminals.<sup>20</sup> While there is still general agreement that the Ulm trial provided a momentary impulse behind the creation of the Zentrale Stelle, a wave of recent scholarship has argued that the agency emerged not from massive public support, but rather from political anxieties over possible international and domestic frustrations with the weak West German response to former Nazis.<sup>21</sup> This view has consequently deemphasized the role of the Ulm trial in the creation of the Zentrale Stelle.

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<sup>19</sup> New investigations more than doubled the year after the Zentrale Stelle's creation, and grew by an additional 50% in 1960. Thereafter, new investigation dropped precipitously, but remained above the average levels in the 1950s. Moreover, the drop after 1960 reflected the decision of the Bundestag to extend the statute of limitations on Nazi crimes beyond the planned lapse date of 1960. Prior to this extension, the initial two years of the Zentrale Stelle had been a fraught race against time to launch as many new investigations before the crimes slipped away from prosecutors' grasp. See Eichmüller, "Eine Zahlenbilanz," 626.

<sup>20</sup> See, Ruckerl, *Strafverfolgung*.

<sup>21</sup> See, Claudia Fröhlich, "Die Gründung der 'Zentralen Stelle' in Ludwigsburg -- Alibi oder Beginn einer systematischen justitiellen Aufarbeitung der NS-Vergangenheit?," in *Justiz und Nationalsozialismus--*

Rather than viewing this shift as a consequence of top-down or bottom-up initiatives, I argue for a middle-out approach by focusing on the changes that began within local and state judiciaries. In the course of the Ulm investigation, whole categories of unprosecuted Nazi crimes came to the attention of prosecutors and investigators. Rather than sit on this information or attempt to pass it off to other jurisdictions, key personnel involved in the Ulm trial – chief among them its prosecutor and the state attorney general – used these newly discovered crimes to catch the ear of highly placed justice officials in West Germany. They posited that a coordinated effort among the West German states could better carry out future investigations than a competitive judiciary seeking to avoid jurisdiction over undesired prosecutions. This spurred a typically slow-moving state bureaucracy into fast action, as the question of ongoing Nazi crimes prosecutions found its way onto the state justice ministers' conference agenda in October 1958. At this conference, the ministers agreed to create the *Zentrale Stelle*. The entire issue had been pushed not by an angered public or an anxious federal government, but by several activist prosecutors and bureaucrats. The Ulm trial – and in particular the personnel behind it – was the engine that drove the discussion on the *Zentrale Stelle*.

More than just raising the question of unprosecuted Nazi crimes, the Ulm trial was the answer to that question. In order to understand the structure and purpose behind the *Zentrale Stelle*, one must look to the three year Ulm investigation that provided a blueprint for the agency. The first year of the investigation followed conventional approaches in 1950s

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*Kontinuität und Diskontinuität*, ed. Gerhard Pauli and Thomas Vormbaum (Berlin: Berliner Wissenschafts-Verlag, 2001), 213-250; Michael Greve, *Der justitielle und rechtspolitische Umgang mit den NS-Gewaltverbrechen in den sechziger Jahren* (Frankfurt am Main: Europäische Hochschulschriften, 2001); von Miquel, Ahnden; Annette Weinke, *Eine Gesellschaft ermittelt gegen sich selbst: Die Geschichte der Zentralen Stelle Ludwigsburg 1958-2008* (Darmstadt: WGB, 2008).

Nazi crimes cases. It began in 1955, just a year after the all-time postwar low for new investigations. Prosecutors devoted few resources to the case, and a culture of low expectations in the prosecutor's office made the case a low priority. But in June 1956 a new prosecutor, Erwin Schüle, fundamentally overhauled the case. He pioneered a strategy of investigating the "crime complex," which placed particular crimes into the broader context of the Nazi state apparatus. The crime complex investigation required using a range of evidence – such as perpetrator accounts, survivor testimony, contemporary documentation, and historical works – to build a case. Though a more expensive and expansive approach, the verdict in Ulm proved its effectiveness and became the inspiration for the creation of the Zentrale Stelle. Both Schüle and the investigators made up the core staff of the Zentrale Stelle, and the agency was largely built to house their talents and showcase their methods.

The Ulm trial was thus not some interchangeable part – the tool at hand that allowed West Germans to repair their approach to the Nazi past. Instead, the Ulm trial was an essential component for this process and for the creation of the Zentrale Stelle. The engine that drove the discussion over the Zentrale Stelle and the blueprint for its design, the Ulm trial fundamentally shaped the judicial approach to Nazi crimes in West Germany since 1958. The construction, form, and function of the Zentrale Stelle resulted directly from the decisions made by Ulm prosecutors and investigators.

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Second, this dissertation draws attention to the complex set of attitudes espoused at various levels of West German society towards the question of the Nazi past in the postwar period. Ever since the 1960s, when West Germans began to address the Nazi era and the Holocaust more openly and in earnest, scholars have looked back to the fifteen years after the

war to understand why these issues had not surfaced earlier. Compared with the prominent discussions of Nazi criminality and the Holocaust during the 1960s, the absence of any similar public discourse during the 1950s was conspicuous. Upon closer examination, recent scholarship has shown that the 1950s in fact were a fertile period for discussion over the Nazi era, but in ways starkly different from and advancing different needs than the Holocaust-centered understanding of the past that later emerged.

Current scholarship posits that the main features of West Germany's response to the Nazi period can be explained through the particular array of factors that comprised the political, diplomatic, and social realities of the postwar period. Two of the most influential proponents of this view were Jeffrey Herf and Norbert Frei. Herf has argued that in the West the postwar years constituted an effort to avoid ongoing discussion of the Nazi era in favor of political stability. In order to move forward, West Germany was forced to delay justice.<sup>22</sup> Frei's work has similarly found a lack of willingness to deal with German complicity in Hitler's crimes throughout the 1950s. He detailed the "politics of the past" under West German Chancellor Adenauer to mask social divisions through the creation of amnesty programs and hiring incentives to bring former Nazis back into society.<sup>23</sup> As Herf had done, Frei portrayed postwar West Germany as a forward-looking state, too pressed with the needs of the present to engage in concerns over the past. In both iterations, the challenge of dealing with the Nazi past was therefore conceived at the federal level as primarily a social issue, and not an issue of morality or justice.

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<sup>22</sup> Herf, *Divided Memory*, 7.

<sup>23</sup> Frei, *Adenauer's Germany*.

If Herf and Frei conclusively revealed federal aversions to a critical confrontation with the Nazi era in the postwar period, more recent work by Robert Moeller and others has demonstrated the way these views permeated throughout society. Central to Moeller's work is the notion that West Germans engaged in a "selective memory" of the Nazi era during the postwar years.<sup>24</sup> They actively and widely discussed the Nazi period ever since the end of the war, but their discussions through the 1950s centered on the notion of German victimization. Having endured twelve years of Nazi dictatorship, the destruction of their homes and cities, the epidemic of rape at the hands of the invading Red Army, the division of their country, the ongoing imprisonment of their POWs, the pursuit of "victor's justice" at Nuremberg, and the mass expulsions of ethnic Germans from the East, many Germans felt that they had suffered and continued to suffer.<sup>25</sup> All of these events created what Konrad Jarausch has termed "new points of reference through collective suffering."<sup>26</sup> In orienting themselves away from the Nazi past, West Germans chose to emphasize aspects of that past and the postwar occupation years that led to the belief that they had suffered greatly as a people over previous decades.

Because West Germans considered themselves victims, little attention was given to the victimization of other groups, especially Jews. Few voices in the streets were able to contradict the message of German victimization. As Atina Grossmann has argued, the absence of Jews from postwar society made it easy for many Germans to overlook them as a

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<sup>24</sup> Robert Moeller, *War Stories: The Search for a Usable Past in the Federal Republic of Germany* (Berkeley: University of California Press, 2001).

<sup>25</sup> Moeller, *War Stories*; Robert G. Moeller, "Germans as Victims?: Thoughts on a Post-Cold War History of World War II's Legacies," *History & Memory* 17, no. 1 (2005): 147-194; Wulf Kansteiner, *In Pursuit of German Memory: History, Television, and Politics after Auschwitz* (Athens, Ohio: Ohio University Press, 2006); Frank Biess, *Homecomings: Returning POWs and the Legacies of Defeat in Postwar Germany* (Princeton N.J.: Princeton University Press, 2006); Helmut Schmitz, ed., *A Nation of Victims?: Representations of German Wartime Suffering from 1945 to the Present* (Amsterdam; New York NY: Rodopi, 2007).

<sup>26</sup> Konrad H. Jarausch, *After Hitler: Recivilizing Germans, 1945-1995*, trans. by Brandon Hunziker (New York: Oxford University Press, 2006), 60.

victim group.<sup>27</sup> This was not to say that they denied the Holocaust, but rather that in the echo chamber of postwar victimization the only way to be heard was to shout the loudest, and the dearth of Holocaust survivors were unable to drown out the cries of German suffering. The introduction of the selective memory framework therefore significantly opened up the field of postwar studies by suggesting that this time period consisted of competing and overlapping narratives of the past, a cramped field of interpretations out of which a Holocaust-centered understanding of the Nazi era slowly began to emerge in the 1960s.

Paradoxically, the massive Ulm trial emerged out of this postwar culture of amnesty, reintegration, and selective memory. The former members of Einsatzkommando Tilsit all found refuge in West Germany after the war thanks largely to these dominant attitudes in the government and within society. The policies of reintegration and the widespread beliefs in German victimization created conditions favorable for Holocaust perpetrators seeking to avoid prosecution.<sup>28</sup> For over a decade, the ten Ulm defendants succeeded in manipulating the anxieties in postwar West Germany to allow them to reintegrate into society. But by capitalizing on these policies and beliefs, the perpetrators undermined the very legitimacy of these attitudes. As the Ulm trial made clear, the victimization narrative had become so pervasive and all-encompassing that even perpetrators had been able to lay claim to it. By

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<sup>27</sup> Atina Grossmann, *Jews, Germans, and Allies: Close Encounters in Occupied Germany* (Princeton: Princeton University Press, 2007).

<sup>28</sup> Recent scholarship has emphasized the ways that the state created – largely inadvertently – opportunities for Holocaust perpetrators to reintegrate and avoid prosecution. See, Klaus-Michael Mallmann, *Die Gestapo nach 1945: Karrieren, Konflikte, Konstruktionen* (Darmstadt: WBG, 2009); Christina Ullrich, *“Ich fühl mich nicht als Mörder!”: Die Integration von NS-Tätern in die Nachkriegsgesellschaft* (Darmstadt: WBG, 2010).



abusing these programs and misappropriating the label of victim, the Ulm defendants attacked the very credibility of the postwar state.<sup>29</sup>

A close study of the origins and evolution of the Ulm trial also reveals the extraordinarily complicated and manifold attitudes that existed in postwar society towards the Nazi past. Even the victimization narrative was neither monolithic nor did it hold a monopoly on opinions. Through the Ulm trial, a wide range of perspectives about the relationship between the Federal Republic and the Third Reich emerge. Perpetrators, survivors, scholars, federal officials, local bureaucrats, the media, and the public all brought differing expectations about to the Ulm trial. Thus this case study affords a more complicated picture of the memory culture in postwar West Germany than is possible in larger surveys of the time period. There was a remarkable dynamism of opinion during that long postwar decade, as ideals and beliefs about the new state and the old clashed over the direction of West Germany. The trial in Ulm became one important site of conflict in this debate.

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Third, the evolution of the Ulm trial reveals the transnational dimensions of West German attempts to confront the Nazi past. Events unique to West Germany shaped the particular outcome of the country's memorial culture, but the general willingness to critically engage the Nazi past was part of an interconnected transnational moment in Western Europe, North America, and Israel. West Germany's broad story shows a state unwilling or unable to seriously confront Nazi era crimes during the postwar decade, until a transformation occurred

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<sup>29</sup> In this regard, I draw on recent scholarship on postwar perpetrators done by Bernhard Brunner and Jürgen Matthäus; see, Bernhard Brunner, *Der Frankreich-Komplex: die nationalsozialistischen Verbrechen in Frankreich und die Justiz der Bundesrepublik Deutschland* (Göttingen: Wallstein, 2004), 149-180; Jürgen Matthäus, "No Ordinary Criminal!: Georg Heuser, Other Mass Murderers, and West German Justice," in *Atrocities on Trial: Historical Perspectives on the Politics of Prosecuting War Crimes*, ed. Patricia Heberer and Jürgen Matthäus (Lincoln: University of Nebraska Press, 2008), 187-210.

during the 1960s that prompted a more critical reassessment of the relationship between the Federal Republic and its predecessor. While this is often seen as a German story, I argue that this also occurred within a global context of chiefly Western states converging at nearly the same time on a Holocaust-centered interpretation of the Nazi era.

The West German arc resembled that of other countries after the war. In Israel, in order to project an aura of Israeli strength, the Holocaust and its survivors – generally interpreted at the time as symbols of Jewish weakness – were left out of public discourse during the 1950s.<sup>30</sup> It was only in the 1960s, beginning with the arrest of Adolf Eichmann and the consequent testimony of dozens of survivors at his much publicized trial in Jerusalem in 1961, that this situation began to reverse itself.<sup>31</sup> What Henry Rousso described in France as the “Vichy syndrome,” describes a similar process and timeframe for dealing with the Nazi era.<sup>32</sup> There too an initial unwillingness to examine the role of the Vichy government in Nazi crimes during the 1950s gave way by the end of the 1960s to an “obsession” with the Vichy regime and its role as a collaborator state. Peter Novick has noted that by the end of the 1960s Americans also began to discuss the Holocaust regularly, and it came to inform dominant understanding of World War II.<sup>33</sup> The 1960s thus marked the beginning of a cultural reappraisal of the Nazi period that occurred in various national contexts.

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<sup>30</sup> See, Tom Segev, *The Seventh Million: The Israelis and the Holocaust* (Holt Paperbacks, 2000); Hanna Yablonka, *The State of Israel Vs. Adolf Eichmann*, translated by Ora Cummings (New York: Schocken, 2004).

<sup>31</sup> Yablonka, *State of Israel*; Lipstadt, *The Eichmann Trial*. Annette Wieviorka has termed this shift after the Eichmann trial the “era of the witness.” Annette Wieviorka, *Era of the Witness*, translated by Jared Stark (Ithaca: Cornell University Press, 2006).

<sup>32</sup> Henry Rousso, *The Vichy Syndrome: History and Memory in France Since 1944*, translated by Arthur Goldhammer (Harvard University Press, 1994).

<sup>33</sup> Peter Novick, *The Holocaust in American Life* (Boston: Houghton Mifflin, 1999).

By setting West Germany alongside these examples, one can detect a broad pattern of states beginning a critical reevaluation of the past in the 1960s. The striking parallels across these instances has led some historians to suggest that national mourning mimicked human psychological responses to trauma – a period of amnesia leading to a return of memory. Through the 1980s, a dominant view of postwar West Germany’s relationship to the past emphasized the country’s “inability to mourn.” This concept, best articulated by Alexander and Margerete Mitscherlich in 1967, posited that postwar Germany was recovering from trauma and thus repressed the past in order to move forward.<sup>34</sup> Even Rousso’s concept of a “syndrome” suggested a psychological process of addressing the Nazi era.

Other historians have rejected the psychological implications of this view, but the notion that the postwar period engaged in a “silence” about the Holocaust has persisted.<sup>35</sup> To explain why this era of silence ended, historians have widely converged on important events, such as the Eichmann trial, that forced the international public to confront the historical reality of the Holocaust. Annette Wieviorka, for example, has recently looked at the role of the Holocaust survivor after 1945 and has argued that in response to the Eichmann trial, survivors became the symbolic carrier of Holocaust memory throughout North America, Western Europe, and Israel.<sup>36</sup> Other historians have similarly evaluated the impact of various

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<sup>34</sup> Alexander Mitscherlich and Margarete Mitscherlich, *Die Unfähigkeit zu trauern: Grundlagen kollektiven Verhaltens* (Munich: Piper, 1967).

<sup>35</sup> See David Wyman, *The World Reacts to the Holocaust* (Baltimore: Johns Hopkins Press, 1996); Novick, *The Holocaust in American Life*.

<sup>36</sup> Wieviorka, *Era of the Witness*.

carriers of memory – films, books, memorials, trials – on the formation of Holocaust-centered understandings of the past.<sup>37</sup>

While much of the transnational scholarship emphasizes very public confrontations with the past, I argue that key transnational aspects of the emergent memorial culture in West Germany occurred in the background and out of public view. Here I draw on a mounting critique of the “myth of silence” about the Holocaust in the postwar period.<sup>38</sup> While it remains true that public discussions of the Holocaust remained relatively muted prior to the 1960s throughout most of the West, this does not mean that no discussions were taking place. To the contrary, an important and increasingly influential group of actors – survivors, research institutes, Jewish rights organizations, and scholars – were actively engaging in the process of coming to terms with the Nazi era and the genocide of European Jews.<sup>39</sup> Far from being a lost decade of remembrance, it was during the 1950s that the groundwork was laid for the later emergence of a Holocaust-centered understanding of the Nazi era.<sup>40</sup>

This dimension of processing the Nazi era is essential for understanding how and why the Ulm trial emerged at a moment of seeming decline in West German interest over Nazi crimes prosecution. The trial succeeded because the investigation tapped into a growing

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<sup>37</sup> Kansteiner, *In Pursuit of German History*; Samuel Moyn, *A Holocaust Controversy: The Treblinka Affair in Postwar France* (Waltham, Mass.: Brandeis University Press, 2005); Jeffrey Herf, “The ‘Holocaust’ Reception in West Germany: Right, Center and Left,” *New German Critique*, 19 (Winter 1980), 30-52; Tom Dreisbach, “Transatlantic Broadcasts: Holocaust in America and West Germany,” *Penn History Review*, v. 16, issue 2 (Spring 2009), 76-97.

<sup>38</sup> For an introduction to these arguments, see, David Cesarani and Eric J. Sundquist, *After the Holocaust: Challenging the Myth of Silence* (New York: Routledge, 2012).

<sup>39</sup> Many organizations now well-known for their role in advancing Holocaust awareness, such as YIVO, Yad Vashem, and the Wiener Library were already operating in the postwar period.

<sup>40</sup> Hasia Diner has recently shown the broad discussions that took place throughout American society regarding the Holocaust prior to the 1960s. See, Hasia Diner, *We Remember with Reverence and Love: American Jews and the Myth of Silence after the Holocaust, 1945-1962* (New York: New York University Press, 2009).

network of individuals and organizations committed to a more historical appraisal of the Nazi era. Tucked away across the west, these pockets of activism had opportunities to engage one another and the public through events like the Ulm trial. As a forum for exchange, the Ulm trial provided an opportunity for the network to make its case for a critical assessment of the Holocaust. This suggests that central to the process of coming to terms with the past was the behind-the-scenes work of advocates actively constructing a network to push for a confrontation with the Nazi past and the persecution of Jews.

Considering the transnational dimensions of the Ulm trial also highlights the importance of the 1950s for understanding the emergence of a memorial culture in the 1960s. What emerged in the 1960s was not only a more critical approach to dealing with the Nazi past, but one that allowed victims a greater role in that process. In this sense, one sees through the Ulm trial an important moment of evolution towards this victim-centered memorial culture. Initial attempts to deal with Nazi crimes had largely relegated Jewish survivors to the sideline, in favor of using historical records and perpetrator testimony.<sup>41</sup> This changed by the 1960s, most prominently with the trial of Adolf Eichmann, but indications of a shift were already evident at the Ulm trial. By using an extensive network of organizations and resources, the investigators conducted a global search for Jewish survivors to testify. That they found none spoke only to the extensive nature of the Einsatzkommando Tilsit crimes, and not to a lack of effort on the investigators' part. Seen as a form of

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<sup>41</sup> Boaz Cohen describes the failed efforts of the World Jewish Congress to find a role for Jewish survivors in the Nuremberg proceedings, thus challenging Wieviorka's claims that the Eichmann trial witnessed the first effort to make Jewish suffering central to Nazi crimes prosecutions. See, Boaz Cohen, "Dr. Jacob Robinson, the Institute of Jewish Affairs and the Elusive Jewish Voice in Nuremberg," in *Holocaust and Justice: Representation & Historiography of the Holocaust in Post-War Trials*, edited by David Bankier and Dan Michman (Jerusalem: Yad Vashem, 2010).

transitional justice, the Ulm trial attempted to create a forum that would allow the victims to confront their perpetrators directly.<sup>42</sup>

Thus many of the major transitions in West German attitudes towards the Nazi past were underway during the Ulm trial. The emergence of a more self-critical response to the Nazi era towards the end of the 1950s directly resulted from the hard work of a vocal minority during the postwar period advocating for such a response. The Ulm trial was a crucial moment in this process. These disparate actors, their voices relegated to the wilderness for much of the postwar period, began to speak with one another, finding strength in their common causes. The Ulm trial brought together Jewish rights activists, Holocaust survivor networks, activist prosecutors, historians, archivists, concerned citizens, and leading intellectuals. The trial flourished due to their coordinated efforts. By constructing a transnational network engaged in the work of coming to terms with the Nazi past, the Ulm trial contributed to a far larger process that would soon burst onto the public stage across much of the world. For several months in the summer of 1958, Ulm became the epicenter in this expanding universe of Holocaust memorial culture.

## Sources

This dissertation draws on a diverse array of primary source material. The core documentation comes from the Staatsarchiv Ludwigsburg in Germany. This archive contains

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<sup>42</sup> The importance of such symbolic confrontations and the legitimacy they lend to the victims' voices, which were silenced during the era of oppression, has long been recognized as a key component of transitional justice. See, for example, The Truth and Reconciliation Commission in South Africa, for example, had such encounters as their key aim. See, Alex Boraine, "Truth and Reconciliation Commission in South Africa – Amesty: The Price of Peace," in *Retribution and Reparation in the Transition to Democracy*, edited by Jon Elster (Cambridge: Cambridge University Press, 2006), 299-316. See also, Young-Hee Shim, "From Silence to Testimony: The Role of Legal Institutions in the Restoration of the Collective Memories of Korean 'Comfort Women,'" in *Legal Institutions and Collective Memories*, ed. by Susanne Karstedt (Oxford: Hart Publishing, 2009) 135-157.

all major trial records beginning with the investigation of Bernhard Fischer-Schweder in 1955 and continues through the trial and into the appeals of the verdict in the 1960s. They provide the most precise day-by-day account of the evolution of the case through its various phases.

Taking this narrow story and placing it into the larger legal, cultural, and transnational histories of coming to terms with the Nazi past required consulting a much wider group of sources. Other city, state, and federal archives in West Germany provided insights into the culture of the Ulm prosecutor's office, the Baden-Württemberg state judiciary, and the Federal Ministry of Justice. These various levels of government often had starkly different takes on the investigation and trial underway in Ulm, and their internal correspondence is necessary for understanding the internal dynamics of the justice system in West Germany.

To gauge public response to the trial, I consulted a wide array of media. Local, regional, national, and international newspapers all covered the case, as did radio outlets. This coverage not only highlights the way West Germans widely interpreted the trial, but also provides a detailed chronology of the four-month trial, as no transcriptions of the trial itself exist. Finally, an archived collection of over one hundred letters sent in by citizens interested in the Ulm trial reveal a striking diversity of personal opinions over the nature of the case.

Because much of this story involves individuals – perpetrators, prosecutors, officials – many of the sources deal with these individuals' backgrounds and lives. First, personnel records of various state officials from German archives grant insights into the lead investigators' and prosecutors' professional lives. Second, the microfilmed records of the

Berlin Document Center in Washington, DC as well as many postwar investigation statements provide necessary information on the wartime and postwar lives of the Ulm defendants. Finally, I conducted a series of oral history interviews with three individuals involved in the trial: a lead investigator, an attorney who represented one of the defendants, and a clerk in the Ulm courthouse.<sup>43</sup> Their perspectives afford essential information the climate of the courtroom, the challenges of the case, and the personalities of the main actors. Numerous other personal records, such as defendants' correspondence and the journal entries from the trial of another defense attorney, have been used in an attempt to understand the individuals involved in the trial.

To uncover the transnational web the Ulm trial spun, research at various organization archives helped piece together a global paper trail. Beginning in the city archive of Stuttgart, which holds the records of the leading Jewish rights organization in the city, a set of correspondence leading to similar groups in Israel, Great Britain, France, and the United States emerged. Through research at the Yad Vashem archive in Jerusalem and the Wiener Library in London, it has been possible to find the missing half of much of this correspondence. Recently declassified American intelligence reports also draw attention to the perceived global threat of resurgent Nazism in the postwar period. Since several of those involved in the Ulm trial fostered this far-right sentiment, these records contribute to understanding the mood of paranoia and uncertainty that pervaded postwar society.

Through this wide assortment of primary sources, as well as extensive secondary scholarship, this dissertation reveals a plurality of responses to the trial and to the Nazi past at various levels of government and in different pockets of society. Much of this archival

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<sup>43</sup> Carried out with approval by the University of North Carolina Institutional Review Board (IRB Project #11-0256).



information has not been researched before. While most contemporaries saw the Ulm trial as a significant moment, few could agree at the time on what it actually signified. The archival record portrays a society rife with internal divisions, conflicting priorities, and anxieties over the future of the state.

## **Organization**

The dissertation has a four-part structure. These sections have a temporal structure mirroring the evolution of the trial: Reintegration, Investigation, Trial, and Legacy. This division also allows for different sections to address different subcultures within West Germany. The first part focuses on perpetrators, the second on investigators and prosecutors, and the fourth on government officials and the public. The exception is part three, which examines the trial as a confluence of all these groups. The trial became the point of intersection in the stories explored in the other sections.

Part one explores the postwar lives of the Einsatzkommando Tilsit perpetrators after 1945 to illuminate dominant attitudes about the Nazi past during the initial postwar decade. These perpetrators and their choices functioned like barometers for measuring the changing attitudes towards Nazi crimes and ongoing prosecutions in the postwar period. They attempted to reintegrate in ways that they felt would diminish any questions about their past, thus their choices reveal the evolving contours of Holocaust consciousness in West Germany. These perpetrators faced a surprisingly open set of possibilities for reintegration, and none faced any prosecution for their role in the Holocaust in Lithuania prior to the Ulm investigation. Their ability to avoid detection for these murders reveals the general lack of awareness that permeated society and state regarding crimes of the Holocaust in Eastern

Europe. In addition to the ten future defendants at the trial, the section includes other members of Einsatzkommando Tilsit who avoided prosecution in Ulm in order to present a wider perspective on the successes and failures of perpetrator reintegration. Though the perpetrators carved their own individual paths towards reintegration, their responses generally fell along a spectrum of five possible responses: flight from Germany, concealment of the past through extralegal means (i.e. using false identification), resumption of prewar life and routines, continued adherence to the Nazi cause, and suicide.

Part two, consisting of two chapters, examines the three-year investigation that ended with the trial of ten Einsatzkommando Tilsit members in 1958. Primarily concerned with the internal evolution of this investigation, this section focuses on the culture of the West German judiciary in the mid-1950s and the tactics at its disposal for investigating fifteen year old crimes that occurred behind the Iron Curtain in Lithuania. Chapter 2 analyzes the first stage of this investigation, when the case proceeded on the directives of the Ulm prosecutor's office, without the intervention of higher government offices, and with Bernhard Fischer-Schweder as the sole target of the investigation. This first phase from 1955-1956 was a typical example of the minimal effort afforded to most 1950s Nazi crimes cases. The prosecutor's office in Ulm allocated few resources to the investigation and based their evidence on perpetrator testimony. The lead investigators lacked any experience with Nazi crimes cases, and consequently perpetrators were largely taken at their word, which proved extraordinarily unreliable and mendacious.

The second phase of the trial, explored in part three, began with the intervention of the state judiciary in 1956 and represented a revolution in the prosecution of Nazi crimes. Now, an entire "crime complex" was the target of the investigation, which led to ten

indictments. Substantial resources allowed investigators and prosecutors to utilize all potential information at their disposal, and a historical approach to the investigation based on war era documentation created a massive body of evidence against the perpetrators. The investigators worked with an international network of organizations, survivors and witnesses, archives, and historians to build a comprehensive case against Einsatzkommando Tilsit. Contrasting these two periods of the investigation explains how and why the Ulm trial emerged as the largest Nazi crimes case to that point prosecuted in a West German court. The contrast also highlights the distinctions between Nazi crimes cases investigated by conventional 1950s standards and those that adopted a more sustained, contextual, and historical approach to Nazi criminality in the wake of the Ulm trial.

Part three blends the perpetrator and prosecutor stories of the first two sections through a focus on the four-month trial in Ulm in 1958. This trial also added new actors to the story, such as the defense attorneys, the judges and jury, the media, and the public. This section therefore addresses the interactions among these in the Ulm courtroom and their attempts to shape and understand its outcome. While the ostensible goal of the trial was to arrive at a verdict in the trial of these ten men, all present also recognized the symbolic importance of this case in defining the future of West Germany's response to the Nazi past. Defense attorneys made the case that such trials undermined the country's ability to move forward and address the needs of the present, while prosecutors argued that the trial constituted proof of the state's inadequate response to the past and therefore the need to devote more resources and energy to dealing with Nazi crimes. Media outlets conversely portrayed the defendants according to well-worn tropes of Nazi radicals and sadists. Central to the views of the Ulm trial was therefore a longer-standing debate over Nazi criminality,

which considered perpetrators as unwilling participants in Hitler's crimes, legally culpable criminals, or bestial murderers.

In the final section, the complicated legacy of the Ulm trial is examined through an analysis of the reactions of the public and the West German government to the verdict. Through an assembly of newspaper articles and a trove of letters to the prosecutor's office from an assortment of citizens, the impact of the trial on the West German public in the form of fostering the demand for a more intensive dealing with the Nazi past is seen as questionable. Though a wide array of views were expressed, few citizens suggested that the trial made them think differently about their relationship to Nazi era crimes. To the contrary, most interpreted the Ulm trial according to their preconceived ideas and expectations about postwar justice and Nazi crimes. The true impact and legacy of the Ulm trial must therefore be seen through an analysis of the debates it sparked within the halls of the West German judiciary. With the Ulm prosecutors pushing an agenda for more investigations, the West German state ministers agreed to create the Zentrale Stelle to coordinate future cases. To head the new agency, the ministers appointed the lead prosecutor of the trial and its investigative team. The legacy of the Ulm trial was therefore not in creating broad-based popular support for a new approach to Nazi crimes prosecutions, but rather in fostering a process of consensus-building within the state judiciaries which only later spread throughout much of the West German public.

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"It appears," the early modern philosopher G.W. Leibniz once stated, "that in the smallest particle of matter there is a world of creatures, living beings, animals, entelechies, souls... Thus there is nothing fallow, nothing sterile, nothing dead in the universe, no chaos,

no confusion save in appearance, somewhat as it might appear to be in a pond at a distance.”<sup>44</sup> The 1958 Ulm *Einsatzkommando* trial may be a small particle – a pond in the distance – in the broader history of postwar Europe, but upon closer inspection it yields a world of meanings. Through the study of the Ulm trial, one sees the complicated society of 1950s West Germany. Victims, perpetrators, investigators, prosecutors, public, media, and state and federal officials all occupied a place in this trial and all brought a different perspective to it. By exploring the histories of these groups through the Ulm trial, the dissertation tells a broader story about conflicting and evolving West German attitudes towards the Nazi past.

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<sup>44</sup> Leibniz, *Monadology*, translated by Robert Latta, accessed September 2012, <http://philosophy.eserver.org/leibniz-monadology.txt>.

### III. Reintegration: A Perpetrator's History of Postwar West Germany

*When we heard the shocking reports after 1945 of the concentration camps, when we learned through the Nuremberg trials of the unimaginable crimes conceived of and committed by Germans who led the Reich for over a decade, we did not want to believe these things. We did not want it to be true. We barricaded ourselves behind the belief that that we were the vanquished people who had been burdened with everything...And today? What is the reason today why a large part of the population doesn't want to hear anything more? It is the shame we all feel that sons of our nation were capable of such deeds. One might counter, "We see that, but why then is this trial first being carried out today?" This question can only be answered if one returns to the year 1945.*

*– Erwin Schüle, closing statements of the 1958 Ulm Einsatzkommando trial*

Erich Frohwann stood atop a hill on the outskirts of Salzburg and looked out across the ruined city. Over the previous months he had been part of a massive German retreat in the face of the Russian invasion. After serving in Pressburg (present day Bratislava), he was forced further west in May 1945, across Austria, until he arrived in Salzburg. Now, on July 18, 1945, the forty-three year old looked out across the failure and collapse of the Third Reich, manifested as smoldering rubble and privation, and bleakly considered his options for the future.<sup>1</sup>

Just a few years earlier, Frohwann had been an ascendant member of the rapidly expanding Nazi empire.<sup>2</sup> Young, intelligent, married, and Aryan, Frohwann saw before him endless possibilities in Germany under Hitler. In 1937, the Gleiwitz native joined the Nazi Party and SS. With a doctorate in law, he was among the many highly-educated young

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<sup>1</sup> Formanek, Republik Österreich, Bundesministerium für Inneres, Kriminalpolizeiliche Abteilung to the Bundeskriminalamt in Wiesbaden (5 July 1956), EL 322/II, Bü 3, SL.

<sup>2</sup> Personnel card, Dr. Erich Frohwann (ca. 1942), SS Officers, Microfilm Publication A3343, Series SSO, Roll 227, Berlin Document Center, NARA.

officers recruited into service. Although he received no SS officer training, Frohwann was instated initially as an Untersturmführer. By 1941, he had become Kriminalkommissar and leader of Grenzpolizeikommissariat (GPK) Memel. This office was organized under the larger office of the Stapostelle Tilsit, which coordinated Nazi police efforts along a significant portion of the German-Lithuanian border. As such, Frohwann and his office constituted the frontline of the Nazi state on the eve of war with Soviet Russia.

In the wake of the German invasion of the Soviet Union, Frohwann participated in the actions that would distinguish him within the Nazi ranks and define his postwar life. As head of GPK Memel, he was among the small group of Nazi officials and department heads who authorized and carried out the executions of Jewish Lithuanians in the town of Garsden, across the border from Frohwann's post in Memel.<sup>3</sup> Under his orders, members of GPK Memel arrested and interned all Jews of Garsden. They systematically conducted a house-by-house search for Jewish inhabitants and guarded the victims on the day of the shooting. Frohwann also suggested to his superiors a date and location for these civilians to be executed. This essential involvement in the Garsden executions made him an integral member of the newly formed Einsatzkommando Tilsit. Over the coming months, Frohwann involved himself in numerous subsequent massacres. Within a year, he had been promoted to Hauptsturmführer.

Four years later, the actions that had distinguished him as an earnest and devoted member of the Nazi regime now marked him as a war criminal. With a strong understanding of both law and the criminality of his involvement with the Third Reich, this former member of the Nazi elite found himself with few postwar options. Since June 1945, he scraped out a

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<sup>3</sup> Urteil, EL 322/II, Bü 20, SL.

living as a salesman in Salzburg, hoping to lay low and avoid the Allied sweeps for Nazis occurring within the occupied territories. Already there was talk of the horrors of the concentration camps and rumors of massive war crimes trials. His hometown of Gleiwitz now lay on Polish soil and the threat of retributive justice prevented any thoughts of a return. Though married and young, the dejected Holocaust perpetrator believed he faced long odds for a successful postwar life. Like Hitler, Himmler, Goebbels, and others before him, Frohwann refused to allow the Allies to prosecute him for his crimes.<sup>4</sup> On the morning of July 18, 1945, at the peak of the hill in Hallwang, Frohwann secured one end of a rope to a tree, the other around his neck, and took his life.<sup>5</sup>

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For the leaders of Einsatzkommando Tilsit, uncertainty loomed on the postwar horizon. Most of these men had spent entire careers in the service of the Third Reich. As Holocaust perpetrators, many rightly feared prosecution at the hands of the Allies. Regime change signaled not just possible prosecution, but also economic hardship as they had now lost their positions and many their homes. Some, like Frohwann, could not imagine a viable way forward and preferred suicide. His decision was not isolated; at least four other Einsatzkommando Tilsit members committed suicide in the postwar period.<sup>6</sup> The majority, though, attempted a new life after 1945. Since their participation in the murders of Lithuanian Jews in the summer of 1941, the officers had pursued divergent paths. Most

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<sup>4</sup> As Ian Kershaw has argued, suicide became categorized by the Nazis at the end of the war as something “manly” that could preserve some element of victory in defeat. See, Ian Kershaw, *The End: Hitler's Germany, 1944-45* (New York: Allen Lane, 2011), 355-357.

<sup>5</sup> Sterbeurkunde (Hallwang, 28 June 1956), EL 322/II, Bü 3, SL.

<sup>6</sup> One (Wilhelm Rediess) killed himself at the very end of the war, as Frohwann had, while the other three (Arthur Gennat, Willi Artschwager, and Paul Gerber) did so only once they found themselves under investigation in the mid-1950s.



moved to different cities and held other posts after 1941, and by the end of the war they faced hard choices about how best to reintegrate into society.

Even though they generally encountered similar situations after 1945, no two perpetrators shared the same postwar experiences. They interpreted their circumstances in a wide variety of ways. Those who believed that they faced likely prosecution after the war went to great lengths to obscure their past, to forge new identities, to escape Germany, or even to take their own lives. Others, however, had no such anxieties and attempted to resume their prewar lives as best they could, as though nothing had ever happened. As a result, the former perpetrators of Einsatzkommando Tilsit constantly probed at the margins of acceptability in postwar society, eagerly searching out opportunities, raising their heads and surveying the landscape in search of stable employment and safe environs. This created a panoply of postwar responses that was highly dynamic and changed in response to the evolution of political, social, and legal priorities in postwar German life.

Woven throughout this chapter like the perpetrators throughout Europe in 1945 are the varied stories of the leaders of Einsatzkommando Tilsit as they reintegrated into postwar Germany.<sup>7</sup> This chapter staggers their biographies in a loosely chronological framework in order to focus on moments of interaction with postwar authorities – ranging from the Allies, denazification boards, the West German government, to employers.<sup>8</sup> How the perpetrators engaged with or avoided these authorities provides insight into how they interpreted postwar attitudes towards the Nazi past. Assuming each sought self-preservation and actively avoided

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<sup>7</sup> In using the perpetrators' biographies to tell a wider history of postwar West Germany, I draw on recent scholarship by Bernhard Brunner, Jürgen Matthäus, and Christina Ullrich. See, Brunner, *Frankreich-Komplex*; Matthäus, "No Ordinary Criminal," *Atrocities on Trial*; and Ullrich, *Integration*.

<sup>8</sup> I follow a general periodization established by Christina Ullrich regarding postwar reintegration. She described three periods: occupation from 1945-49, reintegration during the 1950s, and the end of reintegration starting at the end of the 1950s. Ullrich, *Integration*, introduction.

prosecution, then the choices they made, the language they used, and the lives they created for themselves can all be interpreted as a manifestation of what they believed to be acceptable behavior in Germany after 1945. These were Holocaust perpetrators who masqueraded after the war as ordinary civilians. Their success depended on their ability to accurately read shifting attitudes towards the Nazi past and camouflage themselves accordingly. They hid behind masks of respectability, and during the postwar decade these disguises were very convincing.

Because of the different paths they chose, a history of postwar Germany told from the perspective of the perpetrators touches on a wide array of familiar themes but casts them in a new light. Many of the tools West Germans used to move past the Nazi era also served to benefit former Nazis. Political goals and social attitudes could be contorted and put to the use of Holocaust perpetrators eager to avoid prosecution under the Allies, the denazification boards, or the West German state. There were certain notes that perpetrators could strike that played to the sensibilities of the public. Here was a nascent state threatened by the Soviets in the east, and eager to oppose any revival of fascism. Germans wanted to repair their cities and welcome their husbands, fathers, and brothers home. They worried about the fate of the POWs still held by the Soviets into the 1950s, and they expressed sympathy for those ethnic Germans forced from their homes in Eastern Europe by revanchist locals. These were dominant anxieties among the German public after 1945. Within these conditions, anyone could be a potential victim, and very few were seen as perpetrators. To understand how Holocaust perpetrators could escape justice is therefore to understand how they could transform themselves into victims.

## The Zero Hour

The Elbe River follows a twisted path northwest from its origins in the Krkonoše Mountains of Central Europe through Bohemia and the plains of central Germany before emptying into the North Sea. Not quite halfway through its journey, the waters meander past the German city Schönebeck, a few miles south of Magdeburg. Since World War I, the Elbebrücke, an imposing Jugendstil bridge with rounded steel tresses, had arched across this two-hundred yard span of the Elbe, connecting Schönebeck to the east. During the desperate defense of the Third Reich, German troops destroyed the bridge, leaving the slow waters of the Elbe not crossable in Schönebeck, but the city itself exposed to the American forces.

Hans-Joachim Böhme approached the Elbe on foot from the east in early May 1945, intending to cross into Schönebeck.<sup>9</sup> There he hoped to find his mother, who had fled from Magdeburg to stay with her brother during the aerial raids and military assault. The twisted heap of the Elbebrücke, though, forced Böhme north. As he continued to follow the river, he avoided his hometown of Magdeburg altogether, as the city swarmed with the U.S. Army. Eventually, finding few opportunities to cross the Elbe without risking exposure to foreign troops, Böhme decided to risk the wide cold waters. Though not a particularly difficult swim, for an individual with chronic leg pain this would have been a desperate decision.<sup>10</sup>

On one side of the waters stood Böhme, a thirty-six year old member of the Nazi elite. In the Nazi Party since 1933, he joined the SS in 1938. During the 1930s, he trained in law and, upon passing the bar in 1936, began to work for the state. He had been a model Nazi; committed, loyal, and dependable, Böhme steadily ascended the Nazi hierarchy. From

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<sup>9</sup> Statement by Hans-Joachim Böhme (17 October 1956, Hohenasperg), EL 322/II, Bü 4, SL.

<sup>10</sup> Böhme had been injured in the leg in 1943, when he was posted farther east. Statement by Hans-Joachim Böhme (17 October 1956, Hohenasperg), EL 322/II, Bü 4, SL.

1938 to 1940, he worked in the Gestapo in Kiel, before transferring to a post as leader of the Stapo Tilsit office in 1940, where he remained until 1943. In that post, he became head of the unit Einsatzkommando Tilsit, which carried out the massacres of Jews and suspected communists along the Lithuanian border in the summer and fall of 1941. He ran afoul of the state just once, in 1943, when he took a service vehicle without permission to attend his father's funeral.<sup>11</sup> In late 1943, Böhme wounded his leg in battle, and he spent nearly six months recovering.<sup>12</sup> By mid-1944 he became head of Einsatzkommando 3 before his transfer to the Reichssicherheitshauptamt in Berlin later that year. By the end of the war he had achieved the rank of SS-Standartenführer, the highest rank below general within the organization.

At some point during his swim across the Elbe, Böhme shed his Nazi identity. When he emerged on its west bank, he had transformed himself from an SS *Übermensch* into a penniless Wehrmacht veteran from the east. He soon made his way back south to Schönebeck, but his mother had already moved on. Indeed, much of the population along that stretch of the river had begun to relocate. Although the Americans had invaded and occupied the area, postwar decisions already dictated that it would fall into the Soviet sphere. Reading the political terrain, Böhme recognized that his best opportunity to avoid detection for his crimes now lay farther west, away from the Soviets and the lands in which he had made his career. He again followed the Elbe northwest to the British controlled city of Lüneburg.

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<sup>11</sup> RSHA ID2 to Reichsführer-SS and SS-Personalhauptamt (2 June 1943), SS Officers, Microfilm Publication A3343, Series SSO, Roll 83, Berlin Document Center, NARA.

<sup>12</sup> Böhme to das Personalhauptamt Berlin-Charlottenberg (10 June 1944), SS Officers, Microfilm Publication A3343, Series SSO, Roll 83, Berlin Document Center, NARA.

Outside Lüneburg, in the small town of Reinstorf, Böhme began to establish his new identity. The area of the Lüneburg Heath had long been an established Nazi stronghold, an agrarian bastion of fascism in northern Germany. The psychiatric hospital there had carried out euthanasia actions against children, and thousands of prisoners passed through the Lüneburg train station en route to Belsen concentration camp.<sup>13</sup> A Nazi seeking safe harbor could count on finding sympathetic locals in Lüneburg. In Reinstorf, Böhme met a farmer who agreed to take him on as a farmhand. Böhme gained the farmer's favor with the "cover story that I had been a soldier who had fled from a postwar camp and could find no work in the cities because I had no release papers."<sup>14</sup> Böhme found refuge in the home of a rural farmer by appealing to the widespread belief that ordinary Wehrmacht soldiers were untainted by the crimes of the SS.<sup>15</sup> The farmer likely felt that Böhme's internment by the Allies was a clear demonstration of victor's justice and thereby facilitated his efforts to avoid unjust postwar imprisonment.

Manipulating the sensibilities of a northern farmer may have earned Böhme food and shelter, but it did not solve the problem of avoiding the Allies. The farmer's willingness to aid did not extend to outright harboring of a fugitive, and Böhme was required to register with the Reinstorf town hall. He much later boasted to authorities that "I was registered in

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<sup>13</sup> Inge Marszolek, "Coverage of the Bergen-Belsen Trial and the Auschwitz Trial in the German Nordwestdeutscher Rundfunk: The Reports of Axel Eggelbrecht," in *Holocaust and Justice*, 138-139.

<sup>14</sup> Statement by Hans-Joachim Böhme (17 October 1956, Hohenasperg), EL 322/II, Bü 4, SL.

<sup>15</sup> The "myth of the clean Wehrmacht" extended well beyond the initial postwar years, as a public outcry erupted in Germany in the 1990s over an exhibit detailing Wehrmacht complicity in the Holocaust. The desire to believe that at least the soldiers had performed honorably, even if the war was filled with horrors, has proven a difficult hurdle for many in Germany to overcome. This myth was not limited to the Germans, however, as even in the postwar period prominent Allied leaders, such as Eisenhower, spoke about the bravery of the ordinary German soldier. See Ronald Smelser, *The Myth of the Eastern Front: The Nazi-Soviet War in American Society* (New York: Cambridge University Press, 2008); Waitman Beorn, *Descent into Darkness: The Local Participation of the Wehrmacht in the Holocaust in Belarus, 1941-2* (Dissertation, UNC-Chapel Hill, 2011), 7-11.

Reinstorf under my correct name and particulars as early as August 1945,” though this only tells part of the story.<sup>16</sup> He did register with his correct name, but he altered his particulars slightly. From his days in the Gestapo in Kiel, Böhme still had a false passport that identified him as “Dr. Böhme, Master of Business Administration.” Böhme had no such training. This passport, however, allowed him to register with the office without alerting the Allies to his true background in the Nazi state. A number of questions might have surfaced in the Reinstorf town hall about this application: Why would someone with a passport from Kiel register in Reinstorf claiming to be a refugee from the east? Why would he have only a single form of identification? Why would a master of business administration want to work as a hired field laborer? But amidst the chaotic demographic reshuffling in postwar Germany, these questions were not raised, and Böhme’s passport made possible his reentry into society without any time in a postwar camp.

The disorder inherent at all levels of German society in 1945 that Böhme seized upon benefitted swaths of prominent Nazis. Just in the area of the Lüneberg Heath, where Böhme had settled, two architects of the Holocaust had tried their hands at duping the occupiers in May 1945. Heinrich Himmler had been captured there towards the end of the month, attempting to pass for a lesser officer.<sup>17</sup> More successfully, Adolf Eichmann had escaped the U.S. Army and hidden out under an assumed identity, working as a woodman in a small village barely an hour southwest of Böhme.<sup>18</sup> If these top-level, extremely well-known

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<sup>16</sup> Statement by Hans-Joachim Böhme (17 October 1956, Hohenasperg), EL 322/II, Bü 4, SL.

<sup>17</sup> Peter Padfield, *Himmler: Reichsführer-SS* (London: Macmillan, 1990), 608-612.

<sup>18</sup> David Cesarani, *Eichmann: His Life and Crimes* (London: William Heinemann, 2004), 204-205.

individuals could contemplate such bold deceptions, then the opportunities for less prominent perpetrators, such as Böhme, to evade the authorities were legion.

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A significant dimension of Böhme's postwar reintegration lay in his ability to insert himself into the very real problem confronting Germany after 1945 concerning the massive numbers of refugees from the east. Though Böhme created this fictional biography of himself, for many Germans this constituted their postwar reality. An estimated 12 million *Volksdeutsche* (ethnic Germans) and East Prussians were forced from their homes in Eastern Europe after the war. An estimated 700,000 of them died during the process, as Eastern Europeans directed all their anti-Nazi aggression on the ethnic Germans in their midst.<sup>19</sup> Although many in the West turned a blind eye to this ethnic cleansing, the expellees became a symbol of the victim status that many Germans asserted for themselves.<sup>20</sup> From this perspective, for twelve years they had suffered under Hitler, and now, as a consequence of his war, many Germans had lost not only their homes but their very homelands. Their experiences fueled a wider narrative of victimization that emerged after 1945, and these refugees stood in for the suffering of all Germans.<sup>21</sup>

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<sup>19</sup> Timothy Snyder arrives at this estimate by looking at the entire exodus of Germans from Eastern Europe from 1943-1947. See, Timothy Snyder, *Bloodlands: Europe between Hitler and Stalin* (New York: Basic Books, 2010), 320-322/II, 331-333. By contrast, Norman Naimark has a very high-end estimate of 2.5 million German deaths, though both he and Snyder converge on a number of 12 million overall German refugees. See Norman Naimark, *Ethnic Cleansing in Twentieth Century Europe* (Seattle: University of Washington, 1998), 21-22.

<sup>20</sup> The aversion many outside Germany feel for any discussion of "German suffering" has meant that the expulsions have been afforded at best a small place in contemporary understandings of the aftermath of World War II. Recent work by Alfred-Maurice de Zayas has characterized this response as a missed opportunity for societies to consider more fully the multifold legacies of that conflict. See, Alfred-Maurice de Zayas, *A Terrible Revenge: The Ethnic Cleansing of the East European Germans* (New York: Palgrave Macmillan, 2006).

<sup>21</sup> Moeller, *War Stories*.

The status afforded to German refugees and expellees became a form of social amnesty, as many in society were willing to ignore these individuals' pasts because of their symbolic importance as victims. Such an attitude directly benefitted many members of Einsatzkommando Tilsit who were natives of now foreign lands. They came to occupied Germany legitimately as refugees and found that conditions there made it easy for them to avoid significant questions about their pasts. Of the ten men later put on trial in Ulm, five had been born in German territories lost after 1945. Many others not tried at Ulm, such as Frohwann, had spent their prewar lives in lands that became Poland or the Soviet Union.

As a native of Tilsit, Edwin Sakuth could not return to his prewar home.<sup>22</sup> Tilsit had been an important city in East Prussia for centuries until it fell into Soviet control in 1945. With the exception of a year spent in Canada in 1930, he had lived only in Tilsit prior to the war. He joined the Nazi Party early, in 1931, and six years later took a position in the city's SD office.<sup>23</sup> By 1941, Sakuth was heading the Memel branch of SD Tilsit, which put him into contact with the leadership of Einsatzkommando Tilsit. As the war effort crumbled, Sakuth and his family had no choice but to abandon Tilsit. His wife and children fled ahead of him to western Germany. As with Böhme, Sakuth crossed the Elbe at war's end and reunited with his family in the Harz region. Although sentenced in 1947 to two years imprisonment (he would serve seven months) by a denazification panel, Sakuth's reintegration was free from major difficulties. His denazification result was standard due to

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<sup>22</sup> Urteil, EL 322/II, Bü 20, SL.

<sup>23</sup> Edwin Sakuth, SS Officers, Microfilm Publication A3343, Series SSO, Roll 59B, Berlin Document Center, NARA.



his SD membership, and no investigation took place into his wartime record.<sup>24</sup> The Einsatzkommando Tilsit murders remained a secret of the east.

Werner Kreuzmann's postwar story closely mirrored Sakuth's. Born in 1909 in the East Prussian capital of Königsberg, Kreuzmann spent the prewar years studying law.<sup>25</sup> He joined the Nazi party and SA early on, which allowed his police career to flourish.<sup>26</sup> By 1939, he was working for the Königsberg state police at the Jewish affairs desk. In 1941, he transferred to the farther perimeters of the German state and became the head of Abteilung II in Stapo Tilsit, where he oversaw all issues related to enemies of the state, foremost among them Jews and communists. He not only played an organizational role in the Garsden executions, but on several occasions during that summer he acted as Böhme's representative and personally authorized several Einsatzkommando Tilsit shootings. Pushed west as the war effort collapsed, Kreuzmann was arrested in spring 1945 by the British and held in a camp in Fallingbostal until 1948. Thereafter, a denazification court sentenced him to two and a half years for membership in criminal organizations, but applied this as time served and released Kreuzmann into West Germany. He returned to his family, who had fled to Westerdeistich in the far north, and was able to reintegrate without any investigation into his past.<sup>27</sup>

Kreuzmann and Sakuth's experiences were typical for many of the members of Einsatzkommando Tilsit who became refugees in the wake of 1945. For these perpetrators, the experience of the refugee combined loss with opportunity. Though forced out of their

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<sup>24</sup> Statement by Edwin Sakuth (Northeim, 8 December 1956), EL 322/II, Bü 6, SL.

<sup>25</sup> Urteil, EL 322/II, Bü 20, SL.

<sup>26</sup> Werner Kreuzmann, SS Officers, Microfilm Publication A3343, Series SSO, Roll 214A, Berlin Document Center, NARA.

<sup>27</sup> Statement by Werner Kreuzmann (Itzehoe, 2 November 1956), EL 322/II, Bü 9, SL.

homes, they encountered the Allies and denazification boards unencumbered. Their memberships in the Nazi party or SS could still result in sentencing by a denazification court, but the courts widely lacked the capacity to make serious and sustained inquiries into an individual's wartime behavior. Many police records from cities in the east had been destroyed during the Nazi retreat, leaving few means for denazification authorities to disprove the stories these expellees told of their service. Meanwhile, because the widespread refugee crisis became transmuted into a fictive victimization status for many Germans, these perpetrators could take advantage of these misguided sympathies and fade into the ether of society.

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Not all refugees in Germany were German, nor were all Einsatzkommando Tilsit members. One group eager to flee was those who had allied themselves with the Nazi occupiers. These willing locals provided the cooperation that so greatly facilitated the extermination of Jews in Eastern Europe. When Nazis entered foreign areas, they frequently lacked the linguistic tools and the cultural knowledge to identify and separate the Jewish inhabitants of a town. Volunteers readily emerged throughout the occupied Nazi empire to help in this task. Though rarely pro-Nazi, these individuals were typically stridently anti-communist and anti-Semitic. Ardent believers in the myth of Judeo-Bolshevism, civilians throughout Eastern European communities became eager perpetrators of the Holocaust.

Einsatzkommando Tilsit had relied on such auxiliaries and local support throughout its operations in the summer and fall of 1941. One of the most prominent collaborating Lithuanians volunteered not only himself but his police force to assist in the arrest and execution of Jewish civilians. Pranas Lukys took command of the Lithuanian secret police

force in the border town of Krottingen immediately after the German invasion in June 1941. The day after the Garsden execution, the newly formed Einsatzkommando Tilsit unit arrived in Krottingen for a similar execution. Lukys assisted in identifying the Jewish residents of the town. Over the coming months, Einsatzkommando Tilsit returned to Krottingen for five additional mass executions, and Lukys volunteered to assist on all but two occasions.<sup>28</sup>

Lukys' support for the Nazi genocide of Europe's Jews stemmed from a complicated blend of Lithuanian nationalism, anti-Semitism, and anti-communism. In 1900, when Lukys was born, the state of Lithuania did not exist; its lands lay predominantly under Tsarist Russian control, with the exception of a small strip that included Memel belonging to the Germans. In the wake of World War I, these pieces were granted to the new Lithuanian state, which then fought a series of wars to preserve its independence from 1918 to 1920 against Poland and Russia. As a nineteen year old, Lukys was seized by the spirit of nationalism and joined the campaigns against the Poles and Russians. From 1926 to 1940, he headed the security police in Krottingen, until the Soviet invasion forced him to flee to German territory. Working in a labor camp near Tilsit, Lukys began to contact the Nazi authorities and made clear his interest in finding employment under the Third Reich. On June 21, 1941, he and a group of former Lithuanian police were picked up and driven to Memel. There, Nazi authorities informed them that war was imminent and that they would be appointed to replace the Soviet-backed Lithuanian police along the border. Two days later, Lukys found himself again at the helm of the Krottingen police, able to exact revenge for his exile on the communists and Jews he held responsible.<sup>29</sup>

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<sup>28</sup> Urteil, EL 322/II, Bü 20, SL.

<sup>29</sup> Statement by Pranas Lukys (Augsburg 21 February 1957), EL 322/II, Bü 10, SL.

Despite his willful participation in the murder of Jews and communists, Lukys was no Nazi ideologue. He cooperated with the Germans when they shared a common foe, but he remained a Lithuanian nationalist at heart and soon found himself on the opposite side of the Nazis. In December 1942, he and several others in the Lithuanian police were arrested by the Gestapo and imprisoned in Kowno. According to Lukys, this arrest stemmed from his participation in the Lithuanian underground movement. In 1944, he succeeded in escaping and fled with his family to Austria. After a month, he believed he saw an opportunity between the evacuation of the Germans and the occupation of the Soviets to return to Lithuania. His calculations were off, however, and he was again arrested by the Gestapo, this time in Memel. Once more, he escaped and this time fled Lithuania for good.<sup>30</sup>

Because of his brutal leadership against the civilians of Krottingen, Lukys could not possibly hope to remain in Lithuania after the Red Army regained control. By 1944, he and his family became refugees and occasionally used the surname “Jakys.” By September 1945, they were living in a refugee camp in Augsburg, where Jakys began to work in a kitchen for the U.S. Army, a post he held for several years.<sup>31</sup> Meanwhile, at a camp in Kempten, two former residents of Krottingen filed allegations that Lukys had been a brutal and sadistic police officer, but these statements did not lead to any investigation, likely a result of his name change.<sup>32</sup> He and his wife separated in 1949, when she took the family to the United States, and Lukys opted to remain behind, only sporadically employed. Because he was not a German, Lukys never had to appear before a denazification panel.

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<sup>30</sup> Statement by Pranas Lukys (Augsburg 21 February 1957), EL 322/II, Bü 10, SL.

<sup>31</sup> Statement by Pranas Lukys (Augsburg 21 February 1957), EL 322/II, Bü 10, SL.

<sup>32</sup> Statement by Alfonsas Uselies (Kempten, undated), EL 322/II, Bü 18, SL; Statement by Ona Sinkuniene (Kempten, undated), EL 322/II, Bü 18, SL.

The only questioning Lukys seems to have faced came in 1951, when he had to present materials to the International Refugee Organization. Created by the United Nations to facilitate and look after the many refugees of World War II (though significantly this did not include German refugees), the IRO could offer assistance to Lukys (he was again using his real name).<sup>33</sup> Two statements, likely provided by Lukys as references, testified that he had been a good and proper officer. One wrote in stilted English:

[Lukys] fought with criminals and communist bandits, who terrorized the peaceful people of Lithuania and set fire to their houses and destroyed their property. In the end of the year 1942 Mr. Lukys being provoked by the communists was arrested by the German ‘Gestapo’ and put into prison in Kaunas, from where he escaped in the summer 1944. I have to mention that Mr. Lukys fought his entire life with the communists and he is a great enemy of them.<sup>34</sup>

This statement reveals how easily individuals could manipulate and frame the truth in postwar society. Technically, all aspects of the statements are true: Lukys hated communists, he was arrested by the Gestapo, and the Soviets had imposed a harsh occupation on Lithuanians. But the statement also obscures that his fights against “criminals and communist bandits” involved his voluntary participation in the executions of innocent civilians. His role as a perpetrator of the Holocaust could be reformulated in such a way as to make Lukys appear a model of anti-communism, a champion of the Cold War, and a victim of the Nazis.

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Bernhard Fischer-Schweder spent the last days of war in a military hospital recovering from a shrapnel wound.<sup>35</sup> During those days of recovery he began to consider for the first time in twenty years his future without Nazism. For a Nazi and SS officer as deeply

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<sup>33</sup> Grossmann, *Close Encounters*, 247-248.

<sup>34</sup> Statement by Alfonsas Uselies (Kempton, undated), EL 322/II, Bü 18, SL.

<sup>35</sup> Statement by Charlotte Fischer (23 October 1954), EL20/1 II, Bü 1, SL; Personallbogen, EL20/1 II, Bü 1, SL.

implicated in the Third Reich and its crimes as Fischer-Schweder, he had good reasons to fear this regime change. As early as 1925, he had joined the SA – the brute security force for the nascent Nazi party.<sup>36</sup> Four years later, he joined the party. With his early membership, Fischer-Schweder was considered an “old fighter” (*alter Kämpfer*), someone attracted to the party early on when it was little more than a thuggish movement of anti-Semites and Versailles revisionists. Because of his standing in the SA, Fischer-Schweder was taken into “protective custody” by the SS in 1934 during the Röhm purge, which Hitler – under pressure from the military as well as Göring and Himmler – had reluctantly ordered, thereby eliminating their rivals and decapitating the leadership of the SA. After nearly three months, according to *Gestapo* reports, Fischer-Schweder was released because “proof of his participation in the Röhm revolt could not be found.”<sup>37</sup> Incarceration did little to dim his enthusiasm for Nazism, however, and in 1941 he was promoted to Police Director in Memel, which carried with it SS membership. He remained in the SS thereafter, though he was reassigned after 1942 and served in various Panzer divisions of the Waffen-SS until the injuries he sustained in the closing months of the war. Now, confronting a political present deeply hostile to his violent past, this old fighter decided to create himself anew.

He interpreted postwar society as many others had: as a blank slate. The German *Stunde Null* (zero hour) became an immediate and convenient narrative of rupture after 1945. Evidence for this view dominated the scene. The presence of so many men being held in captivity while women were forced to clear the debris of war – giving rise to the popular postwar image of the *Trümmerfrau* (woman of the rubble) – fueled a sense of society in

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<sup>36</sup> Berlin Document Center to Bundesamt für Verfassungsschutz, Köln (26 October 1954), EL20/1 II, Bü 1, SL.

<sup>37</sup> Geheimnis Staatspolizeiamt, Berlin, to the Oberste SA-Führung (Munich, 4 October 1934), EL20/1 II, Bü 1, SL.

chaos, its traditional gender roles inverted.<sup>38</sup> Moreover, the leveling of the urban landscape engendered a belief that the past itself had been erased. The novelty of the concept also served a political end: if Germany was separated from its past, then it might be possible to bracket off the Nazi era and move forward. Politicians were not the only ones who found the notion of total rupture a useful palliative; many Germans with a past to conceal also seized upon the convenient caesura.

Although scars and impaired mobility from his injury became a constant reminder of wartime experience, Fischer-Schweder quickly set about erasing other markings of his life before 1945, embracing his own version of the *Stunde Null*.<sup>39</sup> First, he had to find a way to clear denazification. After recovering from his wounds, Fischer-Schweder was automatically interned in an American POW camp in Bavaria. The massive organizational efforts that denazification required meant that individuals were largely trusted to answer forms honestly regarding their past associations with the Nazi regime; little bureaucratic slack existed for investigating and exposing deceit.<sup>40</sup> For many former SS officers and prominent Nazis, submitting an incomplete or inaccurate form therefore offered the best chance of avoiding an extended stay in an Allied camp.<sup>41</sup> Fischer-Schweder chose this route. He fabricated a new identity, listing his name as Bernd Fischer and his birth date as February 13, 1904, instead of January 12, 1904. As for his wartime activities, he noted his career in the civil service and

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<sup>38</sup> Elizabeth Heineman, "The Hour of the Woman: Memories of Germany's 'Crisis Years' and West German National Identity," *The American Historical Review* 101, no. 2 (April 1996): 354-395.

<sup>39</sup> Amtsärztliches Zeugnis (1 February 1954), EL20/1 II, Bü 1, SL.

<sup>40</sup> On the aims and problems of denazification, see Jarausch, *After Hitler*, 48-55.

<sup>41</sup> Of the other defendants at the Ulm trial, fully one-third of them, including Fischer-Schweder, pursued similar ruses to avoided denazification. For another sample of how former SS officers attempted to deal with postwar denazification and prosecution efforts, see, Brunner, *Frankreich Komplex*.

stated that he became Police Director in Memel in 1941, absent any mention of his membership and accompanying promotions within the ranks of the SS. On March 5, 1946, the *Spruchkammer* (denazification court) in Bad Neustadt, a town in southwest Germany not far from Ulm, declared him to be “unaffected” by Nazism.<sup>42</sup> He rejoined society.

Though his calculated change in name and birth date helped him avoid extended time in a denazification camp, it also forced him to start his career over after the war. Because of his desire to avoid the spotlight and because the Allies had purged the civil service of former Nazis, Fischer-Schweder found himself in a double bind. As a result, he aimed low. For the initial postwar years, Bernhard Fischer-Schweder worked a series of odd jobs as Bernd Fischer. He began first as a clerk in Bad Neustadt and after 1948 as a salesman.<sup>43</sup> Though he likely found sales less desirable than police work, the position was stable and out of the public eye.

Professionally reborn, Fischer-Schweder also created a new personal life for himself in the postwar era. While recovering in the military hospital, he had stopped communicating with his wife, and she learned his whereabouts only by chance.<sup>44</sup> Though married since 1935, he divorced shortly after the war. Within months, he remarried, and the couple soon had a child.<sup>45</sup> The new family settled in southwest Germany, far from the eastern Prussian cities where Fischer-Schweder had spent his life before 1945.

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<sup>42</sup> Spruchkammer Bad Neustadt to Bernd Fischer (9 April 1947), EL20/1 II, Bü 1, SL.

<sup>43</sup> Firma Gerhard A. Koch, Zeugnis (undated), EL20/1, Bü 1, SL; Egon Panther, Zeugnis (10 December 1953), EL20/1, Bü 1, SL.

<sup>44</sup> Kriminalpolizei Schweinfurt to Landespolizeidirektion Nordwürttemberg-Kriminalhauptstelle (1 October 1954), EL48/2, Bü 3125, SL; Statement by Bernhard Fischer-Schweder (2 May 1955), EL 322/II, Bü 1, SL.

<sup>45</sup> Personalbogen (30 November 1953), EL20/1 II, Bü 1, SL; and Melde- und Personalbogen (1 December 1953), EL20/1 II, Bü 1, SL.



By the end of the 1940s, Fischer-Schweder's metamorphosis was complete. He had been able to start over in a new city with a new name, new career, and new family. This reintegration path suggests that early on he believed his past could destroy his postwar life. Although denazification authorities hardly had the capacity to uncover his past on their own, Fischer-Schweder's decisions to deceive them, divorce his spouse, and relocate across Germany indicate that he nevertheless feared such an investigation. Confronted with what he perceived as a direct threat, Fischer-Schweder fled his past.

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Despite the headache of denazification, most members of Einsatzkommando Tilsit confronted it head on and found that they were able to navigate the process with few repercussions. The entire practice became so flawed and riddled with loopholes that extensive contortions – passing as a farmer, changing one's name – were unnecessary for the majority. The Allies initially pursued denazification with great zeal, but by 1946 other priorities loomed and the management of denazification transferred from the Allies to the Germans themselves. This shift mirrored a transition among the Western powers from concern over the Nazi past to the Soviet east. As Germans began to take the lead in the panels, they sought to avoid divisive politics. As a result, denazification quickly deteriorated into a system of rubber stamping.

The Spruchkammer were expected to classify individuals in one of five categories of involvement in the Nazi regime. Over the next few years, the bottom two categories of least involvement swelled, and nearly sixty percent of all those who underwent denazification were placed in these categories.<sup>46</sup> Barring any overt evidence implying deeper involvement

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<sup>46</sup> Jaraus, *After Hitler*, 53-54.

in the state or its crimes, the Spruchkammer forewent extensive investigations, imposed a minor fine on some, and released the vast majority out into society. The entire process became a cynical form of theater for many Germans, who referred to the exoneration certificates as *Persilscheine*, which might be translated as “Clorox cards,” indicating that the court had whitewashed their Nazi past.

The unfortunately named Harm Harms made extensive efforts to receive his *Persilschein* from the Spruchkammer in Bremen. He first encountered the denazification board in 1948 after having spent the previous three years in various prisoner of war and denazification camps. His uncertain circumstances began in September 1944. That month, Harms had been forced to leave Tilsit in East Prussia as part of a general evacuation.<sup>47</sup> Since 1939, with the exception of a failed one-month assignment in Lyons, Harms and his family had lived in Tilsit, where he had worked in the Grenzpolizeikommissariat as a Kriminal Kommissar. Upon their evacuation, Harms and his wife moved in with their daughter in Potsdam, where they remained until 1945. By the end of the war, they had resettled at the home of his mother-in-law in Bremen, and he succeeded briefly in finding work at a Focke-Wulf plant. On June 22, 1945, the American Counter Intelligence Corps arrested Harms in Bremen because he had been a member of the Gestapo in the 1930s, and he was sent to the Bremen Civilian Internment Center.<sup>48</sup> Over the next three years, Harms spent time in camps throughout the western occupation zones. By 1948, he had arrived at a camp in Riespot, where he finally came before the denazification tribunal.

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<sup>47</sup> Arrest report (22 June 1945), EL 322/II, Bü 124, SL.

<sup>48</sup> Detention Report (22 June 1945), EL 322/II, Bü 124, SL.

The camp years had taken a physical toll on Harms. Born in 1892, he was only in his fifties, yet his body suffered beyond those years. His long and increasingly haggard pale face was framed by a pair of elfin ears and brown hair that quickly thinned and grayed. Heavy bags formed under his blue eyes, and poor diet had left him with a full set of false teeth. To maintain some income at the camp, he worked first as a mason, before turning to a less physically demanding job as a shoemaker.<sup>49</sup> Over the long, lean years in the camp, he lost over twenty pounds, and by 1948 Harms was a small and frail fifty-five year old.<sup>50</sup> The experience of internment, as he explained, “left me physically weakened after 38 months.”<sup>51</sup>

As a result of his experiences in the camps, Harms seized on his denazification trial as an opportunity to regain his freedom. Certain facts of his background were beyond dispute. He had finished his education at fourteen and worked for several years as a hotel porter before joining the military in 1912. After his service in World War I, he enlisted in the Freikorps unit Märker, which operated in the north.<sup>52</sup> In 1933, Harms joined the Nazi Party and applied for membership in the SS in 1939, though he was denied for failing to provide sufficient evidence of Aryan ancestry.<sup>53</sup> According to the Hamburg police department, Harms had begun work in the city’s Schutzpolizei in 1919.<sup>54</sup> In 1934, he moved from the

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<sup>49</sup> Statement by Harm Harms (Bremen, 21 July 1948), EL 322/II, Bü 124, SL.

<sup>50</sup> Fragebogen (4 June 1947), EL 322/II, Bü 124, SL; Detention Report (22 June 1945), EL 322/II, Bü 124, SL.

<sup>51</sup> Statement by Harms (Hohenasperg, 4 June 1947), EL 322/II, Bü 124, SL.

<sup>52</sup> Statement by Harms (Bremen, 18 October 1956), EL 322/II, Bü 3, SL.

<sup>53</sup> SS applications required the completion of an extensive family tree, going back several generations, in an effort to prove Aryan ancestry. Often, as in Harms’ case, individual applications were rejected not because of any racial “impurities,” but simply because supporting documentation could not be located. For Harms’ application and its rejection, see: Harms, Rasse- und Siedlungshauptamt, Microfilm Publication A3343, Series RuSHA, Roll C43, BDC, NARA.

<sup>54</sup> Ermittlungsbericht (Hamburg, 11 March 1948), EL 322/II, Bü 124, SL.

Kriminalpolizei to the Staatspolizei, where he oversaw political affairs. While in Hamburg, his unit was taken over by the Gestapo in 1937. His desire to return to the criminal detective branch led to his ultimate transfer to Tilsit in 1939. This combination of party and SS membership and time served in the Gestapo formed the core of the case against him. It was a question of what he did during those years in the police under the Third Reich that would determine how the denazification panel would categorize him and what additional sentencing he might face.

With three years to prepare, Harms had solidified his defense. First, he explained that his membership in the Nazi party and other illegal organizations resulted from career necessity. Although a member of the SPD until 1933, Harms claimed that the Nazi takeover left him “in a particularly bad economic situation.”<sup>55</sup> As a result, “I tried to keep my position [in the police] at any cost in the interest of my family, since I had three children.” Despite his membership in the party, he insisted that his background membership in the SPD continued to hinder his career advancement under the Third Reich. Regarding his work in the police, he insisted on numerous occasions that he had been involved only in “purely criminal cases (i.e. murder, theft, rape)” and that he “had nothing to do with Jews as racial enemies.”<sup>56</sup> “There is no one in the world,” Harms stated, “to whom I have done wrong.”<sup>57</sup> Echoing his own claims, he offered statements from friends and colleagues who had known him “since

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<sup>55</sup> Statement by Harms (Bremen, 18 August 1948), EL 322/II, Bü 124, SL.

<sup>56</sup> Statement by Harms (Hohenasperg, 6 June 1947), EL 322/II, Bü 124, SL; Statement by Harms (Bremen, 21 July 1948), EL 322/II, Bü 124, SL.

<sup>57</sup> Harms to öffentlichen Kläger Herrn Meinecke (7 June 1948), EL 322/II, Bü 124, SL.

childhood,” who all signed a statement claiming that “we would never consider him capable of a crime, or even of misconduct.”<sup>58</sup>

Through this defense, Harms presented himself to the denazification authorities as a simple man who wanted little more than to care for his family and serve his country. An ideological opponent of the Nazi regime, he worked as a policeman to maintain peace and to combat violent crime. As he concluded in his statement:

As a refugee from the east, I have lost everything. My wife has to eke out a living as a lowly cleaning lady. My oldest son is dead, my second is missing, and my daughter’s husband left her with two small children. My nine-year-old son shares the fate of my wife. Why should my family suffer so much grief and sorrow? For three years now I have been detained. I have always been fair to everyone, have never voted for a Nazi, and have only tried to do my duty as a civil servant. I am now fifty-six years old and my wife fifty-one. In the few years that I have left to live, I would like to care for my family and help in the rebuilding of our so badly ailing country.<sup>59</sup>

Here was a man who tried to pluck as many notes of sympathy as possible: a refugee from the east, a former civil servant who did no harm to anyone, a husband unable to care for his wife, a father who had lost children to the war, and a tired old man who wanted nothing more than to go home and live out his remaining years in peace and service to his country. The extraordinarily self-pitying nature of his defense created the image of a man broken and emasculated from the experiences of war and internment, an individual more victim than perpetrator.

In preparing its decision, the Spruchkammer had to categorize Harms under one of five possibilities. These categories, established by the Allies in March 1946 under the Law for the Liberation from National Socialism and Militarism (*Befreiungsgesetz*), presented a

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<sup>58</sup> Leumundzeugnisse (Südarle, 5 February 1947), EL 322/II, Bü 124, SL.

<sup>59</sup> Harms to öffentlichen Kläger Herr Meinecke (7 June 1948), EL 322/II, Bü 124, SL.

spectrum of involvement in the Nazi regime.<sup>60</sup> From most implicated in the state to least, these categories were: I. major offender (*Hauptschuldiger*); II. activist, militarist, and/or profiteer (*Aktivist, Militarist, Nutzniesser*); III. lesser offender (*Minderbelasteter*); IV. nominal follower (*Mitläufer*); and V. exonerated person (*Entlasteter*). The first four classifications carried corresponding recommended punishment, ranging from extended imprisonment and loss of voting rights for the major offenders to fines against nominal followers.

Upon reviewing the materials against and in defense of Harms, the investigator concluded that no extensive investigations into him were needed.<sup>61</sup> On October 18, 1948, the denazification board in Bremen ruled that Harms had been a *Mitläufer* in the Nazi movement.<sup>62</sup> Being categorized as a nominal follower was likely the most positive outcome for Harms, given his party membership and Gestapo background. Typically such a judgment would result in a fine or additional sentencing for the defendant, but in this instance the court decided to forego any such punishments “in consideration of the fact that the person concerned was interned for thirty-eight months and has lost everything as a displaced person.”

Harms now had his *Persilschein*, though his experience with denazification surprisingly did not end here. For most perpetrators, it did. Those who made it through denazification could disappear back into German life. Yet for Harms, the denazification result was unsatisfying.

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<sup>60</sup> Gesetz Nr. 104 zur Befreiung von Nationalsozialismus und Militarismus (5 March 1946), <http://www.verfassungen.de/de/bw/wuertt-b-befreiungsgesetz46.htm>.

<sup>61</sup> Statement by Harms (Bremen, 18 August 1948), EL 322/II, Bü 124, SL.

<sup>62</sup> Spruch, VI. Spruchkammer Bremen (18 October 1948), EL 322/II, Bü 124, SL.

“I hereby file an appeal,” Harms wrote in a handwritten letter to the Spruchkammer in November, “against the decision from October 18, 1948.”<sup>63</sup> His appeal requested a re-categorization from nominal follower to exonerated person status. Though Harms did not contest the charges regarding his membership in the Nazi Party or SS, he argued that these memberships obscured a persistent internal opposition to fascism. Most significantly, he insisted, “I actively resisted the National Socialistic tyranny to the extent of my powers and thereby suffered disadvantages.” This was not the casual wording of a camp shoemaker, but the deliberate statement of a skilled detective. In order for Harms to win his appeal, he needed to demonstrate that he met the strict definition laid out under the denazification law for an exonerated person. According to Article 13 of the Befreiungsgesetz, exonerated persons were those who “in spite of their formal membership, candidacy or other external indications, not only showed a passive attitude but also *actively resisted the National Socialistic tyranny to the extent of their powers and thereby suffered disadvantages* [author’s emphasis].”<sup>64</sup> His appeal invoked the identical language of the law.

To support his claim, Harms offered anecdotes of resistance and suffering. A central story involved his brief encounter with the wife of Ernst Thälmann, the one-time leader of the Communist Party of Germany (KPD). Thälmann’s wife, Rosa, was arrested and brought into the Hamburg police station on Göring’s orders in 1937. Supposedly Harms had been present upon her arrival, and he made her coffee and arranged for her to be dropped back off at her home. These gestures earned him a sharp rebuke from his superiors. Thereafter, Harms

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<sup>63</sup> Harms to VI. Spruchkammer Bremen (9 November 1948), EL 322/II, Bü 124, SL.

<sup>64</sup> Law for the Liberation from National Socialism and Militarism, quoted in *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, vol. III, ed. by Neil Kritz (Washington, DC: United States Institute of Peace, 1995), 396.

was denied the promotion he desired. He explained, “I was considered too soft and remained an inner Marxist. They transferred me to Tilsit on February 1, 1939. I had to leave behind my nice house and my nice garden plot, which I had had since 1930.” Harms’ resistance took the form of preparing coffee, and the punishment he faced involved career stasis and relocation (though in the process of relocating to Tilsit, he was promoted). He concluded his appeal with a swipe at the new state’s legitimacy, “My entire life I have acted justly, and I cannot and will not accept that on account of this I should be condemned by a democratically-governed state.”

In early June, nearly eight months after Harms’ initial appeal, the prosecutor called on the Spruchkammer to uphold its categorization of Harms as a Mitläufer “because the person concerned has not fulfilled the conditions for the application of Article 13.”<sup>65</sup> Two weeks later, the Spruchkammer agreed and rejected Harms’ appeal. The court found that while he may not have joined the Gestapo eagerly and that his work there was likely “not involved with the pursuit of political opponents of the Nazi regime,” Harms was “not so uninvolved (*entlastet*) that he can be categorized as an Entlasteter.”<sup>66</sup> His claims of active resistance were unsubstantiated and, in their mind, constituted “only the mere completion of professional duties.” Harms now had to pay the additional costs of his failed appeal.

Harms had explicitly seized on the language of victim in postwar society to defend his case, but although he struck the right tone, he seems to have played the wrong notes. In his attempt to come across as an anti-fascist who had suffered for his beliefs, he portrayed himself as a pro-communist “inner Marxist,” which was unlikely to earn him the sympathies

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<sup>65</sup> Statement by Harms (Bremen, 18 August 1948), EL 322/II, Bü 124, SL.

<sup>66</sup> Spruch (28 June 1949), EL 322/II, Bü 124, SL.



of a West German denazification panel. Ernst Thälmann, the man whose wife Harms claimed to have saved, had become a martyr for the East Germans. Already they were making plans for a new Thälmann memorial bridge across the Elbe in Schönebeck. Meanwhile, in the west, Thälmann was seen as a destructive force, a man whose attacks on the SPD during the Weimar years had paved the way for Hitler's ascendancy. Harms' decision to tie himself to this hero of the communist east therefore had an opposite effect than intended, as he ostracized himself from the denazification panel.

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The years immediately after 1945 were characterized by extremes. On one hand, flawed denazification policies allowed huge swaths of potential Nazi criminals to avoid prosecution. On the other hand, the years from 1945-1949 saw the most intense period of prosecution for Nazi crimes. Besides the prominent International Military Tribunal at Nuremberg and the successor trials, a significant number of Nazi crimes cases were taking place at this time before German courts in the western zones. To some extent, who was and was not prosecuted contained an element of chance. A particularly clever and manipulative perpetrator or an eager and resourceful Spruchkammer could sway whether or not an investigation occurred. A more significant factor in determining postwar prosecutions stemmed from the crimes perpetrated. Allies limited German jurisdiction to crimes committed against Germans, which meant that crimes against Lithuanian Jews could not be prosecuted in West German courts. As a result, postwar prosecutions focused overwhelmingly on crimes in concentration camps, at high levels of government, within the military, and inside German borders.<sup>67</sup> This proved fortuitous for the Einsatzkommando Tilsit members, as the few

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<sup>67</sup> Eichmüller, "Zahlenbilanz," 626.

investigations into Einsatzgruppen tended to focus chiefly on high-ranking officials. The prosecutions up to 1949 constituted a remarkable flurry of judicial activity, but they left huge swaths of crimes unexplored.

The first Nazi crimes trial took place in Lüneburg, just miles from where Böhme was tilling soil in the fields. Because this area had provided bedrock support for Nazism, the Allies made a point of hosting a prominent trial there. The case, prosecuted by the British, began in September 1945 and tried forty-nine officers from the Bergen-Belsen concentration camp for various war crimes and crimes against humanity.<sup>68</sup> The camp was already central to Allied denazification efforts, as they began to show the documentary *Death Mills* throughout the occupied zones, which consisted of gruesome footage from the camp's liberation. While some Germans, particularly in northern Germany, looked at the film and trial as instances of *Greuelpropaganda* (atrocities propaganda) and victor's justice, the majority registered general apathy towards the prosecutions. This apathy turned to fatigue during the more intensive and far more public International Military Tribunal at Nuremberg that started later in 1945. These proceedings against the Nazi elite dwarfed the case in Lüneburg and captured the media attention of the world. Nevertheless, most West Germans met the constant inundation of reportage on the trials with declining interest.<sup>69</sup> This early after the war, most Germans found themselves too engaged in more immediate problems such as rebuilding their homes and securing food for their families to seriously engage in these trials as a reeducation effort, as the Allies had hoped.<sup>70</sup>

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<sup>68</sup> Marszolek, 137-145.

<sup>69</sup> Donald Bloxham, *Genocide on Trial: The War Crimes Trials and the Formation of Holocaust History and Memory* (New York: Oxford University Press, 2001), 145-149.

<sup>70</sup> Bloxham, 137-145.

What most Germans were willing to accept about these trials was a certain portrait of Nazi criminality that focused on the elites. By the end of the Bergen-Belsen case, the Nuremberg proceedings, and its subsequent trials of other perpetrator groups, it became clear that the Allies were chiefly interested in prosecuting senior officials in the Nazi state and those who ran concentration camps. One prominent trial of the leadership of the Einsatzgruppen did take place under the Allied prosecutions from 1947-48, yet this resulted in a skewed perspective of these units and their role in the Holocaust.<sup>71</sup> The Allies relied extensively on wartime reports from the Einsatzgruppen leadership, which created the impression that this was a fundamentally top heavy organization. The importance of improvisational on-the-ground decision-making of units like Einsatzkommando Tilsit did not appear during the trial. To the extent that the initial postwar period drew attention to the open-air mass executions of the Holocaust, it also closed off further discussion by purporting to have dealt conclusively with those most responsible.

This is not to say, however, that all members of Einsatzkommando Tilsit avoided postwar prosecution. Most members of the Einsatzkommando had rotated in and out, usually involved for only a matter of months. They had many years and many other posts within the Nazi regime to commit other acts of criminality and atrocity. When it came to avoiding postwar prosecution at the hands of the Allies, these perpetrators were often more concerned about concealing criminal behavior on either side of their participation in massacres in 1941 Lithuania. Such was the case for Werner Hersmann, the former leader of SD Tilsit and the most senior officer behind Böhme in the Einsatzkommando Tilsit murders.

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<sup>71</sup> Earl, *The Nuremberg SS-Einsatzgruppen Trial*.

While most Tilsit members avoided prosecution for over a decade, Hersmann's postwar was defined by a litany of interrogations and investigations. Born in Duisburg in 1904, Hersmann's early years were marked by the instability and listlessness characteristic of many young men's lives in Weimar.<sup>72</sup> By 1930, he was unemployed after a string of positions in various factories and as a film theater operator Frankfurt. National Socialism offered him solutions and purpose. He joined the party in 1930 and the SS a year later.<sup>73</sup> Well-regarded by his seniors, Hersmann began a successful career in the Nazi state.<sup>74</sup> By 1941, he transferred from a position as SD head in Weimar to Tilsit. After his leadership in Einsatzkommando Tilsit, Hersmann transferred again in May 1942 to Einsatzgruppe D and later that year assumed control of Einsatzkommando 11a. Wounded in 1943, he worked briefly at the RSHA in Berlin, before returning to the field in various SS units at the close of war. His career in the service of the Nazi state thus spanned numerous criminal organizations. The prominent role Hersmann played in so many organizations during the war made it very difficult for him to hide after.

Having committed so many crimes, it is important to consider why Hersmann had not attempted a reintegration strategy of concealment, as Böhme and Fischer-Schweder – and to a lesser extent, Harms – had done. Those men were opportunists, willing to sell out their pasts to save their future. Hersmann was cut from a different cloth and belonged to a group of committed and fanatic Nazi ideologues. He did not conceal his past because he believed in his actions. He rejected the authority of the Allies and postwar state to pass judgment on his

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<sup>72</sup> Urteil, EL 322/II, Bü 20, SL.

<sup>73</sup> SS-Ahnenafel von Hersmann, Werner, BDC, RuSHA, Microfilm Publication A3343, Roll C315, NARA.

<sup>74</sup> Werner Hersmann, SS Officers, Microfilm Publication A3343, Series SSO, Roll 92A, Berlin Document Center, NARA.

actions. He did not claim to have acted against his will in carrying out massacres or suppressing local populations because he acted of his own volition and because the desires of the state mirrored his own personal convictions. Rather than lead him to abandon all commitment to Hitler's fascism, the postwar conditions Hersmann confronted hardened his beliefs. As a result, in an era when many found it easy to disappear into the wilds of postwar society, Hersmann was conspicuous, as he faced interrogations concerning three separate sets of war crimes in the postwar decade.

His first run-in with investigators came in late June 1947, when U.S. investigators representing the Office of Chief of Council for War Crimes (OCCWC) interrogated him for two days at the Darmstadt camp where he was being held since the end of the war.<sup>75</sup> Beginning in 1946, the OCCWC began to carry out investigations for subsequent trials of other major crimes not being prosecuted in the main Nuremberg trial.<sup>76</sup> For their investigation into the pending trial of Einsatzgruppen leadership, they interviewed hundreds of former officers and members of the Einsatzgruppen, but limited the prosecution to just twenty-two.<sup>77</sup> Hersmann was interrogated on account of his role as head of Einsatzkommando 11a, but he had only served in this unit in 1943 and the trial focused chiefly on crimes from 1941-1942. As a result, Hersmann was interrogated just once and his role in Einsatzkommando Tilsit never surfaced.

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<sup>75</sup> Record of the United States Nuremberg War Crimes Trials Interrogations, 1946-1949, M-1019, NARA, site accessed May 2012, <http://www.archives.gov/research/captured-german-records/microfilm/m1019.pdf>.

<sup>76</sup> Bloxham, 37-38.

<sup>77</sup> Earl, *The Nuremberg SS-Einsatzgruppen Trial*.

His respite was short lived. In 1949, he was again arrested, this time on the orders of a West German court.<sup>78</sup> While the Allies were pursuing high level officers in the Nazi state, German courts had also begun to prosecute their own Nazi crimes cases. Constrained by the Allies in their jurisdiction, German prosecutors at this time could only pursue crimes committed on German soil.<sup>79</sup> Since very little of the Holocaust took place within Germany, this meant that a very different set of crimes took precedence in the German judiciary. Many cases involved denunciation, euthanasia, or the destruction of property during Kristallnacht. One important set of crimes open to German courts were the so-called Endphase crimes, which involved German violence against other Germans during the last desperate days of war.<sup>80</sup> It was for one such incident that the Traunstein prosecutor arrested Hersmann.

On April 28, 1945, during the very last days of the Third Reich, citizens in the Bavarian town of Altötting attempted to overthrow the local Nazi force, liberate the city, and thereby stave off its destruction at the hands of the quickly advancing U.S. Army.<sup>81</sup> Early that morning a message had gone out on the radio declaring the “Freedom Action of Bavaria,” a well-intentioned but futile plan to demonstrate to the Allies that not all Germans were Nazis.<sup>82</sup> The call inspired the Altötting district administrator (Landrat) and several associates to arrest six prominent Nazis, including the town’s mayor. By the early afternoon, word of

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<sup>78</sup> Urteil (Traunstein, 21 September 1950), EL 322/II, Bü 78.

<sup>79</sup> Adalbert Rückerl, *The Investigation of Nazi Crimes, 1945-1978*, trans. by Derek Rutter (Hamden, Conn.: Archon Books, 1980), 26-32.

<sup>80</sup> According to Eichmüller’s data set, from 1945-1949 denunciations made up 38 percent of all investigations, with “political opponents” (in this time period, typically socialists and members of other banned parties) and Kristallnacht 17 percent each. Endphase crimes constituted 4 percent. See Eichmüller, “Zahlenbilanz,” 628.

<sup>81</sup> Information on the “Civilian Murders in Altötting” as it became known locally comes from the Traunstein verdict against Hersmann and from Ulrich Völklein, *Ein Tag im April. Die ‘Bürgermorde’ von Altötting* (Göttingen: Steidl Verlag, 1997).

<sup>82</sup> Ian Kershaw, *The End*, 343-345.

the arrests had spread to a group of Nazi officers in the area. They took immediate control of the situation and released their comrades. The Kreisleiter then identified those responsible, and by two o'clock that afternoon five resisters had been arrested. By this point, an SS unit led by Hersmann had arrived on the scene. A hasty show trial immediately declared all five guilty. Hersmann selected a shooting squad from his SS troops, which summarily executed the citizens. The resisters were dead before nightfall. American troops liberated the city three days later.

Hersmann and Olaf Sigismund, another SS officer on the scene that day, were put on trial for their participation in the Altötting murders in the nearby city Traunstein in 1950.<sup>83</sup> Because these crimes occurred publicly, because they took place so close to the end of the war, and above all because German civilians were the victim group, the Altötting murders became an important target for postwar prosecutors. Cases like these were relatively easy to investigate and prosecute, given the many witnesses and often close familiarity with units stationed in one's town. But they also reverberated with themes that Germans wished to believe about themselves after 1945: that many had wanted to resist, that to resist would have meant certain death, and that now that the Nazis were gone a system of democracy and justice could again flourish. These factors suggest why – of all the atrocities he saw and participated in prior to 1945 – Hersmann was tried first for the murder of five Germans, nearly a decade before his trial for the murder of five thousand Lithuanian Jews.

The Traunstein trial of Hersmann resulted in an eight-year conviction. These murders had so clearly originated from Nazi fanaticism that there could have been little doubt about the verdict. In explaining the decision, the judge wrote, “Neither the defendant Hersmann nor

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<sup>83</sup> Urteil (Traunstein, 21 September 1950), EL 322/II, Bü 78.

the defendant Sigismund can claim to have been carried away by a conflict of duty or influenced by threat or force into committing these crimes.”<sup>84</sup> The two men “had merely been given the order to break the ongoing resistance in Altötting during the Freedom Action Bavaria.” As a result, “The two defendants were in position to make their own decision about the fate of the arrested Altötting citizens.” Because he had authorized the murders, Hersmann now faced imprisonment for the next eight years in Traunstein. In 1952, while still in prison, his case went before a denazification panel. Based on his deep involvement in the Nazi regime and his recent conviction, he was unsurprisingly deemed a class one “major offender,” and additional sentencing was retroactively added on to be served concurrently with his Traunstein sentence.

## **A New Germany**

After the creation of the Federal Republic of Germany in May 1949, many in politics and society readied to declare the postwar era over. Between denazification and the Nuremberg trials, most prominent Nazis had been captured and tried. Since the currency reforms the year earlier, the economy rumbled with activity. Tensions between east and west roiled since the Berlin blockade. The years immediately after 1945 had been marked by chaotic demographics, uncertain political realities, and economic privation. Now, most West Germans eagerly turned away from those years and sought stability under the new republic. For many, the needs of the present and concerns of the future trumped the problems of the past.<sup>85</sup> For many former Nazis, this shift of priorities created favorable conditions for their

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<sup>84</sup> Urteil, EL 322/II, Bü 20, SL.

<sup>85</sup> As Jeffrey Herf has stated, the young state could choose “memory and justice or democracy, but not both.” See, Herf, *Divided Memory*, 7.



reintegration. Many had spent the initial postwar years defensively trying to ward off inquiries into their past, but now real opportunities existed and the threat of investigation never seemed less than in the early 1950s.

To the extent that West Germans continued to worry about lingering problems from the Nazi era they focused on the continued plight of the POWs who remained in Soviet custody. Already by 1950, over one million had returned, but an estimated 34,000 still sat in Soviet camps.<sup>86</sup> A major foreign policy aim of the Adenauer government was to bring these POWs home, a mission not accomplished until 1955. Because of their continued captivity, these POWs became inflected with the moral purpose of the Cold War and embodied the emerging narrative of multiple German victimizations.<sup>87</sup> Since the cessation of Allied trials, the knee-jerk victim status many Germans claimed softened, as a desire to find a “usable past” emerged.<sup>88</sup> Such views often incorporated narratives of rebirth, and the continued captivity of many Germans signified the inability to move forward. The POWs became the counterpoint to the refugees and expellees: millions of refugees had been forced out of the east, and now thousands were being held captive within it. In order to set West Germany on its proper course, the POWs needed to be returned.

As they began to be released from the camps during the early 1950s, these *Heimkehrer* (returnees) were quickly cast as the new ideal German citizen. They had suffered at the hands of both Hitler and Stalin, and one could build a strong house of democracy with

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<sup>86</sup> Biess, *Homecomings*, 179.

<sup>87</sup> Biess, *Homecomings*, 5-7.

<sup>88</sup> Moeller, *War Stories*.

these post-totalitarian men as its pillars.<sup>89</sup> They also spoke to a sense of rupture within German family life: with men imprisoned and women forced to provide for the families, traditional gender roles had been upturned. The POWs in the east became the symbolic missing piece of the puzzle – with their return, so too would West Germany return to an imagined normalcy. With such a status, the Heimkehrer quickly became politicized. The SPD first attempted to woo their vote, putting forward several pieces of legislation to provide economic assistance to these POWs from the east. Not wanting to oppose the new model German man, the other political groups fell in line, and the *Heimkehrergesetz* (Law for the Returnees) passed in 1950, awarding 100DM per month to the returnees.<sup>90</sup> Despite the hopes and ambitions projected onto the Heimkehrer, a 1957 study revealed that, as a group, the returnees were more authoritarian, less liberal, and less democratic than the majority of German citizens.<sup>91</sup> Moreover, a tension emerged regarding the few thousand still in the east after 1950. Although West Germans saw them increasingly as victims, in many cases these individuals remained in Soviet custody because they were war criminals and the most die-hard, ideologically committed Nazis.<sup>92</sup>

Werner Schmidt-Hammer was not among these fanatical Nazis, but as a Heimkehrer he benefitted from the policies and status afforded to the late returnees of World War II. Since the end of the war, Schmidt-Hammer had been a POW in Tito's Yugoslavia. The thirty-eight year old Schmidt-Hammer spent six weeks on a "starvation diet" in Ljubljana

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<sup>89</sup> Biess, *Homecomings*, 112-113.

<sup>90</sup> Biess, *Homecomings*, 110.

<sup>91</sup> Biess, *Homecomings*, 113-114.

<sup>92</sup> Biess, *Homecomings*, 214-215.

before being transferred to a work detail in Belgrade in 1945.<sup>93</sup> For over two years he remained there until being sent to another camp in Zrenjanin, Serbia. He described these as “hopeless, agonizing years.”<sup>94</sup> “I fell deeper and deeper into total despair,” he later wrote, “I was totally broken mentally.” This description of his experiences, offered several years later in the 1950s, perfectly captured the expectations of suffering that many West Germans held for the Heimkehrer. In 1948, Tito famously broke with Stalin, and several months later with no reason given Schmidt-Hammer was released from his Yugoslavian captivity. Finally able to return to Germany, he arrived just as the constitution of the Federal Republic was being drafted.

Ten years earlier on the eve of war with Poland, little in Schmidt-Hammer’s life indicated the odyssey that would take him from his family, transform him into a perpetrator of the Holocaust, then leave him marooned in a Yugoslavian prison through the 1940s. Born to a pharmacist in East Prussia in 1907, Schmidt-Hammer moved at the age of six to his uncle’s home in Breslau in order to pursue higher education. “By family tradition,” he admitted, “I was attuned to nationalism. Inspired by appropriate readings and historical teachings, I admired the old Prussian kings; they remained a model of duty to me, their soldiers a model of discipline and obedience.”<sup>95</sup> German children were fed a steady diet of Prussian king worship, but this would not make him an obvious disciple of Hitler. Whatever his boyhood notions of duty, he devoted himself to the study of optometry, and during the

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<sup>93</sup> Lebenslauf, Werner Schmidt-Hammer (28 October 1956), EL 322/II, Bü 12, SL.

<sup>94</sup> Schmidt-Hammer, Informations-Niederschrift (Heldenheim-Schnaitheim, 17 May 1957), EL 322/II, Bü 12, SL.

<sup>95</sup> Schmidt-Hammer, Informations-Niederschrift (Heldenheim-Schnaitheim, 17 May 1957), EL 322/II, Bü 12, SL.

early 1930s he worked at the large optics firm Carl Zeiss in Jena. Beginning in 1936, he ran his own practice in Königsberg, until drafted into the police in 1939.

Having avoided joining the Wehrmacht, Schmidt-Hammer took a number of police officer training courses. Between 1939 and 1941 he held various posts “guarding military areas and important buildings” in the Königsberg Schutzpolizei, was transferred late in 1940 to Tilsit, and by 1941 had been appointed lieutenant and adjutant to the head of a Kommando of the Schutzpolizei in Memel.<sup>96</sup> In this position, he was asked to head the shooting squad on the day of the Garsden executions. Schmidt-Hammer led his troop of Memel policemen out into the fields, where he issued the firing orders for the murder of the Jewish men there. Schmidt-Hammer remained in Memel until 1943, at which point he transferred to Yugoslavia in a volunteer police battalion (Polizeifreiwilligenbataillon), which consisted of Yugoslavian collaborators headed by German officers and non-commissioned officers, such as Schmidt-Hammer. Throughout his entire career, Schmidt-Hammer never joined the Nazi Party, even though this was the career expectation for an officer. In 1941, his superior granted him an exemption from an order requiring that all Memel officers join the SS.<sup>97</sup>

When Schmidt-Hammer was finally released from his postwar internment, he, like many members of Einsatzkommando Tilsit, had no home to which he could return. All the German cities he had once called home – Elbing, Breslau, Königsberg, Tilsit, and Memel – were no longer German. In 1944, his family fled Memel for Rendsburg in northern Germany

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<sup>96</sup> Schmidt-Hammer, Informations-Niederschrift (Heldenheim-Schnaitheim, 17 May 1957), EL 322/II, Bü 12, SL.

<sup>97</sup> Lebenslauf, Werner Schmidt-Hammer (28 October 1956), EL 322/II, Bü 12, SL.

as part of a general evacuation.<sup>98</sup> Schmidt-Hammer had not seen his wife and children since.

Upon his release from Yugoslavia, Schmidt-Hammer later wrote:

I returned to my family haggard and broken – without joy, without hope of being able to return to a normal life. Nothing experienced at the start of the war with Russia has been forgotten; now and forever it is a heavy burden for me to bear. But then I had a thought: as much as humanly possible, the hardship I have experienced has balanced out the suffering which arose due to my role implementing the execution orders.<sup>99</sup>

Casting himself as a latter-day Odysseus forced to endure an endless litany of trials in penance for his sins, Schmidt-Hammer created a narrative of atonement. If anything, he felt his punishment had exceeded his crimes, and now the mistakes of 1941 would haunt him endlessly.

Despite his self-pity, upon his return to Germany, Schmidt-Hammer faced fewer obstacles than most. As a Heimkehrer with no Nazi membership, he faced no difficulties with denazification and was immediately exonerated. While many struggled to find employment, Schmidt-Hammer returned to his old position. Carl Zeiss, the optics firm where he had once worked in Jena, had opened a new plant in the west and offered Schmidt-Hammer a position. By late 1949, he relocated the family to Aalen and had begun working as he had before the war, under the same name, with the same wife and family, and with the full blessing of the law as an optometrist. For Schmidt-Hammer, the postwar experience in Yugoslavia may have been difficult and memories of atrocity perhaps did weigh on his conscience, but his time as a POW abroad also expedited his reintegration into West Germany, and his role in Einsatzkommando Tilsit had left no paper trail. Instead, he was a policeman who refused the Nazi party, a refugee from the east, a late Heimkehrer, a man who wanted little more than his

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<sup>98</sup> Statement by Werner Schmidt-Hammer (Oberkochen, 9 November 1955), EL 322/II, Bü 1, SL.

<sup>99</sup> Schmidt-Hammer, Informations-Niederschrift (Heldenheim-Schnaitheim, 17 May 1957), EL 322/II, Bü 12, SL.

family and old life back – he was the embodiment of the new West German male. Because Schmidt-Hammer was all these things, no one worried whether he might not also have been a Holocaust perpetrator.

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The passage of the Basic Law in 1949 creating the West German state carried with it an important though at the time not fully developed amendment concerning members of the civil service who lost their positions after 1945. Many had been categorically purged by the Allies, while others as refugees had lost the cities in which they had worked. In determining how best to deal with these individuals, the drafters of the constitution included Article 131, which stated:

The legal relations of persons, including refugees and expellees, who on 8 May 1945 were employed in the public service, have left the service for reasons other than those recognized by civil service regulations or collective bargaining agreements, and have not yet been reinstated or are employed in positions that do not correspond to those they previously held, shall be regulated by a federal law. The same shall apply mutatis mutandis to persons, including refugees and expellees, who on 8 May 1945 were entitled to pensions and related benefits and who for reasons other than those recognized by civil service regulations or collective bargaining agreements no longer receive any such pension or related benefits. Until the pertinent federal law takes effect, no legal claims may be made, unless state (*Land*) law otherwise provides.<sup>100</sup>

This amendment solved little, but established that the federal government would, at a later date, enact a law dealing with the problem of civil servants. In the interim, local governments could make their own choices about what to do about the hiring and pensioning of these individuals.

Harm Harms decided not to wait for the Bonn government to solve the 131 problem and pressed the local Bremen authorities to take action on his behalf. Since his failed attempt

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<sup>100</sup> Basic Law for the Federal Republic of Germany, official English translation, Deutsche Bundestag, site accessed May 2012, <https://www.btg-bestellservice.de/pdf/80201000.pdf>.

at exoneration by the Spruchkammer, Harms had spent the year working as a shoemaker in Bremen. He was the oldest of the Einsatzkommando Tilsit officers, and as a result his postwar career options were particularly narrowed. He found hope in Article 131. Now at retirement age and with twenty years police experience, Harms decided to apply for his pension. On October 3, 1950, Harms completed the necessary Article 131 paperwork with the Bremen Senate Commission for Human Resources. In listing his career in the civil service, Harms noted his long tenure in the police, but carefully omitted any mention of his time in the Hamburg Gestapo.<sup>101</sup>

Unlike his attempts at defrauding the denazification authorities, Harms' efforts to receive a pension under the as-yet unclear terms of Article 131 proved successful. In April 1951, Harms began to collect monthly pension checks valued at over 100 DM. Over the next several years, the Holocaust perpetrator, masquerading as a simple, old police officer earned 8,624 DM from the Federal Republic.<sup>102</sup> Though not a fortune, the pension along with his continued work as a shoemaker allowed Harms to find peace and stability in postwar West Germany. Despite constantly putting himself in front of various government authorities, neither had Harms found himself the subject of any investigation, nor had his participation in mass killings in Lithuania ever once come to light.

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In May 1951, the Federal Republic of Germany passed the long-awaited law promised under Article 131. The delay stemmed from an extensive research campaign to look into the full scope of the problem: just how many West Germans might be eligible for

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<sup>101</sup> Anklageschrift gegen Harms (Bremen, 6 May 1957), EL 322/II, Bü 108, SL.

<sup>102</sup> Anklageschrift gegen Harms (Bremen, 6 May 1957), EL 322/II, Bü 108, SL.

reinstatement to the civil service? This question had to take into account the huge numbers of refugees and expellees from the east, as well as the results of the denazification panels. Based on the government's report, any decision on Article 131 could affect up to 430,000 West Germans (345,000 still of working age and 85,000 pensioners), though these estimates proved quite conservative.<sup>103</sup> At the time, the Federal Republic already had one of the most extensive bureaucracies among modern states, with 2.1 million – nearly one out of every ten West Germans – working in the civil service. Article 131 raised the possibility of having to add nearly 20 percent more employees or pensioners to the swollen civil service.<sup>104</sup>

Although a fiscal problem, this was also a political opportunity. No party wanted to alienate itself from such a number of voters, and as a result the “Law Regulating the Legal Status of those Persons Falling under Article 131 of the Basic Law” flew through the Bundestag with no votes against and only two abstentions. The law opened the path for the reintegration of hundreds of thousands into the civil service. Each state was to allocate a minimum of 20 percent of its employee expenditures towards the salaries of the new “131-ers.” The law particularly targeted those expelled from the east as subject to this 20 percent, though nothing barred those purged from West German posts from also reapplying. Several small restrictions were placed on those who could reapply. Membership in the Gestapo and Waffen-SS could still prohibit one from rejoining the civil service, unless that person could show that they had been automatically taken into such organizations and not done so voluntarily (as Harms had earlier argued before the Bremen Spruchkammer). All

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<sup>103</sup> Garner, “Public Service Personnel,” *Under Construction*, 159.

<sup>104</sup> On Article 131, see Frei, *Adenauer's Germany*, 41-66; and Curt Garner, “Public Service Personnel in West Germany in the 1950s: Controversial Policy Decisions and their Effects on Social Composition, Gender Structure, and the Role of Former Nazis,” in *West Germany under Construction*, ed. Robert Moeller (Ann Arbor: University of Michigan Press, 1997), 135-195.



denazification rulings remained in effect, though by 1951 most sentences had already been served. Some were permanently barred from the civil service due to their denazification results, but this caveat was applied in only 0.4 percent of all cases.<sup>105</sup>

Gold rush fever struck West Germany, and thousands of West Germans – among them huge numbers of former Nazis – descended on their local town halls to file the paperwork for reinstatement to the civil service. Harms had been only an early prospector; other members of Einsatzkommando Tilsit also hoped to find their own corner of postwar heaven in the halls of West German bureaucracy. Crucially, Article 131 had stipulated that those with over ten years experience should be hired to a position commensurate to their earlier post. Individuals like the Einsatzkommando Tilsit members had been career civil servants and had held important and influential posts as officers. These men were not simply applying to find themselves at the back of career line; they were being placed back into leadership positions.

Few so seamlessly worked their way back into postwar society as Gerhard Carsten. Carsten checked all the boxes for an open acceptance into West Germany. A native of East Prussia who had spent most of his life in Tilsit, Carsten was an expellee from the east. Posted in Denmark at the end of the war, he spent five years in a Danish POW camp. Though by no means could this be compared to a Soviet camp, Carsten could nonetheless claim to be a *Heimkehrer* kept away from the German homeland for far too long. His only career prior 1945 had been working in the police based out of Tilsit. Now, with the passage of the Article 131 law, Carsten found an opportunity for reinstatement.<sup>106</sup>

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<sup>105</sup> Garner, “Public Service Personnel,” *Under Construction*, 164-171.

<sup>106</sup> Urteil, EL 322/II, Bü 20, SL.

This image of Carsten as a hard-luck policeman with no direction home conflicted with his record of activity while in Tilsit. After applying several times to become a detective, in 1938 he was assigned to Stapo Tilsit, whereupon he undertook a three-month officer training course at the RSHA in Berlin. Likely this promotion came along as a result of his decision to join the Nazi party the year prior, though his simultaneous application to the SS was denied on racial grounds. Nevertheless, at the time of Memel's return to Germany in 1940, Carsten had advanced sufficiently to be appointed as the head of the border police unit in Schmalleningken. During the late summer in 1941, Carsten used his position there to assist in the murders of several hundred Jews on at least three separate incidents.<sup>107</sup>

As with the other members of Einsatzkommando Tilsit, these crimes did not follow him to West Germany. Upon his repatriation in 1950, Carsten joined his family first in Neheim-Hüsten. Employed for several years as an industrial worker, he soon filed an application for reinstatement to the civil service under the terms of Article 131. In 1953, his application was approved and Carsten began work once more as a detective in nearby Arnsberg.<sup>108</sup> As with the other members of Einsatzkommando Tilsit, postwar authorities saw in Carsten what they wanted to see: an honest policeman who, through the cruelties of the war and its aftermath, had lost his home, his livelihood, and years of his life. Moreover, by incentivizing the hiring of former civil servants from the east, Article 131 had created a logic that discouraged officials from asking questions about an applicant's past. During the period of denazification, flawed though it was, authorities were interested in a person's background to determine criminality; in the wake of Article 131, they saw only a résumé.

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<sup>107</sup> Urteil, EL 322/II, Bü 20, SL.

<sup>108</sup> Statement by Gerhard Carsten (Arnsberg, 12 December 1956), EL 322/II, Bü 6, SL.

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After Article 131 took effect, Bernhard Fischer-Schweder continued to live under his assumed identity as Bernd Fischer, a Bad Neustadt vacuum salesman. By 1955, however, the allure of rejoining the civil service proved too strong to ignore. Fischer-Schweder wanted financial security more than he feared prosecution, and in 1953 he joined the fray to reintegration. First, he faced a problem of his own creation: the false name and birth date he had been using on papers since 1945. “Bernd Fischer” needed the résumé of “Bernhard Fischer-Schweder.” To make this happen, he brought the “trivial change” in his birth date to the attention of the local administrators, claiming a clerical error.<sup>109</sup> Since denazification no longer threatened, the consequences for this admission were limited to a few key strokes noting the change.

He also filed two applications – one for a civil service position in the region of North-Württemberg, the other to qualify for Article 131 status – and here the issue becomes more curious. On the first, he continued to use his falsified information, listing his name as “Bernhard Fischer” and his birth date as “13 February 1904.”<sup>110</sup> Yet, on the very next day he filed the second application, and here he gave his name as “Bernhard Fischer-Schweder” and his date of birth as “12 January 1904.”<sup>111</sup> A clerical error this was not. Fischer-Schweder either began to use information selectively, depending on the application and audience, or had confused himself with his frequent changes. For the moment, officials failed to discover the discrepancy.

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<sup>109</sup> “Der Leser hat das Wort: Nichts zu verschleiern,” *Ulmer Nachrichten* (26 May 1955).

<sup>110</sup> Personalbogen (30 November 1953), EL20/1 II, Bü 1, SL.

<sup>111</sup> Melde- und Personalbogen I (1 December 1953), EL 20/1 II, Bü 1, SL.

The reemergence of Fischer-Schweder into public life in Western Germany began with his second application for reinstatement to the civil service in accordance with Article 131. In addition to his full name and actual birth date, he stated that he was born in Berlin in the borough of Spandau and at the age of twenty received a vocational degree as a technician. His résumé noted he had been a civil servant his entire life, beginning in 1932 when he entered the police force. Fischer-Schweder steadily worked his way up the ranks of the detective division, emerging as superintendent in the eastern German city of Breslau in 1939. By 1940, he had been reassigned to Memel, and in 1941, Fischer-Schweder became director of the police force. According to the application, he saw action in the war from October 1943 to June 1945, which ended in a several week stay at the POW camp in Linz. Not included on the statement was mention of his Nazi and SS memberships.<sup>112</sup>

Within a few weeks of his application, a routine procedural check turned up the various names Fischer-Schweder had been using since 1945. Asked to clarify, he argued that in order to avoid “automatic imprisonment in and eventual deportation” to the Soviet Union, he began using the name “Fischer” as early as 1942, when eventual German defeat began to seem likely.<sup>113</sup> The change, in other words, came not as an attempt to shirk postwar justice, but to avoid the cruelties of life in a Soviet camp. This explanation capitalized not only on Cold War tensions, but also on West German anxiety over POWs in the Soviet Union. By tapping into this sentiment, Fischer-Schweder’s justifications for changing his name won over local officials. They approved his application for reinstatement to the civil service.

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<sup>112</sup> Melde- und Personalbogen I (1 December 1953), EL 20/1 II, Bü 1, SL.

<sup>113</sup> Statement by Bernd Fischer (12 December 1953), EL28/2, Bü 3125, SL.

Once the Article 131 application was approved, Fischer-Schweder's application for a position in North-Württemberg began to bear fruit. Apart from the use of his assumed name and birth date, the résumé on his application for a civil service position in the district of North-Württemberg was nearly identical to that of the Article 131 form. Given his service as a police director for the substantial city of Memel, he was well qualified. When his application came across their desks in early December, authorities felt that the "experiences of Fischer as a civil servant" seemed the perfect remedy to the "multiple and difficult duties" facing those in charge of the refugee camp situation in Ulm.<sup>114</sup> Initially intended to hold 2,500 refugees in the postwar period, by 1953 Ulm-Wilhelmsburg overflowed with nearly 3,800 refugees, most German, fleeing the Soviet-dominated east. To this point, the camp had been subsumed as a part of the larger Ulm-Römerstrasse camp, but the challenges and day-to-day needs of the Wilhelmsburg camp made the need for an individual director apparent. Since the middle of October 1953, officials had allocated funds for the new hire.<sup>115</sup>

On January 18, 1954, the vacuum salesman became the camp director in Ulm. As the camp's first director, he encountered a system in disarray. His military background led him to institute a string of disciplinary initiatives. Guards now wore brown uniforms, and entry to the camp became limited to the eastern gate, where identification papers were required. He began a physical renovation of the facilities, as many buildings were still in disrepair from wartime aerial bombing raids.<sup>116</sup> When nearly forty residents fell ill shortly after he took

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<sup>114</sup> Regierungspräsidium Nordwürttemberg to the Ministerium für Vertriebene, Flüchtlinge und Kriegsgeschädigte (10 December 1953), EL20/1 II, Bü 1, SL.

<sup>115</sup> Regierungspräsidium Nordwürttemberg to the Ministerium für Vertriebene, Flüchtlinge und Kriegsgeschädigte (10 December 1953), EL20/1 II, Bü 1, SL.

<sup>116</sup> "Frischer Wind auf der Wilhelmsburg," *Schwäbische Donau-Zeitung* (21 May 1954).

control, he initiated measures to raise health and diet conditions within the camp.<sup>117</sup> After only a month, Fischer-Schweder was briefly but strongly considered by the regional government to take over leadership of the larger camp near Stuttgart.<sup>118</sup> Even the local press noted the “fresh air” he brought to the Ulm camp. Fischer-Schweder’s “purposeful and energetic” planning had systematically raised the quality of life in the camp.<sup>119</sup> Encouraged by his successes and confident about his future, Fischer-Schweder moved the family to Ulm later that year.<sup>120</sup>

To this point, Fischer-Schweder seemed to have navigated the postwar situation perfectly. He remained out of sight long enough to avoid serious investigation by the Allies, and now he had reemerged in time to capitalize on a period of amnesties and reintegration efforts by the Adenauer administration. In order to achieve this postwar arc, though, he had been forced to play a dangerous game with the details of his past. He used false information to clear denazification, but then coupled this denazification with his real name and select details of his wartime experiences to gain re-admittance to the civil service under Article 131. When questions did emerge about discrepancies in his personnel record, he invoked the popular victimization narrative and stated that he feared Russian persecution. His dexterity with truth and lies had created a house of cards construction that depended on the situation being viewed from the single angle Fischer-Schweder determined. But now that he had stepped back into public life, he could no longer control his own exposure.

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<sup>117</sup> “40 Flüchtlinge im Lager erkrankt,” *Schwäbische Donau-Zeitung* (9 February 1954).

<sup>118</sup> Regierungspräsidium Nordwürttemberg to Abteilung I – Kenzleidirektion (30 January 1954), EL20/1 II, Bü 1, SL.

<sup>119</sup> “Frischer Wind auf der Wilhelmsburg,” *Schwäbische Donau-Zeitung* (21 May 1954).

<sup>120</sup> Bernhard Fischer-Schweder to Regierungspräsidium Nordwürttemberg (1 June 1954), EL20/1 II, Bü 1, SL.

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If postwar perpetrators functioned as a barometer, constantly measuring any changes in pressure that might forecast a heightened risk of prosecution, then Article 131 became the clearest piece of evidence that the new West German state was fostering a climate conducive to reintegration. Above all, Adenauer favored social integration over political division.<sup>121</sup> He, like many Germans, had felt that denazification had gone too far. While those guilty of crimes needed to be punished, Adenauer worried in a September 1949 address that denazification had divided Germans into “those without political blemishes and those with such blemishes. This distinction must be overcome as soon as possible.”<sup>122</sup> In this perhaps well-intentioned spirit, the Bundestag began to pass a spate of legislation during the first half of the 1950s aimed at ironing out whatever social divisions had attended the end of the 1940s and that era of denazification. Starting with the passage of a 1949 amnesty law for many convicted by denazification courts, the early West German government voiced its goal of reintegration over prosecution. As Norbert Frei has stated, the 1949 amnesty law “constituted an act of high political symbolism.”<sup>123</sup>

By the time Article 131 was approved in 1951, there could be little doubt about the safe haven being created in West Germany. Article 131 became more than an economic opportunity—it was an all-clear signal that the perpetrators could come out from hiding. Provided no new allegations or evidence of criminality were brought before the state, it was clear that the state would no longer be actively seeking out such information. These variables

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<sup>121</sup> Herf, *Divided Memory*, 270-272.

<sup>122</sup> Herf, *Divided Memory*, 271.

<sup>123</sup> Frei, *Adenauer's Germany*, 25.

transformed West Germany into a haven for former Nazis, as the state offered opportunities for reintegration and showed little interest in ongoing prosecutions.<sup>124</sup>

By the end of the 1940s, Hans-Joachim Böhme found clear evidence that the political and social culture of western Germany was changing in his favor. Stranded on a farm in the Lüneburg heath, Böhme began to seek out career opportunities that played more to his intellectual capabilities. He scoured job advertisements and sent off applications for various office positions. In the fall of 1948, he received an interview with a tax accountant in Karlsruhe, in southwest Württemberg-Baden. The accountant needed a lawyer and looked favorably on Böhme's application. In the interview, Böhme explained, "I came from East Prussia and had lost my papers. Vis-à-vis my prior background I told him nothing."<sup>125</sup> His interview landed him the position, and Böhme, the longtime Nazi and one time farmer, became a tax attorney in postwar West Germany. This relocation to Karlsruhe brought him into delayed contact with denazification authorities, but Böhme again used his passport and obscured his Nazi background from the officials. As a result, Böhme passed through denazification without any difficulties.

Once in Karlsruhe and through the process of denazification, Böhme began to assemble an actual postwar life for himself. Employed in a position for which he had actual qualifications, he could imagine a future in this far off corner of Germany. In 1950, he married a Karlsruhe secretary, and the couple had a daughter several years later.<sup>126</sup> Böhme briefly went unemployed in 1951, when the firm closed, but his wife found him a post at the

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<sup>124</sup> Brunner has concluded that postwar West Germany in fact offered "extraordinarily good living conditions" for former Nazis. See Brunner, *Frankreich Komplex*, 180-183.

<sup>125</sup> Statement by Hans-Joachim Böhme (Hohenasperg, 17 October 1956), EL 322/II, Bü 4, SL.

<sup>126</sup> Statement by Hans-Joachim Böhme (Hohenasperg, 17 October 1956), EL 322/II, Bü 4, SL.



Badenia-Bausparkasse, a savings and loan office, where he worked as a lawyer in the mortgage department.<sup>127</sup> More than any other member of Einsatzkommando Tilsit, Böhme had completely remade himself in the postwar period. Others resumed old posts or sought reinstatement to the civil service, but Böhme created an entirely new life and bore no markings of his old self as a Holocaust perpetrator. A good employee well-liked at work and loved at home, Böhme had embraced the Stunde Null. His path had twisted southwest from the among the highest ranks of the Nazi profession in Eastern Europe through the lowly fields of central Germany as a farmhand before arriving at the opening to the Black Forest as an accountant. This meandering route had carried him beneath the channels of Allied and West German authorities and allowed him to resurface across Central Europe as an ordinary German.

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Werner Hersmann emerged into West Germany in January 1954, paroled by the Traunstein court for his participation in the murder of five Altötting civilians.<sup>128</sup> By this point, Hersmann was fifty years old, a convicted murderer, and a “major offender” in the Third Reich. He lacked any touch for postwar politics and had become a magnet for investigators. With his criminal record, Article 131 status was out of the question and even finding decent work would require an open-minded employer. Perhaps if he had just been convicted for vague crimes against communists in the east, he might have found a hardened anti-Bolshevist to take up his cause, but because he had killed five German civilians in the final week of the war the situation for him in 1954 did not look good. Only a Nazi apologist

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<sup>127</sup> Urteil, EL 322/II, Bü 20, SL.

<sup>128</sup> Urteil, EL 322/II, Bü 20, SL.

hostile to the postwar state could look on Hersmann as an asset, and so it was fortunate that he encountered the agency *Stille Hilfe*.

*Stille Hilfe*, or more fully *Die Stille Hilfe für Kriegsgefangene und Internierte* (Silent Assistance for POWs and Interned Persons), occupied a prominent position in the seedy underbelly of postwar society.<sup>129</sup> Founded after the war by Helene Elisabeth Princessin von Isenburg, the organization worked initially on the principal that those arrested and imprisoned after 1945 by the Allies faced unjust punishments. By 1950, *Stille Hilfe* focused on the mistreatment and the continued unfair imprisonment of several hundred prominent Nazis in Landsberg penitentiary, which became a symbol for far-right conservatives to rail against the injustices of the postwar era. The nominal aim of the organization was to provide legal and material to these prisoners. The “Mother of the Prisoners,” as Princess von Isenburg became known, explained her purpose in a 1951 interview: “People today often say to me, ‘Why do you care about Landsberg of all things?’ There’s a good reason: no organizations keep the Landsberg prisoners in mind and their relatives receive no support. If Jews were still being persecuted today, I would take up their cause just the same.”<sup>130</sup> Even though when Jews actually were being persecuted, she had been a Nazi party member who did nothing to speak out against their mistreatment, her high birth and background as a non-medical practitioner lent credibility and support for her and her cause.

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<sup>129</sup> Overall, there is little scholarship on this organization and what does exist is mostly of a journalistic nature. To date, the best sources are Andrea Röpke and Oliver Schröm, *Stille Hilfe für braune Kameraden: Das geheime Netzwerk der Alt- und Neonazis* (Berlin: Links, 2001); Martin A. Lee, *The Beast Reawakens* (Taylor & Francis, 1999), 252.

<sup>130</sup> “Meine Liebe Prinzessin,” *Der Spiegel* (31 January 1951).

The agency became a breeding ground for far-right Nazi crimes apologetics, and many of the legal strategies for defending war criminals were pioneered by its leadership.<sup>131</sup> The preeminent legal mind behind these strategies was Rudolf Aschenauer, a young Munich-based attorney. Aschenauer had risen to prominence as the defense attorney for Otto Ohlendorf, the chief defendant in the Allied trial of Einsatzgruppen leadership. The case launched his career as a Nazi crimes specialist, and he would come to exert wide influence in 1958 during the Ulm trial.<sup>132</sup> Working with Stille Hilfe, Aschenauer took the lead on advocating for the release of the Landsberg prisoners. He also started a working group of like-minded legal minds to work on ending Nazi prosecutions, a group known as the Heidelberg Kreis.

By the mid-1950s, the pro-Nazi orientation of the Stille Hilfe began to shine more clearly through the thin veneer of charity for prisoners. Moving beyond the Landsberg issue, it began to take on the causes of all Nazis being held in Germany and abroad. The agency provided material aid to those who had escaped Germany, and it was widely believed to have played a role in ferreting prominent Nazis out of Germany to safety in the early postwar years. In late 1957, Stille Hilfe prepared care packages for many Nazi criminals to cheer them up during the holiday season. The January 1958 newsletter printed a table listing the numbers of those convicted being held in prisons across Europe, and Princess von Isenburg wrote, “It would have been a sad Christmas for these poor people without our help this year.”<sup>133</sup> One can only sympathize with convicted Nazi criminals for so long before it

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<sup>131</sup> Frei, *Adenauer's Germany*, 110-120.

<sup>132</sup> For information on Aschenauer, see Earl, *The Nuremberg SS-Einsatzgruppen Trial*, 198-201, 270-277.

<sup>133</sup> *Rundbrief für den Freundeskreis*, Stille Hilfe für Kriegsgefangene und Internierte, Nr. 1 (January 1958) EL322/II, Bü 88, SL.

becomes clear that one's sympathies also lie with their crimes. The agency had become a perfect place for a convicted war criminal like Hersmann with few other options to turn.

Beginning in 1955, Hersmann took up employment at the Stille Hilfe.<sup>134</sup> Although unclear what services he performed for the group, Hersmann had clearly navigated postwar society with no interest in absorbing any of its democratic impulses and having steadfastly resisted any pressures to renounce the Nazi cause. Shiftless and often unemployed prior to 1933, his experiences in the Third Reich had been a steady string of promotions and apparently gave him a strong sense of belonging. After 1945, he found himself constantly dragged before various authorities and made to answer for his role in the Nazi empire. The lone bright spot in his life were those years as a Nazi, under a regime which gave approval to him for carrying out his basest desires. Whether he feared any subsequent prosecutions after his release in 1954, Hersmann willfully made no attempts to atone for his past. When he began work for the fascists at Stille Hilfe, Hersmann showed that, however futile the effort, he would continue to advocate on behalf of the Nazi cause.

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Organizations like Stille Hilfe fed into a broad paranoia about ex-Nazi clandestine organizations, nefariously plotting a return to power. Often, these concerns centered on smuggling prominent Nazis out of occupied Germany to safe haven in the Middle East or South America. Rumors of the notorious shadow network ODESSA (the Organization of Former SS Officers), which scholars now agree never existed, inspired conspiracy theories among Allies and Nazi hunters alike, who suspected this alleged network was not only aiding

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<sup>134</sup> Urteil, EL 322/II, Bü 20, SL.

in Nazis' escape but also actively plotting the return of Nazi rule to Germany.<sup>135</sup> A 1950 CIA report, for example, warned of a "heavily armed colony" of Nazis in Bolivia.<sup>136</sup> While such concerns of Nazi resurgence may have been overblown, certainly there was proof that many Nazis were escaping Germany's borders and often had help in doing so. Well known incidents, such as the escapes of Adolf Eichmann and Josef Mengele, showed that individuals with the right connections could evade authorities with minimal difficulty. Several hundred high-level Nazis escaped through "ratlines" into South Tyrol, through Italy, and on to Argentina or other nations that turned blind eyes to their presence.<sup>137</sup>

For the former members of Einsatzkommando Tilsit, few saw any need for flight. A wide array of options existed that would allow them to remain within Germany, so for many this option proved preferable to the immense difficulties of starting life anew in a foreign country. Moreover, these perpetrators took their cues from the politics of the day, and they saw very few prosecutions underway that would indicate their involvement in Lithuanian massacres might come before a court. The major Nuremberg trials focused only on the elites and other cases like the Bergen-Belsen trial focused on camp crimes and crimes within Germany. For these mostly mid-level Nazi officers who carried out mass murder in small towns throughout Lithuanian, the threat of prosecution seemed small.

Of the many officers responsible for the Einsatzkommando Tilsit murders, only one chose to leave West Germany, and he did not do so until the early 1950s. Wilhelm Gerke had been born in 1906 to a family with roots working the fields of Ritze, a small town midway

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<sup>135</sup> Gerald Steinacher, *Nazis on the Run: How Hitler's Henchmen Fled Justice* (New York: Oxford University Press, 2011), xvi-xix.

<sup>136</sup> Information Report, CIA (3 April 1950), RG 263, Box 5, NARA.

<sup>137</sup> Information Report, CIA (7 June 1950), RG 263, Box 5, NARA; see also Steinacher, *Nazis on the Run*, 1-54.

between Hamburg and Berlin. His career aspiration was to become a detective, and he first entered the Leipzig police force in 1928. He joined the Nazi party in 1933 and enrolled in numerous officer training courses over the next several years. By the late 1930s, Gerke was a member of the SS, and on the eve of war with the Soviet Union he transferred to Stapo Tilsit. He worked there initially under Harms before being made a Kriminalkommissar in the fall of 1941, a post he held until 1944. His last task during the war involved destroying documents of the police and other administrative records. Thereafter, the Tilsit office evacuated west. He contracted shingles during the flight and ended the war in an American POW camp.<sup>138</sup>

Bounced between camps for several years, by 1948 Gerke was sentenced to eighteen months by the Hamburg Spruchkammer for his membership and involvement in Nazi organizations.<sup>139</sup> He found employment until 1951 doing agricultural work for a friend near his hometown. Gerke's family, however, remained in the Soviet east, and he hoped to secure better employment so as to make possible their move to the west. A newspaper advertisement alerted him to a company in Osnabrück which "provided Germans as lumberjacks for a firm in Sweden." Gerke applied and by fall 1951, he had taken up residence and employment in Sweden. Gerke later insisted that he relocated not out of any desire to conceal his past but purely to improve his financial circumstances.<sup>140</sup> A year later, though, his family had managed to escape to West Berlin, but rather than return to Germany, Gerke brought his family to Sweden where they remained through the 1950s.<sup>141</sup>

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<sup>138</sup> Statement by Wilhelm Gerke (Stuttgart, 20 June 1958), EL 322/II, Bü 21, SL.

<sup>139</sup> Statement by Wilhelm Gerke (Stuttgart, 20 June 1958), EL 322/II, Bü 21, SL.

<sup>140</sup> Statement by Wilhelm Gerke (Stuttgart, 20 June 1958), EL 322/II, Bü 21, SL.

<sup>141</sup> Urteil (Dortmund, 5 February 1963), Nr. 547, *Justiz und NS-Verbrechen* (Amsterdam: University Press Amsterdam, 1998), CD-ROM.

## **The End of Reintegration**

By late summer 1954, fresh doubts about Bernhard Fischer-Schweder's past surfaced in the North-Württemberg regional government. In addition to the troubling revelation that he had been falsifying his name and birth date, his claims to have been the Police Director in Memel and yet not a member of the Nazi Party appeared dubious.<sup>142</sup> The massive problems facing the Allies and Germany at the end of the war had made it possible for Fischer-Schweder and others to submit false information; the bureaucratic logjam rendered individual verifications highly unlikely. Resources that for political and financial reasons were unavailable to the Allies after the war now existed in 1950s West Germany.<sup>143</sup> The bureaucratic and organizational infrastructure had been built up substantially, as more groups, organizations, and political agencies existed to assist in the reintegration of Nazis on the one hand and to investigate those who had bypassed denazification channels on the other. The *Bundesamt für Verfassungsschutz* (Federal Office for the Protection of the Constitution) and the Berlin Document Center were two such agencies.

In 1950, the Federal Republic created the *Bundesamt für Verfassungsschutz* to serve as a national agency charged with investigating those whose behavior threatened the integrity of the Basic Law constitution. At first, this charter translated primarily into tracking communists in West Germany, but because of its resources and networks, the agency soon became a central asset for background investigations. As such, North-Württemberg officials wrote first to the *Bundesamt* when questions about Fischer-Schweder's past arose. In August

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<sup>142</sup> Report by Regierungspräsidium Nordwürttemberg (25 November 1954), EL20/1 II, Bü 1, SL.

<sup>143</sup> For a detailed evaluation of the limitations of the denazification program and the political considerations inherent to it, see Buscher, *U.S. War Crimes Trial Program*.

1954, the Bundesamt in turn reached out to the Berlin Document Center for information on potential Nazi or SS membership for Bernhard Fischer-Schweder, born January 12, 1904.<sup>144</sup>

The Berlin Document Center (BDC) had only been fully operational since October 1953 but held millions of captured Nazi documents, including a near-total registry of Nazi and SS membership.<sup>145</sup> The archive therefore provided the largest extant database for information regarding membership in Nazi organizations as well as rank and assignment during the Third Reich. In 1953, the BDC remained under the jurisdiction of the US Department of State. Unlike conventional archives which tend to group documents by provenance, all records there were arranged by name, making it inefficient for those researching a given event, but invaluable for information on individuals. When authorities accessed the archive for information on Bernhard Fischer-Schweder, a thick file emerged that revealed the extent of his involvement in the Third Reich. Although it contained no mention of his role in the Tilsit murders, the file contained damaging documents, such as a 1942 letter thanking Himmler for a birthday gift.<sup>146</sup> The BDC provided unambiguous information on his role in the Nazi party, in the SS, and as a committed Nazi ideologue.

By November 1954, the Berlin Document Center findings arrived at the office of the regional government in charge of Fischer-Schweder's employment.<sup>147</sup> Since he had "hidden

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<sup>144</sup> Bundesamt für Verfassungsschutz, Köln, to Berlin Document Center, US Army, Berlin (1 September 1954), EL20/1 II, Bü 1, SL.

<sup>145</sup> For more information on the history of the BDC and an overview of its holdings, see: Astrid Eckert, *Kampf um die Akten: die Westalliierten und die Rückgabe von deutschem Archivgut nach dem Zweiten Weltkrieg* (Stuttgart: Steiner, 2004); and Henry Friedlander and Sybil Milton, eds., *Archives of the Holocaust: An International Collection of Selected Documents*, v.11 (New York: Garland, 1989).

<sup>146</sup> Bernhard Fischer-Schweder to Reichsführer-SS und Chef der Deutschen Polizei (14 December 1942), EL20/1 II, Bü 1, SL.

<sup>147</sup> Bundesamt für Verfassungsschutz, Köln, to Landespolizeidirektion Nordwürttemberg (2 November 1954), EL20/1 II, Bü 1, SL.



his membership in the [Nazi] Party and SS” from the military tribunal in Bad Neustadt, his “unaffected” denazification status was invalid, which meant that his hiring under Article 131 was also nullified.<sup>148</sup> But politically sensitive questions remained. If word got out that the local government had hired an SS officer to run a displaced persons camp, the situation could prove a public relations nightmare.

Two days later, the officials decided to ask Fischer-Schweder to resign in order to keep the scandal quiet. This desire to avoid a public reaction was also fueled by a sense of concern for Fischer-Schweder. As they noted, “Fischer is handicapped, he is married, and he has a child. He would have to go to great lengths to create a new life.”<sup>149</sup> They reflected positively on his service as the camp director, and though he had forced their hand through his falsehoods, they wished him no long-term ill. To this end, they provided a letter of recommendation for future applications, which noted the “care and cultivation” he had shown in his leadership at the camp.<sup>150</sup> The realization that he had been a member of the SS seemingly posed no inherent moral dilemmas for authorities. Given the narrowly defined concept of perpetrator in this time period, officials looked on Fischer-Schweder as just another individual that Hitler coerced into service. The decision showed that they tacitly accepted his self-image as a victim of the Third Reich. It was not Fischer-Schweder’s past that cost him his post, but rather that he had lied about this past.

Fischer-Schweder delayed as long as he could, but in the end found no choice but to acquiesce to the demand. On February 2, 1955, he resigned, claiming to have found “an

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<sup>148</sup> Report by Regierungspräsidium Nordwürttemberg (25 November 1954), EL20/1 II, Bü 1, SL.

<sup>149</sup> Report by Regierungspräsidium Nordwürttemberg (25 November 1954), EL20/1 II, Bü 1, SL.

<sup>150</sup> Zwischendienstzeugnis, Regierungspräsidium Nordwürttemberg (16 February 1955), FL700/13 II, 20/6/79, IV Ca 252/55, SL.

extremely opportune job” elsewhere.<sup>151</sup> In fact, he had no such offer and quickly grew discouraged after months of rejections from prospective employers. Frustrated, he wrote to the regional government in late March requesting reinstatement as head of the Ulm-Wilhelmsburg camp.<sup>152</sup> His letter noted the difficulties inherent in finding a new job at the age of fifty-one and the injustice being done to him on account of his past affiliations. “Based simply on my upbringing,” he added, “I joined the Party at a very young age, not knowing what forms it would later take.”<sup>153</sup> For what may have been the first time, he was invoking a reworked version of the victimization narrative: not only had he suffered under the Nazis, now he was being unfairly targeted by the Federal Republic. He went on to state that certain individuals would confirm his claims if given the opportunity. But from the perspective of the officials, the matter was closed and Fischer-Schweder no longer had a place at the Ulm camp. On April 13, 1955, he was officially fired from the camp.<sup>154</sup>

Unsatisfied with their decision, Fischer-Schweder made the exceptional decision to turn to the courts for reinstatement. On April 18, he filed a lawsuit in the Ulm labor court against the government. This shockingly public confrontation revealed that he feared investigation so little, he was willing to attack the state in court over his perceived mistreatment.<sup>155</sup> He argued along similar lines to his earlier defenses: he had indeed been a member of the Nazi party, but was not ideologically motivated; he had suffered under the

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<sup>151</sup> Bernhard Fischer-Schweder to Regierungspräsidium Nordwürttemberg (2 February 1955), EL20/1 II, Bü 1, SL.

<sup>152</sup> Bernhard Fischer-Schweder to the Regierungspräsidium Nord-Württemberg , Kanzleidirektion (24 March 1955) EL20/1 II, Bü 1, SL.

<sup>153</sup> Bernhard Fischer-Schweder to the Regierungspräsidium Nord-Württemberg , Kanzleidirektion (24 March 1955) EL20/1 II, Bü 1, SL.

<sup>154</sup> Geschäftsstelle des Arbeitsgerichts (18 April 1955), FL700/13 II, 20/6/79, IV Ca 252/55, SL.

<sup>155</sup> Geschäftsstelle des Arbeitsgerichts (18 April 1955), FL700/13 II, 20/6/79, IV Ca 252/55, SL.

regime in 1934; and he had always performed dutifully as a civil servant. In his statement, he wrote that he had “committed no political crime” and that his “political history as stated here was the full truth.”<sup>156</sup>

To help in his defense, he assembled a range of endorsements from friends and colleagues who spoke glowingly of him, and invoked the language of victimization. One noted that Fischer-Schweder had been taken “very much against his will” into the SS.<sup>157</sup> Another indicated that Fischer-Schweder had aided in the escape of a Jewish man to Prague in the days after *Kristallnacht* in 1938.<sup>158</sup> Fischer-Schweder’s interpretation of contemporary attitudes led him to believe that he could win his case if he convinced the court that he suffered under Hitler and acted against the Nazi regime.

Like much else in 1955, the trial did not go well for Fischer-Schweder. Legally, the court “rejected the suit as unfounded.”<sup>159</sup> Against his argument that the resignation should be nullified, the court argued that he had hardly been coerced and so the resignation stood. From this, it followed that his firing was moot, stating, “It did not depend on whether the accused state still had the right...to terminate the employment on April 13, 1955. At that time the employment contract no longer existed.”<sup>160</sup> The court saddled Fischer-Schweder with the 2000DM legal costs, a significant sum for the unemployed plaintiff. This outcome revealed that empathy for wartime behavior had its clear limits. Masquerading as a victim of Nazism may have helped him secure a civil service position and even won him the initial

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<sup>156</sup> Geschäftsstelle des Arbeitsgerichts (18 April 1955), FL700/13 II, 20/6/79, IV Ca 252/55, SL.

<sup>157</sup> Statement by Dr. Nitschke (15 April 1955), EL20/1 II, Bü 1, SL.

<sup>158</sup> Statement by Rudolf Renner (7 April 1955), EL20/1 II, Bü 1, SL.

<sup>159</sup> Urteil (1 October 1955), FL700/13 II, 20/6/79, IV Ca 252/55, SL.

<sup>160</sup> Urteil (1 October 1955), FL700/13 II, 20/6/79, IV Ca 252/55, SL.

understanding of his former employers, but claiming to be a victim of the West German state did not make for a winning legal defense in the Ulm labor court of 1955.

The unusual case of an SS officer suing for his right to run a refugee camp caught the attention of local press, which commented on Fischer-Schweder's "reemergence" and his "interesting labor court trial."<sup>161</sup> A German news wire agency requested "to be informed of the next meeting date" for additional reporting.<sup>162</sup> In response to the press coverage, Fischer-Schweder wrote a letter to the editor. On May 26, 1955 – one day after an article about his lawsuit appeared in the press – a brief seven-point statement appeared in the local newspaper, the *Ulmer Nachrichten*. In addition to summarizing his lawsuit, Fischer-Schweder argued again that he had been a victim of the SS in 1934 and that during the war "I kept many people – Christians, Jews, Germans, Austrians, and Poles – from harm and mortal danger." He also used Cold War tensions to explain his false postwar information, and as to the issue of why he continued to use false information in 1953, he distilled the essence of his postwar integration tactics: "I had no reason to bring up things that I was not asked about."<sup>163</sup>

With this letter and trial, Fischer-Schweder had finally run up against the limits of tolerance of postwar society. He had grown far too comfortable in mid-1950s German society. With the recent firing, unsuccessful lawsuit, and poor media coverage, he may have felt isolated and unlucky, but not criminal and certainly he saw no reason to hide. As he would soon realize, however, he had overstepped the limits of acceptable behavior for former Nazis in postwar society. While many West Germans still distinguished between the horrors

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<sup>161</sup> "Ein interessanter Arbeitsgerichtsprozeß," *Schwäbische Donau-Zeitung* (26 May 1955); "SS-Oberführer wieder 'aufgetaucht'," *Ulmer Nachrichten* (25 May 1955).

<sup>162</sup> Deutsche-Press-Agentur to Arbeitsgericht Stuttgart (1 June 1955), FL700/13 II, 20/6/79, IV Ca 252/55, SL.

<sup>163</sup> "Der Leser hat das Wort: Nichts zu verschleiern," *Ulmer Nachrichten* (26 May 1955).

of Nazism and the many Germans who were seduced by its appeal, these frivolous lawsuits, condescending letters to the editor, and fraudulent postwar deceptions of a former SS officer destroyed whatever tolerance was left for Fischer-Schweder. He did not realize that through these decisions he had set into motion a chain of events that would undo the reintegration strategies of not just himself but the other members of Einsatzkommando Tilsit.

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In December 1955, just six months after Fischer-Schweder's lawsuit, Franz Behrendt received a letter from his old friend and colleague Herbert Schmidtke. A few days earlier, Schmidtke had unexpectedly been called in by Stuttgart-based detectives regarding an investigation. Both Schmidtke and Behrendt had previously served in the Memel police, and the target of the investigation seemed to be their former director, Bernhard Fischer-Schweder.<sup>164</sup> Schmidtke had been asked repeatedly over several hours about Fischer-Schweder's role in massacres along the German-Lithuanian border. At the end of the interrogation, detectives asked Schmidtke if he knew the names or addresses of any other former Memel policemen. He recalled the name Erich Frohwann, but then informed detectives that he had committed suicide at the end of the war. Other than Frohwann, Schmidtke insisted he knew of no other individuals who might be of assistance. Now, back home in Tuttlingen, Schmidtke wrote to Behrendt to inform him of this new investigation.

Concerned about the case and grateful to his friend, Behrendt asked to be kept informed should Schmidtke learn anything more, then proceeded to burn the letter. Born a few years apart in Memel, the two had known each other since childhood, when they sang

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<sup>164</sup> Statement by Herbert Schmidtke (Tuttlingen, 29 November 1955), EL 322/II, Bü 1, SL.

together in a Christian youth group.<sup>165</sup> Both joined the police force and in 1939, following the return of Memel to Germany, both became members of the Grenzpolizeikommissariat. Later that year, their paths diverged slightly when Behrendt transferred to Stapo Tilsit as a Lithuanian translator.<sup>166</sup> As translator, Behrendt played a central role in gaining the complicity of locals to assist in the Einsatzkommando Tilsit executions during 1941. After the war, both men fled west, as the Memelland was purged of Germans, and they arrived in occupied Germany. By the mid-1950s, Schmidtke had settled near Lake Constance in the south and Behrendt in Hamburg-Harburg to the north.

Although unclear how close their contact had been during the postwar period, their correspondence in late 1955 sparked a renewed bond between the two. Over the next year, Behrendt began to vent his frustrations at his postwar situation, as he desired more opportunities than his current position as a book-keeper afforded. Meanwhile, Schmidtke succeeded in rejoining the police force under the terms of Article 131 and had moved to Bielefeld. By July 1956, Behrendt had hatched a scheme that would allow him to rejoin the police. Because of the secrecy with which they pursued their plans, reconstructing the precise decision-making is difficult, but Behrendt solicited Schmidtke for a letter of reference in order to gain state employment. Schmidtke had slipped back into the civil service, and now he was to hold the door open for Behrendt.<sup>167</sup>

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<sup>165</sup> Statement (undated), EA 4/412, Bü 1, HS.

<sup>166</sup> Urteil, EL 322/II, Bü 20, SL.

<sup>167</sup> Such schemes and networks were not uncommon in West Germany, as many former Gestapo members worked in concert to rejoin the civil service and obscure their pasts. See, Stephan Linck, "Die Stammtisch-Geschichte der 'Alten Charlottenburger': Ein Netzwerk in Westdeutschland," in *Die Gestapo nach 1945: Karrieren, Konflikte, Konstruktionen*, ed. by Klaus-Michael Mallmann (Darmstadt: WBG, 2009), 105-121.

Behrendt's plan involved reaching out to another former colleague, Otto Steinberger. Like Schmidtke, Steinberger had already succeeded in gaining reemployment in the police. He had only returned to Germany the year prior, as he was one of the last POWs released from the Soviet Union.<sup>168</sup> Steinberger had emerged from the experience embittered by his captivity and eager to make something new of his life. He described the USSR to his comrades: "Everything is sh--! ...It's not worth the breath of a dog. (You'll have to forgive me on these points, but there seems to me to be no cultivated expressions for conveying these conditions)."<sup>169</sup> He did, however, have cultivated expressions when it came to writing a letter on behalf of Behrendt. These statements were signed legal affidavits, and as such they carried the threat of perjury for false claims. Acknowledging that, Steinberger wrote in late July 1956 that Behrendt "was known to be a man with an open, honest character, who was equally valued and liked in and out of the office by his superiors and colleagues."<sup>170</sup>

Once Behrendt received Steinberger's endorsement, he turned to Schmidtke for a similar affidavit. He wrote, "It would make me happy if you, along with Otto, could help to put [my] house back in order. Then you'd have close companions at your ready – and good friends are rare these days."<sup>171</sup> Schmidtke responded with an affidavit in support of Behrendt's attempt to rejoin the police service. He wrote, "I know of no incidents in which Behrendt would have taken part in any inhumane activities. Such an allegation would be unthinkable just on the basis of his sensitive character and the fact of his participation in the

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<sup>168</sup> Otto Steinberger to Franz Behrendt (Hohenlimburg, 1 August 1956), EA 4/412, Bü 1, HS.

<sup>169</sup> Otto Steinberger to Franz Behrendt (Hohenlimburg, 1 August 1956), EA 4/412, Bü 1, HS.

<sup>170</sup> Versicherung an Eides Statt (Hohenlimburg, 31 July 1956), EA 4/412, Bü 1, HS.

<sup>171</sup> Behrendt to Herbert Schmidtke (13 September 1956), EL 322/II, Bü 12, SL.

drama and singing group of the Christian Youth Movement in Memel.”<sup>172</sup> Both sets of statements were then passed along to the Ministry of the Interior in Lower Saxony, where Behrendt hoped to find employment.

While Behrendt awaited news from his application, he stayed informed about the investigation into Fischer-Schweder. The nature of the case remained unclear, as the detectives steadfastly kept any mention out of the newspapers. Behrendt had to rely on Schmidtke for information. Since his first interrogation in late 1955, Schmidtke was called before the detectives an additional three times over the next year. Additionally, now that Schmidtke belonged to the police, he had access to information about ongoing investigations in West Germany not available to the public. Recognizing both the importance of Schmidtke’s position and need for secrecy, Behrendt wrote, “I read (in your letter) about your four interrogations. It’s really not pleasant. It would be good if you could keep me up to date. I’ll put your letter in the oven immediately and recommend that you do the same with mine.”<sup>173</sup> The survival of the letter shows that Schmidtke did not share Behrendt’s anxieties, but he did share what information he had on the investigation.

Each of Schmidtke’s interrogations came after an interval of a several months, and so each allowed him to make some insights into the evolution of the case. After the second meeting, in February 1956, Schmidtke realized that the case was centering on the massacres in Garsden and two other Lithuanian towns, though questions still focused on Fischer-Schweder’s involvement. By July, however, a clear shift had taken place. In his third interrogation, he was asked only about the role Hans-Joachim Böhme had played in the

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<sup>172</sup> Statement (undated), EA 4/412, Bü 1, HS.

<sup>173</sup> Behrendt to Herbert Schmidtke (13 September 1956), EL 322/II, Bü 12, SL.



executions; in previous meetings, Böhme's name had never been mentioned. Depending on how carefully Schmidtke monitored the police bulletins, he would have also seen an "Urgent Place of Residence Investigation" request in August 1956.<sup>174</sup> Issued from the Stuttgart police department, this request asked for the last known whereabouts of Böhme. For Schmidtke, this could only mean one thing: the investigation of Fischer-Schweder was expanding.

The information alarmed Behrendt because, even while his application for the Hannover police department was still being reviewed, he began to make plans for an escape to South Africa. Though he would later claim to have long-held plans to visit a friend there, Behrendt had no background in international tourism and a trip to South Africa seems fiscally irresponsible for a man who had spent previous years complaining about the difficulty of providing for his family. South Africa had clearly become the lifeline Behrendt left for himself as it became clear that the investigation of Fischer-Schweder was metastasizing into something that threatened his own future. His plans to flee developed too slowly, however, and on April 12, 1957, he was called in for questioning. Five days later, Ulm detectives arrested him.

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Between Schmidtke's early interrogation by tentative Ulm investigators in the wake of Fischer-Schweder's lawsuit and the arrest of Behrendt two years later, it was clear that a case initially targeting Fischer-Schweder had expanded significantly. During that two year window, ten former members of Einsatzkommando Tilsit would all be arrested in connection with this Ulm case. Of those arrested, only Behrendt, who thanks to his contacts with Schmidtke, and possibly Carsten, who was working as a detective in Arnsberg, had any

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<sup>174</sup> Stimpfig to Landeskriminalamt Baden-Württemberg, Abteilung II, Stuttgart (2 August 1956), EL 322/II, Bü 2, SL.

indication that such an investigation was underfoot. All ten, however, first learned that they were themselves the subject of the investigation only once police arrived at their doorsteps to bring them in for questioning.

Fischer-Schweder was arrested first on April 28, 1956. Over the next year, an intensive period of arrests took place. Hans-Joachim Böhme followed in June; then Harm Harms and Werner Hersmann by the end of October. The end of 1956 saw the quick succession of arrests of Werner Kreuzmann, Edwin Sakuth, and Gerhard Carsten. By February, Pranas Lukys was in custody and by April, Behrendt. Werner Schmidt-Hammer had been interrogated early on in 1955, but was not arrested until June 1957. These ten men became the defendants in an Ulm investigation into Einsatzkommando Tilsit murders. Wilhelm Gerke's escape to Sweden prevented his arrest, as prosecutors could not secure his extradition in time for the trial. Herbert Schmidtke similarly was not arrested in time for the Ulm case; his role in the Tilsit crimes was too uncertain, though he would eventually find himself under investigation in 1958. But for the majority of the officers responsible for Einsatzkommando Tilsit, their postwar routes of reintegration ended in Ulm.

## **Conclusion**

In exploring the various postwar biographies of these perpetrators, it is difficult to summarize their experiences. They pursued a wide variety of options, faced differing opportunities, and made individual choices that allowed each to carve out a unique path towards reintegration. Despite the plurality of their responses, all of them succeeded for over a decade in avoiding investigation into their role in Einsatzkommando Tilsit. This diversity of experiences is therefore itself an important commentary on the broad flexibility of postwar

society in absorbing Holocaust perpetrators. Although many postwar authorities reviewed these individuals' backgrounds, none found their time in the borderlands of Germany and Lithuania to be of concern. The types of crimes and profiles of the criminals under suspicion after 1945 did not map onto the experiences of Einsatzkommando Tilsit and its perpetrators. As a result, the Tilsit members had full freedom of choice in their postwar lives.

Out of the many reintegration routes selected, it is possible to divine a general topology of response. Five categories emerge as the main options available to postwar perpetrators. The most extreme of the five were suicide and flight. Frohwann and others chose suicide rather than confront what they considered to be likely prosecution. Of the Einsatzkommando Tilsit members, only Gerke chose to flee West Germany outright, though Behrendt was in the planning stages of such an exodus on the eve of his arrest. For the majority, though, these solutions did not seem proportionate to the problem. The fact that most perpetrators chose to live in West Germany revealed that they did not consider prosecution imminent or likely. Taking one's life or abandoning Germany altogether seemed excessive and unnecessary for the majority; they preferred alternatives.

The more likely channels for reintegration therefore fall into three groups: deception, normalization, and continuation. The perpetrators who stayed tended to deceive the postwar state about their past, to normalize their experiences and integrate them into their own life stories, or to continue to advocate for the Nazi cause. On some level, all engaged in forms of deception, as none ever admitted openly to the true nature of their roles in the Nazi state upon the advent of the war with the Soviet Union. Others made deception central to their lives, though. Fischer-Schweder and Böhme most notably took active steps to erase their pasts after 1945. Fischer-Schweder invented a false identity, while Böhme created an entirely new life

and career. The majority of the perpetrators attempted to integrate their pre-1945 lives into their postwar lives. Harms and Schmidt-Hammer, for instance, transformed their biographies into passion plays. Having suffered first under the Nazis, they now suffered under the Allies and West German state. Inherent in their accounts was a belief that they could be reborn in postwar society. The least common response was that of Hersmann, who proved so committed to the Nazi regime that he refused to let it die. It is possible that many of the perpetrators remained dedicated fascists in their hearts, but when it came to their postwar livelihoods all but Hersmann openly renounced any Nazi sympathies.

In making their postwar choices, the Tilsit members seemed to have been influenced by their backgrounds in the Nazi state. To a great extent, their decisions came down to personal choice, but the level of their commitment to and involvement in the Third Reich also influenced how they might respond. Those most committed to Nazism – Böhme, Hersmann, Frohwann, and Fischer-Schweder – tended to polarize towards the most extreme responses of suicide, deception, and continuation. These men had all shown enthusiasm for the Nazi party, joining typically at an early age, and they were career SS men. Many of the other perpetrators showed less outright ideological sympathy for the Nazi party, and as a result their postwar behavior gravitated towards the more moderate attempts to normalize their experiences. Men like Harms, Schmidt-Hammer, Sakuth, Behrendt, Carsten, and Kreuzmann had been ordinary members of the police, and to some extent it likely came as a surprise to them that they would constitute the frontline of Nazi aggression against Jews and communists. After the war, these former police officers found it easier to portray themselves as common victims of the Nazi state, and they did not have to undergo the same contortions as the more hard-line members in attempting to reintegrate.

Underpinning this wide range of responses was a common attempt among the perpetrators to portray themselves to various postwar authorities as victims. Contemporary society tends to look back on the Nazi era and cast all the actors in roles of good and evil. The triangle of perpetrators, victims, and bystanders is familiar and well-established today. But in postwar West Germany, these categories were extraordinarily fluid. Who was considered a perpetrator, a victim, or a bystander depended very much on how one presented him or herself. It was not hard for many Germans to cast themselves in the role of the victim; many claimed to have opposed and suffered under Hitler, many had lost their homes and loved ones, and many others had lost their homelands. To the extent that there were perpetrators, Germans looked at the Nazi elite and a few sadistic SS men as the driving force behind a brutal dictatorship that suppressed all internal dissent. Meanwhile, few Jews were present in society to stake out their own status as victims and to discredit this emerging narrative. Thus the triangle saw a majority seeking refuge under the category of victim, which fueled the evaporation of the bystander category, and a small minority of Nazi elites and low-level sadists standing in as perpetrators. Under such circumstances, it is not surprising that so many of the Tilsit officers attempted to and succeeded in appropriating the label of victim for themselves.

Finally, the biographies of the perpetrators reveal a level of interconnectedness that linked them together since the Einsatzkommando Tilsit murders. Though they may have thought themselves lone wolves, personally determining their own postwar fate, their lives in fact remained intimately bound with one another and forever tied to their crimes on the border marches of Germany-Lithuania. All of these men had been able to avoid prosecution for their role in the Einsatzkommando Tilsit murders. As they enjoyed the postwar lives they

created for themselves, they must have felt comfortable in their belief that their crimes lay many years back and miles away. Unknown to them, one mistake by one of them would undo everyone's efforts at reintegration.

#### **IV. Investigation: The Bernhard Fischer-Schweder Case**

*If seventeen years ago a person, be it man, woman, or child, was killed in horrible fashion in this city and if today the killer or killers were found, how would the public react? Would they say, “Let the dead lie in peace; punishing the criminals will not bring the dead back to life?” Would this be the answer? Of course not! Everyone would welcome the arrest of the killer and want him held accountable by our laws. Why then in this case, which concerns the gruesome murder of thousands of people – men, women, and children never convicted by a court of wrongdoing – is the question asked, “Is this trial necessary?”*

*– Erwin Schüle, closing statements of the 1958 Ulm Einsatzkommando trial*

The initial impulses for an investigation of Bernhard Fischer-Schweder came not from politicians aggrieved of his abuses of the court system or from former employers embarrassed by his fraudulent hire. Instead, they arrived in the form of a criminal allegation that predated his labor court case. In March 1955, when Fischer-Schweder lost his position as camp director, he initially and unsuccessfully sought employment in the civil service in Baden.<sup>1</sup> Dr. E. Ballweg, who oversaw the division, had to carry out interviews regarding his potential hiring. Ballweg realized that his current secretary, Meta Poneleit, happened to have worked in the Memel police department under Fischer-Schweder in Memel in 1941.<sup>2</sup> No doubt struck by the coincidence, Ballweg took the opportunity to phone her about her former employer, not minding that she was vacationing at the time. When asked about Fischer-Schweder, she responded, “He was Satan.”<sup>3</sup> Pressed for more details, she stated that he was an “immoderate drunk” and that there was a “burning hatred of Fischer-Schweder by both

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<sup>1</sup> Landespolizei Nordwürttemberg – Kriminalhauptstelle to Staatsanwaltschaft Ulm (8 June 1955), EL 322/II, Bü 1, SL.

<sup>2</sup> Personen-Index, EL 322/II, Bü 27, SL.

<sup>3</sup> Aktenvermerk (Freiburg, 31 March 1955), EA 48/2 I, Bü 3110, SL.

police officers and other officials because of his excessive Nazism.” Though these were damaging character assessments, she saved her most serious allegation for the end: “He organized the shooting of Jews in a ghetto near Memel.”

Ballweg wrote a report on the conversation, passed it along to his superiors, and on April 18, the information arrived at the North Württemberg state police headquarters in Stuttgart.<sup>4</sup> The investigator there then wrote his counterparts in South Baden, where Poneleit lived, asking them to interrogate her “about everything she knows about Fischer-Schweder” and to send them three copies of her full statement “as soon as possible.”<sup>5</sup> The following day they spoke with Poneleit. In her formal statement, she reiterated her claims that Fischer-Schweder had been a “150% SS-Oberführer” and “brutal ruler.”<sup>6</sup> She also repeated a story she had initially told to Ballweg:

According to someone in the police service, Fischer went to the Memel ghetto for his pleasure one Sunday. There was a four-meter wide grave there that had been dug out for shootings. He said to a Jew, if you can jump over this grave and make it successfully to the other side, I will let you live. During the leap over the grave, he then shot him.<sup>7</sup>

Despite these strong statements, Poneleit also retreated from her authority on the subject. She suggested that any shootings were likely organized “by higher offices.”<sup>8</sup> She said that she had “little to do” with Fischer-Schweder and that she “in no way could not make concrete statements because everything that I have explained only came to my ears through rumors.”

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<sup>4</sup> Regierungspräsidium Nordwürttemberg to Landespolizeidirektion Nord-Württemberg (18 April 1955), EA 48/2 I, Bü 3110, SL.

<sup>5</sup> Zimmermann, Landespolizeidirektion Nord-Württemberg - Kriminalhauptstelle Stuttgart to Landespolizeidirektion Südbaden (25 April 1955), EA 48/2 I, Bü 3110, SL.

<sup>6</sup> Statment by Meta Poneleit (Freiburg, 26 April 1955), EL 322/II, Bü 1, SL.

<sup>7</sup> Aktenvermerk, Dr. E. Ballweg, Regierungspräsidium Südbaden (Freiburg, 31 March 1955), EL 322/II, Bü 1, SL.

<sup>8</sup> Statement by Meta Poneleit (Freiburg, 26 April 1955), EL 322/II, Bü 1, SL.



Instead, she suggested that they speak with the former lieutenant, “Schmitthammer, who supposedly can be found working as an optometrist in the Rendsberg region.” The interrogators noted that she seemed “embarrassed” to be put in this situation, and she worried that they were “putting the cart before the horse” (*dass hier das Pferd am Schwanz aufgezäumt würde*) by not speaking first with officers in the Memel police who had regular contact with Fischer-Schweder.

Investigators concurred and began to search for “Schmitthammer” and a few officers Poneleit had mentioned. Over the next six weeks, they labored to track down these individuals and turned up little information on Fischer-Schweder. They asked about possible spelling variants for Schmitthammer, but Poneleit could not recall.<sup>9</sup> Another of the individuals she had mentioned died the previous year.<sup>10</sup> The investigators were surprised to learn in late May about Fischer-Schweder’s lawsuit in the Ulm labor court, but this information only fueled more speculation and rumor.<sup>11</sup> One letter suggested that they track down “a businessman from Berlin-Spandau with the first name ‘Robert’” who had allegedly been staying at a guesthouse thirty miles north of Ulm and knew Fischer-Schweder since 1927.<sup>12</sup> These kinds of miscellaneous leads meant that after six weeks, they had uncovered

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<sup>9</sup> Zimmermann to Kriminalhauptstelle Freiburg (27 April 1955), EA 48/2 I, Bü 3110, SL; Landespolizeidirektion Südbaden to Landespolizeidirektion Nord-Württemberg (27 April 1955), EA 48/2 I, Bü 3110, SL.

<sup>10</sup> Bundesausgleichsstelle beim Bundesministerium des Innern to Landespolizeidirektion Nord-Württemberg (10 May 1955), EA 48/2 I, Bü 3110, SL.

<sup>11</sup> Kriminalsekretär Dangelmaier, Landespolizeidirektion Nord-Württemberg, Kriminalaussonstelle Ulm-Wilhelmsburg to Landespolizeidirektion Nord-Württemberg, Kriminalhauptstelle (26 May 1955), EA 48/2 I, Bü 3110, SL.

<sup>12</sup> Kriminalsekretär Dangelmaier, Landespolizeidirektion Nord-Württemberg, Kriminalaussonstelle Ulm-Wilhelmsburg to Landespolizeidirektion Nord-Württemberg, Kriminalhauptstelle (26 May 1955), EA 48/2 I, Bü 3110, SL.

possible evidence of criminal behavior, but precise information on very little.<sup>13</sup> By June 13, 1955, detectives presented their findings to the Ulm prosecutor's office, which asked them to continue their investigation.<sup>14</sup>

This investigation would stretch on for nearly three years and culminate in the trial of ten *Einsatzkommando* Tilsit members. But it would be a mistake to think that the evolution of this trial followed a linear or conventional path. The small-scale origins of the case bore no indication of the consequential trial it would become. During the initial year of the investigation, Fischer-Schweder remained the sole target of the investigation. Although evidence of massive crimes was uncovered, prosecutors limited their case to the former camp director. In this regard, the first phase of the investigation mirrored 1950s West German Nazi crimes prosecutions. The case began via a chance encounter with a perpetrator that brought allegations before the state. This case failed to register as a high priority for the state, which preferred to focus on more contemporary crimes. As a result, the minimum effort was devoted to determine whether an indictment was justified.

Beginning with the Poneleit allegations in March 1955 and ending with the indictment of Fischer-Schweder in May 1956, this chapter considers the troubled first year of the Ulm investigation. Despite a year's efforts by the prosecutor and his team, Fischer-Schweder (and for that matter, the other nine defendants) nearly avoided prosecution altogether. It was only thanks to the transformation of the investigation during its second phase, discussed in the next chapter, that the case expanded to ten defendants and made it to

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<sup>13</sup> Statement by Robert Chalcupek (Stuttgart, 28 May 1955), EL 322/II, Bü 7, SL.

<sup>14</sup> Landespolizei Nordwürttemberg – Kriminalhauptstelle to Staatsanwaltschaft Ulm (8 June 1955), EL 322/II, Bü 1, SL; Anzeige gegen Fischer-Schweder, Bernhard; Landespolizeidirektion Nordwürttemberg, Kriminalhauptstelle (Stuttgart, 3 November 1955), EL 322/II, Bü 1, SL.

trial. To understand this first phase of the Fischer-Schweder investigation is to understand how fundamentally the cards were stacked against prosecutors investigating crimes of the Holocaust in postwar West Germany. The struggles of the investigators and prosecutors during this investigation were symptomatic of the typical problems with Nazi crimes investigations in 1950s West Germany. The issue was not just that many prosecutors and detectives took little interest in bringing Nazi criminals to justice, but also that even those who worked earnestly did not fully comprehend or have available the resources needed to investigate and prosecute this special set of crimes. They did not have the tools to carry out such investigations because the Ulm trial had not yet invented them.

### **In Ulm, about Ulm, and all around Ulm**

The actual city of Ulm seemed as unlikely a place as anywhere in West Germany to become an epicenter in the country's judicial attempts to confront its Nazi past. A small city downstream from the Danube's origins, Ulm was a conservative town in a conservative state. Since the return of the political parties in postwar West Germany, Ulm voted to the right.<sup>15</sup> During the 1950s, debates over the prosecution of former Nazis fell fairly strictly along political lines. The Christian Democrats, under Chancellor Adenauer, favored continued amnesty in the name of social cohesion; the Social Democrats on the left, however, increasingly pushed the need to deal more seriously with the Nazi past.<sup>16</sup> Ulm was proudly Christian Democratic, even earning a reputation as a hard-line, conservative West German

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<sup>15</sup> Klaus Beer, *Junger Sozialdemokrat in Ulm 1953-1960. Aus dem Innenleben der Ulmer SPD in jener Zeit* (Dresden: Verlag Peter Grohmann, 1998).

<sup>16</sup> See Jeffrey Herf's chapter on "Atonement, Retribution, and Justice Delayed" for the politics of the judicial reconciliation with the Nazi past; Herf, *Divided Memory*, 267-333.

city.<sup>17</sup> From a political standpoint, the city seemed more likely to harbor Nazi criminals than to prosecute them.

Ulm's main cultural and historical legacies today consist of laying claim to the world's tallest cathedral steeple and being the birthplace of Albert Einstein and hometown of Erwin Rommel. Most German schoolchildren encounter the Swabian town through a tongue-twisting mnemonic for remembering prepositions: *In Ulm, um Ulm, und um Ulm herum* (in Ulm, about Ulm, and all around Ulm). The Ulm *Spatz* (sparrow) had been the symbol of the city since the construction of the iconic cathedral that soars above the town in the middle ages. The story goes that in trying to move timber past the city walls for a new town hall, builders became stuck at the narrow entry gate. While debating whether to destroy the walls or change the building plans, a sparrow flew overhead and began to lay branches lengthwise to fit into the nest. Suddenly, the solution to the lumber problem was solved: rotate the lumber ninety-degrees and it could pass unfettered through the city's gates.

The humble stories Ulmers tell about themselves belie the important and turbulent past of the city. The Danube, with its mouth hundreds of miles away on the Black Sea coast, has defined the city, and Ulm's fortunes have risen and fallen on its waters. Although not yet the broad and inspiring river of Vienna or Budapest, the Danube in Ulm is fully navigable, and Ulm derived its strategic importance from serving as a gateway between the Danube proper and the Black Forest rivulets upstream. It was from these shores that many medieval Germanic merchants – the *Donauschwaben* – disembarked to settle the fertile valley in Eastern Europe. During this time, Ulm flourished as a trading center; in addition to the east to

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<sup>17</sup> According to Kathleen Nawyn, Ulm had a “reputation as a postwar stronghold of Nazism”; see, Kathleen Nawyn, “Striking at the Roots of German Militarism: Efforts to Demilitarize German Society and Culture in American-Occupied Württemberg-Baden, 1945-1949,” (PhD dissertation, University of North Carolina at Chapel Hill, 2008), 131-135.

west flow of goods down river, the city became an important stop on trade between Germany and the rich urban areas of Northern Italy. Under Frederick Barbarossa and his Hohenstaufen dynasty, Ulm became a free imperial city, and this wealth bequeathed Ulm its monumental cathedral. Centuries later, Napoleon achieved a critical victory at Ulm over the Austrians, who sought refuge behind the city's strong walls only to be surrounded and, lacking aid, forced to surrender. Although Ulm maintained strategic military importance and industrialized during the nineteenth century, by the twentieth it had comfortably settled into its position as a second-tier German city filled with monuments to its once prominent self.

By 1945, most of this historic center of Ulm lay in ruins, as the city's interior mirrored the condition of much of urban Germany. Eighty-five percent of the city had been destroyed; of 12,756 prewar buildings, only 2,633 remained undamaged.<sup>18</sup> The population had dropped from its prewar level of 68,585 to 28,585. This forty percent decline was mostly due to mass exodus from the city, though 5,761 Ulm inhabitants died as a result of the war itself.<sup>19</sup> Not until 1951 did the city return to its prewar population. During the war, the city produced military trucks among other war assets, which made it a valuable aerial raid target. Due to its position in the far south of Germany, however, the Allies were unable to strike substantially at Ulm until the later stages of the war. By 1944, with aerial supremacy over Germany nearly complete, Ulm began to suffer sustained attacks. On the evening of December 17, 1944, the worst single day of bombing in the city, an estimated 25,000 inhabitants lost their homes and 700 were killed. By the end of the war, only the blackened

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<sup>18</sup> "Die Geschichte der Stadt," Pamphlet (Ulm: Stadt Ulm Zentralstelle Öffentlichkeitsarbeit und Repräsentation, 2009).

<sup>19</sup> "Die Stadt in Zahlen," Pamphlet (Ulm: Stadt Ulm Zentralstelle Öffentlichkeitsarbeit und Repräsentation, 2009); "Die Geschichte der Stadt."

cathedral spire provided a reminder that the city had once been Ulm.<sup>20</sup> Allies and the civilians now set themselves to the enormous task of creating order out of the city of rubble.

The Danube that bisected the city also served as a dividing line for the postwar state boundaries. The east bank of the river became part of Bavaria, while the western part, home to the majority of the city and its historic center, belonged to Württemberg-Baden. During the immediate postwar years, however, both fell into the U.S. occupation zone. A more logical border would have placed Ulm in the French-controlled Württemberg-Hohenzollern, but Americans wanted control of the entire Karlsruhe-Munich Autobahn, which passed near Ulm.<sup>21</sup> As a result, from the first days of the postwar period, Ulm became a city on the margins of the state with its capital sixty miles northwest in Stuttgart. By 1952, Württemberg-Baden merged with the former French occupation zones of neighboring Württemberg-Hohenzollern and Baden (Südbaden), to form the current state of Baden-Württemberg.<sup>22</sup>

One of the immediate challenges to the occupiers was establishing a functioning judiciary to maintain peace and restore civilian order within Germany.<sup>23</sup> In the American zone of Württemberg-Baden, the state attorney general worked out of the capital, Stuttgart, while a number of other secondary prosecutor's offices were established regionally throughout the state. Ulm became the home of one of these branches. Once the new West German judiciary had been created, Allies faced a challenge in staffing it. The German legal

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<sup>20</sup> "Die Geschichte der Stadt."

<sup>21</sup> Reihnhold Weber and Hans-Georg Wehling, *Geschichte Baden-Württembergs* (München: Verlag C.H. Beck, 2007), 105-107

<sup>22</sup> Weber and Wehling, *Baden-Württemberg*, 110-115.

<sup>23</sup> See, Jarausch, *After Hitler*, 48-55; Andrew Szanajda, *The Restoration of Justice in Postwar Hesse, 1945-1949* (Lanham: Lexington Books, 2007).

system had been one of the most thoroughly nazified professions during the Third Reich, and in many cases, the most talented jurists were also the most severely implicated in crimes of the state.<sup>24</sup> Many members of the legal community found it necessary to join the Nazi party in order to advance within the ranks of the judiciary, making it exceptionally difficult to find able jurists not tainted by Nazism to fill the postwar ranks. Those who had not joined the party, meanwhile, constituted a mixed-bag of personalities. Some were exceptional citizens determined to make a moral statement through their refusal, others were obstinate individuals who preferred to zig when others zagged. When the American occupiers chose Rudolf Saup to head the Ulm prosecutor's office in 1945, they got a person who tilted towards the stubborn end of the spectrum.

Saup, like many involved in the Ulm Einsatzkommando trial, was not originally from Ulm. Born in 1897 in a village outside Roggendorf, itself a small town near the northern German city of Lübeck, Saup first came to the area as a university student in Tübingen.<sup>25</sup> One of the premier universities in Germany, Tübingen trained many of the legal minds behind the Ulm trial.<sup>26</sup> After receiving his doctorate of law in 1925, Saup began work as an assistant prosecutor within the Stuttgart area until promoted to district attorney in Ulm in 1940. According to a later denazification panel, he navigated Hitler's rule without ever

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<sup>24</sup> Szanajda, *Restoration of Justice*.

<sup>25</sup> Saup, Lebenslauf, EL 322/III, Bü 6, SL.

<sup>26</sup> In addition to Saup, the later prosecutor of the trial Erwin Schüle, as well as State Attorney General Erich Nellmann and Baden-Württemberg Justice Minister Wolfgang Haussmann, received their law degrees from the university in Tübingen. Unlike Saup, these later three, as subsequent chapters will make clear, provided strong voices of support for an enlarged trial in Ulm and for a more critical legal reconciliation with the Nazi past.

joining the Nazi party, and for this reason, the American occupiers appointed him the head prosecutor of Ulm in 1945, a position he would hold until retiring in 1962.<sup>27</sup>

In this position, Saup provided badly needed stability. Given the destruction of Ulm's urban landscape, the importance of establishing a reliable and functioning judiciary cannot be overstated. The development of this apparatus was one of Saup's signature achievements. As a newspaper article later noted, "It is thanks to Saup that the Ulm prosecutor's office was reorganized under difficult circumstances after the overthrow and became a model functioning office."<sup>28</sup> Saup benefited in particular from already having worked in Ulm for a number of years. Unlike many replacements after 1945, he knew the office and the region, and this familiarity helped him maintain his position until retiring in 1962.

Saup's stability, however, came with drawbacks. For one, he lacked vision and sought stability through a conservation of effort. His superior, State Attorney General Erich Nellmann, later described him as "not a particularly active prosecutor."<sup>29</sup> Especially when it came to politically sensitive situations, as with the Fischer-Schweder investigation, Saup preferred to tread water, neither impeding these efforts through overt inaction nor advancing them through exerted efforts. He hoped, it seemed, to avoid the attention that might attend either end of the spectrum. Saup's aloof attitude created an uninspired culture within the prosecutor's office. Nellmann noted that although he had always found Saup to be "courteous and friendly," those who worked under him complained that he "was not in very close contact" with them.

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<sup>27</sup> Saup, Personalbogen, EA 4/153, Bü 501, HS; Fragebogen, Military Government of Germany (28 August 1945), EA 4/153, Bü 501, HS.

<sup>28</sup> "Vierzig Jahre in Justizdienst," *Schwäbische Donau-Zeitung* (29 December 1962), EL 322/III, Bü 6, SL.

<sup>29</sup> Aktenvermerk (Stuttgart, 16 February 1960), EA 4/153, Bü 501, HS.



Rudolf Mettler, in particular, chafed under Saup's leadership during the Fischer-Schweder case. Later Saup's replacement, Mettler spent the 1950s as head of the major crimes unit in Ulm.<sup>30</sup> In this capacity, the allegations brought against Fischer-Schweder fell under his oversight. Together, the two Rudolfs defined the first year of the investigation. While Mettler conducted daily oversight of the investigation, it was Saup's occasional interventions that determined the permissible scale and scope of Mettler's efforts. Increasingly, Mettler felt that the upper bounds of the efforts and resources Saup allowed for the investigation of the case fell shy of what was needed to bring the matter to a satisfying resolution. Saup never freed Mettler from his other case obligations to pursue the Fischer-Schweder case. At one point in 1956, Mettler had fifty-four additional cases on his plate.<sup>31</sup> Greatly overworked, Mettler could not devote the time and attention to the Fischer-Schweder investigation that he would have preferred.

Mettler's approach to law contrasted with Saup's timid and constricting leadership. He combined a deliberative, detail-oriented approach with a tendency to theorize, making him a hybrid of a desk-bound German bureaucrat and an ivory tower intellectual. "The art of being a good attorney," Mettler once stated, "is not only knowledge of the articles and methods of criminal investigations, but also the capacity to understand the man or the woman who is sitting in the dock."<sup>32</sup> While he stressed the need to master the technical aspects of the profession, it is significant that he saw what he did as an art. There were many rote, routine, and perfunctory aspects of the discipline, but at its core beat a human heart. This thoughtful,

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<sup>30</sup> Mettler, Lebenslauf, EL 322/III, Bü 2, SL.

<sup>31</sup> Erwin Schüle, Aktenvermerk über die Dienstspreehung mit der Staatsanwaltschaft Ulm am 9.10.1956 in der Sache Fischer-Schweder u.a. (12 October 1956), EL 302 I, Bü 305, SL.

<sup>32</sup> "Ich war gerne Staatsanwalt," *Schwäbische Donau-Zeitung* (5 November 1970), EL 322/III, Bü 2, SL.

methodical, and empathetic approach made for first-rate results, but came at the cost of significant effort and time. In Saup's mechanized and routinized office, Mettler's deliberative style found few rewards and little encouragement. Without the freedom to explore cases as he saw fit, Mettler operated under constant strain. Overworked, he suffered from frequent health issues and was prone to nervous attacks.<sup>33</sup> Despite such limitations, colleagues thought highly of Mettler. Even Saup acknowledged that “he has very good legal skills, excellent knowledge of criminal law, and is a very reliable, very thorough and also diligent worker.”<sup>34</sup>

Mettler first came to Ulm in 1948. Born about one-hundred miles northwest in Maulbronn on November 5, 1905, Mettler grew up in a well-educated Lutheran family. His father held a doctorate and served as principal at a nearby school. At the age of seventeen, he attended a Protestant seminary, where he received the equivalent of his Gymnasium degree in 1924. After taking his first legal examination in 1931, Mettler began work as a clerk in the Ellwangen courtroom. His political sensibilities are unclear, but Mettler did join the Nazi party in 1933. Likely, his membership derived from professional expectations, though he spent several years as a Blockleiter, a low level Nazi position analogous to heading a neighborhood watch, in Ellwangen.<sup>35</sup> From 1937 until 1945, Mettler became a full-time prosecutor in Kempten in the Allgäu region. With the occupation of Germany, Mettler was interned for six months by the Allies. Purged from his post, he spent several years out of the legal field. After a 1948 decision by the Ellwangen court that he had been a Category IV

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<sup>33</sup> Mettler's personnel file reveals a history of lingering and recurring illnesses. See, Mettler, EL 322/III, Bü 2, SL.

<sup>34</sup> Dienstleistungszeugnis (28 December 1961), EL 322/III, Bü 2, SL.

<sup>35</sup> Mettler, Form (12 January 1937), EL 322/III, Bü 2, SL.

Mitläufer in the Nazi cause, Mettler received an offer to join the prosecutor's office in Ulm under the leadership of Saup.<sup>36</sup>

Beginning in June of that year, Mettler took up his position in Ulm, commuting over fifty miles each day from Kempten.<sup>37</sup> Finally contented with the position a year later, he relocated his family to Ulm in May 1948.<sup>38</sup> At that point, Mettler had three children with his first wife. Married since 1936, she died at the age of forty-nine in May 1952.<sup>39</sup> Ten months later, Mettler had another child with a second wife, Hilde.<sup>40</sup> Although he suffered recurring health problems during the 1950s, Mettler was able to settle into his life in Ulm and spend time with his family. He developed a passion for gardening, hiking the nearby Swabian Alps, and playing music.<sup>41</sup> Over the coming years, he and Hilde had two more children. Mettler had thus experienced a series of advances and reverses since 1945. His health faltered for years and he lost his first wife at a young age, but he found a new partner, continued to grow his family, and secured an important position in the prosecutor's office in Ulm.

In June 1955, Mettler received the case that would prove the most challenging and physically draining of his entire career. It is likely that Saup and Mettler were already familiar with the Fischer-Schweder scandal. His poorly conceived lawsuit against the state government had brought unfavorable and prominent media attention in the Ulm newspapers, and one would expect the prosecutor's office to stay abreast of the happenings in the nearby

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<sup>36</sup> Mettler, Personalbogen (Ulm, 7 June 1948), EL 322/III, Bü 2, SL.

<sup>37</sup> Mettler to Justizministerium Stuttgart (6 October 1948), EL 322/III, Bü 2, SL.

<sup>38</sup> Mettler to Oberstaatsanwalt Ulm (18 May 1949), EL 322/III, Bü 2, SL.

<sup>39</sup> Erster Staatsanwalt Mayr, Staatsanwaltschaft Ulm to Justizministerium Baden-Württemberg (9 March 1953), EL 322/III, Bü 2, SL.

<sup>40</sup> Erster Staatsanwalt Mayr, Staatsanwaltschaft Ulm to Justizministerium Baden-Württemberg (9 March 1953), EL 322/III, Bü 2, SL.

<sup>41</sup> "Ich war gerne Staatsanwalt," *Schwäbische Donau-Zeitung* (5 November 1970), EL 322/III, Bü 2, SL.

labor court. When the allegations against Fischer-Schweder from the former Memel secretary, Meta Poneleit, arrived at their office, perhaps they had already been bracing for a possible investigation. But the specific crimes alleged certainly shocked their sensibilities. The prosecutor's office responded on June 15, asking the police "to carry out the necessary investigations to clarify the accusations leveled against the accused."<sup>42</sup>

### **The Banker and the Mechanic**

By endorsing the efforts of the investigators to date, Mettler gave the go-ahead to the Stuttgart detectives to continue their preliminary investigation. Since the investigators so far had uncovered nothing specific, Mettler urged them to continue digging, but only when clarification was needed or the investigators had taken a wrong turn did Mettler directly involve himself in the case. With so many additional cases demanding Mettler's immediate attention, this chance investigation into a fifteen-year-old crime did not occupy much space at his cluttered work desk. As another prosecutor later explained the situation, "He could either properly work on the Fischer-Schweder case, or on the other cases."<sup>43</sup> The conspicuous absence of the Ulm prosecutors meant that from this point until early 1956, the major developments in the case took place in the police headquarters in Stuttgart.

The key personnel involved during the investigation were the detectives at the North-Württemberg police headquarters in Stuttgart. At this time, Erwin Stimpfig, a thirty-nine year

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<sup>42</sup> Anzeige gegen Fischer-Schweder, Bernhard; Landespolizeidirektion Nordwürttemberg, Kriminalhauptstelle (Stuttgart, 3 November 1955), EL 322/II, Bü 1, SL.

<sup>43</sup> Aktenvermerk über die Dienstsprechung mit der Staatsanwaltschaft Ulm am 9.10.1956 in der Sache Fischer-Schweder u.a. (12 October, 1956), EL 302 I, Bü 305, SL.

old Stuttgart native oversaw the unit responsible for murder cases.<sup>44</sup> Helmut Opferkuch and Robert Weida joined the case in its earliest days and stayed on as the main investigators through the Ulm trial in 1958. After the trial concluded, both were appointed to a new task force for the investigation of Nazi criminals. Although they made their subsequent careers as Nazi crimes specialists as a direct consequence of the Fischer-Schweder case, prior to this neither had direct experience with investigations of the sort they were about to undertake.

Opferkuch did have prior experience with Fischer-Schweder, though. Since 1952, Opferkuch had worked in the political crimes division of the North-Württemberg state police. For the most part, this entailed issues with postwar refugees, which familiarized him with the nature of the Third Reich in Eastern Europe, but failed to give him experience in investigating murder cases. According to Opferkuch, he had by chance spoken with an officer in the Ulm branch of the state police in 1954, who mentioned that the new camp director, Fischer-Schweder, had been police director in Memel in 1941. When Opferkuch inquired about his Nazi past, he was surprised to hear that Fischer-Schweder claimed no such involvement. Opferkuch recalled, “I didn’t believe him. So I began to investigate.”<sup>45</sup> He went through the available party membership information and turned up elements of the Berlin Document Center findings that would later force Fischer-Schweder’s resignation, in turn triggering the lawsuit and Poneleit allegations. Because of this early involvement, Opferkuch requested to work the case when the criminal allegations surfaced the following year.

Little in his background suggested that he would go on to become one of the leading Nazi crimes investigators in West Germany. Born on November 16, 1919, in

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<sup>44</sup> Stimpfig, Personalbogen, EL48/3, Bü 36, SL. Later the department would merge with others as a result of the earlier creation of Baden-Württemberg, but the main detectives on the case did not change.

<sup>45</sup> Helmut Opferkuch, conversation with the author, 9 June 2011.

Adelmannsfelden, near Aalen, Helmut Opferkuch spent most of his prewar life in Ludwigsburg, where his father relocated to open a plant nursery in 1925. Opferkuch received training in banking, and beginning in 1939, the young man started work as a salaried banker in Ludwigsburg.<sup>46</sup> His employment came to a quick end, as it did for most twenty-year-old German males, as war broke out in earnest. In 1941, he entered military service in Heilbronn, until his Wehrmacht unit transferred to the North Caucasus in 1942. During the retreat in 1943, he moved back to the Crimea where he served on coastal patrol. Injured in June 1944, Opferkuch lost most hearing in his left ear. He spent much of the following year in the military hospital. His military career ended during the retreat through northern Italy, where he was captured by the U.S. army and held until July 1946.

After the war, Opferkuch had every intention of returning to his prewar life. He moved back to Ludwigsburg and married in 1946. Finding a position as a banker, however, proved difficult. In occupied Germany, there was little need for bankers; instead, there was an entire bureaucracy to rebuild, ideally using the least nazified parts of German society. Since Opferkuch had served only as a young soldier during the war and did not have party membership, he was a candidate for the new German civil service. When he and another man went to the employment office to find a job, they were told that two positions were available: one in the police, the other as a clerk. Neither man expressed a preference, and so they decided to draw straws.<sup>47</sup> Based on this moment's decision and quite literally the luck of the draw, Opferkuch went from being a banker to a detective. He worked briefly for a few years outside Stuttgart before his transfer in 1952 to the police headquarters in Stuttgart.

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<sup>46</sup> Many precise dates and details on his education and employment record come from his résumé; Helmut Opferkuch, *Lebenslauf* (1 June 2011), in possession of the author.

<sup>47</sup> Helmut Opferkuch, conversation with the author, 9 June 2011.

The assignment to the Fischer-Schweder case therefore signified a major promotion for Opferkuch regarding the kind of cases he normally worked. A detective for less than ten years and just thirty-five years old, such an assignment could either signal the talents of the young detective or reflect the relative low priority this case held within the police force. Likely, truth lies on both sides. Opferkuch brought familiarity with Fischer-Schweder to the case, which helped in certain respects. But asking a junior detective, with no experience in murder cases – let alone mass murder cases – to investigate crimes that took place over a decade ago in an unfamiliar land raises legitimate questions about how seriously the prosecutor’s office and the police force took the Fischer-Schweder case.

Opferkuch did not work the case in isolation. The other major detective was Robert Weida. Not a banker, but a mechanic by training, Weida worked alongside Opferkuch. As the senior officer, Weida was not always as active as Opferkuch in the field, but he did coordinate efforts between the detectives, the higher-level state police officials, and the Ulm prosecutors. A committed Social Democrat, Weida had perhaps the clearest and most explicit political ambitions in investigating Nazi crimes of any justice officials involved in the Ulm case.<sup>48</sup> In the wake of the trial, he too would join the detectives’ commission for the Zentrale Stelle and become an outspoken advocate for the importance of Nazi crimes prosecutions.<sup>49</sup>

Just a few years older than Opferkuch, Weida was born in 1915 to a Protestant family in Freiburg. He began work there as a mechanic until 1936, when he joined the military.<sup>50</sup> In

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<sup>48</sup> Marc von Miquel located and identified an important independent summarizing of the work of Sonderkommission Z prepared by Weida in 1963. He submitted this report to Willi Sauter, who was affiliated with the SPD in West Germany. Miquel described Weida as “exceptionally politically engaged.” See, Miquel, *Ahnden*, 153-154; and Robert Weida, “Die Sonderkommission ‘Z’” (11 June 1963), Bestand SPD-Bundestagsfraktion 4. Wahlperiode, Signatur 662, Archiv der sozialen Demokratie der Friedrich-Ebert-Stiftung.

<sup>49</sup> Robert Weida, “Unbewältigte Vergangenheit” (undated), in possession of the author.

<sup>50</sup> Weida, *Werdegang*, EL48/3, Bü 43, SL.

the Luftwaffe, Weida served in Italy and later France until 1945, at which point he was captured and taken into an English prisoner of war camp.<sup>51</sup> Two months later, Weida was released, and in 1947 the denazification Spruchkammer in Heilbronn declared him “not affected” by Nazism.<sup>52</sup> The postwar opened up opportunities for those without Nazi pasts, and Weida began work as a rank-and-file police officer in a small town outside Heilbronn in 1946.<sup>53</sup> After additional training, he joined the state police headquarters in Stuttgart in 1949 as a clerk (*Sachbearbeiter*), and by 1954, received a promotion to senior detective (*Kriminalobersekretär*).<sup>54</sup> In this position, he and Opferkuch, under their superior Stimpfig and on the instructions of Mettler, carried out the investigation of Fischer-Schweder.

Although Opferkuch and Weida would go on to be the leading West German investigators of Nazi crimes, they were both neophytes when it came to investigating the types of crimes alleged against Fischer-Schweder in 1955, and they faced a steep learning curve. One challenge at the onset regarded the West German legal approach to Nazi crimes. Rather than prosecuting “crimes against humanity,” as the Allies had done and which most Germans condemned as *ex post facto* law, the state decided to prosecute all such crimes under the 1940 German criminal code. This meant that the state drew no legal distinction between state-sanctioned, state-organized mass executions and first-degree murder

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<sup>51</sup> Weida, Personalbogen, EL48/3, Bü 43, SL.

<sup>52</sup> Spruchkammerentscheid (Heilbronn, 21 April 1947), EL48/3, Bü 43, SL.

<sup>53</sup> Weida to Innenministerium Baden-Württemberg (10 November 1969), EL48/3, Bü 43, SL.

<sup>54</sup> Weida, Werdegang, EL48/3, Bü 43, SL.



committed by deviant individuals.<sup>55</sup> To prove Fischer-Schweder guilty of murder, the investigators therefore needed specific evidence that he had taken human life in accordance with the strict West German criteria that distinguished first-degree murder from homicide. This, in turn, required proving a base motive, blood lust, treacherousness, or maliciousness. These categories required the investigators to go beyond the question of whether or not Fischer-Schweder had carried out massacres; they had to prove that he had acted of his own volition, behaved in a particularly gratuitous and heinous manner, or internalized the base motives of his superiors if he had merely carried out orders. The question of motivation was central. In their efforts to find evidence of crimes, they were as interested in the personality of Fischer-Schweder as they were in his actions, a factor that would drive the interrogations.

The West German legal interpretation that murder was murder, regardless of the regime under which it occurred, did not hold in practice, however. Most investigations start with a crime, and the work of the detective is to identify the criminal. But instances like the Fischer-Schweder case inverted this dynamic. Detectives received information that he had engaged in criminal behavior, and the purpose of the investigation was to identify the crimes. This shift required an entirely different approach to a murder investigation, and from the outset, Opferkuch and Weida were unsure how to proceed. Their plan was to find former Memel police associates of Fischer-Schweder and interrogate them about his tenure as police director and learn what they could about any possible shootings in the Memel region. With no concrete evidence of crimes, they hoped the former police would supply this. Yet this strategy yielded only five interviews during the first two months of the investigation.

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<sup>55</sup> For a more nuanced discussion of the intricacies of West German law regarding murder, see Pendas, *Frankfurt Auschwitz Trial*, 53-70; and Kerstin Freudiger, *Die juristischen Aufarbeitung von NS-Verbrechen* (Tübingen: Mohr Siebeck, 2002).

Simply locating these individuals proved a challenge. At this point in West Germany, there was no centralized resource for the detectives to consult regarding the types of alleged crimes. No central database contained the names of those who had served in various units or in the Memel police force. From the initial Poneleit statements, the detectives had learned of various other individuals who might be able to shed light on the possible crimes involving Fischer-Schweder from 1941, but connecting these names to real individuals with specific addresses in West Germany proved extraordinarily difficult. Poneleit herself, as mentioned earlier, had fingered Schmidt-Hammer as possibly involved in shootings, but investigators could not find anyone with the spelling she provided. The same challenges confronted them with other individuals: were they looking for Kleinmann or Kveimann, Mischkat or Meschkat?<sup>56</sup> With no centralized options or coordinating agency, the detectives were forced to send off inquiry after inquiry to various local police offices, representative agencies from former East Prussian cities, and town administrations in hopes of finding a match.<sup>57</sup> Predictably, these efforts rarely found success.

Not until late July 1955 did the investigators carry out the first interrogation of consequence. Stuttgart investigator Opferkuch traveled north to Peine to speak with Hans Günther, a man mentioned in Poneleit's statement.<sup>58</sup> Born in 1889, Günther had been a major in the Schutzpolizei in Memel during Fischer-Schweder's tenure, as well Schmidt-Hammer's superior, which made him a potential source of a great deal of information on executions and

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<sup>56</sup> Zimmermann to Kriminalpolizei Hannover (29 June 1955), EA 48/2 I, Bü 3110, SL; Landeskriminal-Polizeiamt Schleswig-Holstein to Landespolizeidirektion Nord-Württemberg (27 April 1955), EA 48/2 I, Bü 3110, SL; Zimmermann to Landeskriminal-Polizeiamt Kiel (25 April 1955), EA 48/2 I, Bü 3110, SL.

<sup>57</sup> The Staatsarchiv Ludwigsburg contains dozens of these early inquiries for individual's addresses. In almost all cases, responses came back to the Stuttgart detectives in the negative. See, EA 48/2 I, Bü 3110, SL.

<sup>58</sup> Stimpfig to Staatsanwaltschaft Ulm (3 July 1957), EL 322/II, Bü 62, SL.

on Schmidt-Hammer's whereabouts. Opferkuch came prepared to discuss Fischer-Schweder and his criminality. Günther was more than willing to help make a case against the police director in order to deflect attention off himself. Even though Günther professed "no close professional contact with him and absolutely no insights into his personal life," he described Fischer-Schweder as "an excessively committed Nazi," who was "often drunk on the job."<sup>59</sup>

Regarding Fischer-Schweder's crimes, Günther claimed "no Jews were to be found in Memel at the time in question," but recalled "that multiple shootings of Jews were carried out in the border towns of Polangen and Krottingen, directly on the German-Memelland border, in the timeframe from 1940-1943." Fischer-Schweder had "gathered together a shooting squad [*Erschiessungskommando*] from a group of Schutzpolizei...approximately thirty men, or one platoon." Though he could not say for certain, he reasoned that the orders for these shootings must have originated from a higher office, since Fischer-Schweder had no jurisdiction outside Memel. More precise details on any shootings escaped his memory. Opferkuch asked for others with whom he should speak, and Günther stated that his former adjutants, Schwerdtfeger and Schmidt-Hammer, had been involved in these shootings and could provide additional details. He insisted that he had taken no role in any executions and noted that "even though I belonged to the Nazi Party since 1933, I am not an opponent of Jews," offering as proof that he went to a Jewish doctor in the early 1930s.<sup>60</sup>

Encouraged by the interview, Opferkuch wrote his superiors. He believed that Günther had "incriminated Fischer-Schweder with his claim that the order for the creation of a shooting squad was issued by him.... Possibly he is himself not fully responsible, but had

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<sup>59</sup> Statement by Hans Günther (28 July 1955, Peine/Niedersachsen), EL 322/II, Bü 1, SL.

<sup>60</sup> Statement by Hans Günther (28 July 1955, Peine/Niedersachsen), EL 322/II, Bü 1, SL.

only relayed the order.”<sup>61</sup> These statements had proven useful, particularly since Günther had been a prominent official within the Memel civil service. Unlike many subsequent witnesses, Günther seemed relatively willing to discuss the situation along the German-Lithuanian border in 1941, yet later evidence would indicate that he held a much larger role in the massacres than he admitted to Opferkuch.<sup>62</sup> Unfortunately for the investigators, he died soon after the interview, and they had no opportunity to speak with him further.<sup>63</sup>

Nearly two weeks after the Günther interview, Weida and Opferkuch combined efforts and traveled to Kaiserslautern to interrogate Gerhard Schwerdtfeger, who had been Günther’s adjutant in Memel and supposedly took part in mass executions alongside Fischer-Schweder.<sup>64</sup> Not much older than Weida and Opferkuch, Schwerdtfeger had served in Memel since 1940 and relocated to Kaiserslautern in 1954 from his hometown Berlin. As the three men discussed the Fischer-Schweder case on August 10, the former adjutant agreed with Günther’s statements that an execution squad “of one officer and thirty men” had been organized “by the police director.” When pressed about whether the victims of these shootings were Jews from a camp or ghetto, Schwerdtfeger stated that “to my knowledge there were no camps of Jews in the entire area. If I recall correctly, it was saboteurs, spies, or similar elements.” Contrary to what Günther indicated, he insisted that he “neither led the shooting squad nor took part in it as a witness.” Instead, he claimed “Schmitthammer” had been the officer in charge of the unit. Finally, Schwerdtfeger described Fischer-Schweder as

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<sup>61</sup> Opferkuch to Zimmermann (28 July 1955), EA 48/2 I, Bü 3110, SL.

<sup>62</sup> Günther had discussed the use of his men with Fischer-Schweder for the Garsden, Krottingen, and Polangen executions, and it was Günther’s decision to appoint Schmidt-Hammer as the leader for all three.

<sup>63</sup> Ermittlungsverfahren gegen Fischer-Schweder, Bernhard; Landespolizeidirektion Nordwürttemberg - Kriminalhauptstelle (Stuttgart, 1 March 1956), EL 322/II, Bü 1, SL.

<sup>64</sup> Statement by Gerhard Schwerdtfeger (Kaiserslautern, 10 August 1955), EL 322/II, Bü 1, SL.

the kind of “egomaniacal” person who “acted more from emotion rather than like a man who had a thorough education.”<sup>65</sup>

Following the Schwerdtfeger interrogation, the investigation stalled. In the previous two months, Weida and Opferkuch had conducted only two meaningful interviews. It was clear that “Schmitthammer” was a person of interest, but they had no success tracking him down. For the next two months, they failed to advance the case through any additional interviews. They spoke with three other individuals, but these could offer “no incriminating statements” on Fischer-Schweder.<sup>66</sup> Through interrogations of Poneleit, Günther, and Schwerdtfeger, they had learned only that Fischer-Schweder had been widely disliked and that executions took place somewhere in the Memel vicinity in 1941. It was not immediately clear though that anything illegal had occurred. Poneleit had alleged the shooting of Jewish civilians, but by her own admission, she had no direct knowledge of the events she described. Moreover, the other witnesses, who were both officers, insisted no Jewish ghettos or camps existed within the area at that time. Instead, Schwerdtfeger claimed that any people shot were spies and saboteurs, which would have made their deaths permissible under international law.

The investigators’ inability to find concrete information also reflected their lack of knowledge and faulty assumptions about the circumstances in which these executions took place. Both investigators were attuned to the seriousness of the allegations Poneleit leveled about the shooting of Jews in a ghetto. This story corresponded to the conceptions of the Holocaust handed down through popular culture and the International Military Tribunal at Nuremberg and successor trials. These ideas characterized the Holocaust as taking place in

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<sup>65</sup> Statement by Gerhard Schwerdtfeger (Kaiserslautern, 10 August 1955), EL 322/II, Bü 1, SL.

<sup>66</sup> Statement by Artur Hennig (Hamburg, 30 July 1955), EL 322/II, Bü 1, SL; Opferkuch to Landespolizeidirektion Nord-Württemberg (30 July 1955), EA 48/2 I, Bü 3110, SL.

ghettoes, camps, or in the fields at the hands of preselected dyed-in-the-wool fanatic Einsatzgruppen members. But such scenarios did not map onto the events in the border area of the summer of 1941. There were no camps or ghettos at this point in the Memel area, and because the investigation targeted a former police director, no one suspected open-air mass executions. The expectations, then, that any crimes committed must have involved camps or ghettoes framed the investigation.

Because of the detectives' misconceptions, those interrogated gained the upper hand in the investigation. Men like Schwerdtfeger and Günther knew *exactly* what had happened along the border. There had been no camps or ghettoes, but there had been mass executions. When they heard detectives asking generic questions about Memel area ghettoes and concentration camps, they knew the detectives were unaware of the mass executions or of the enormity of the crimes they were probing into. As former police officers themselves, the witnesses therefore fed the detectives what they wanted to hear. They helped to make a case against Fischer-Schweder by providing negative images of the police director, all the while concealing the true extent and nature of the crimes carried out by the shooting squad.

The consequence of these deceptions was that from June until October 1955, Weida and Opferkuch's efforts had been sidelined into an investigative cul-de-sac. Detectives not did not know how to pursue this case effectively and they seemed to lack drive. Despite the enormous scale of the crimes and their politically sensitive nature, there was no urgency in the first four months of the Fischer-Schweder investigation. The investigators worked their case in isolation, with little input from the Ulm prosecutors. Without any external pressure pushing the investigation, the case languished. Barring any new breakthroughs, prosecution seemed unlikely.

## Pressure from the Jewish Community

Otto Böhnke, a resident of Ulm originally from Memel, read with great interest an exchange in the *Ulmer Nachrichten* in late May 1955. He saw first an article about Bernhard Fischer-Schweder, the former police director of Memel, suing the labor court for reinstatement to a refugee camp position. The following day, the paper ran a letter of defense from Fischer-Schweder, in which he declared his clean background and proper behavior in the Third Reich. Böhnke did not know Fischer-Schweder personally, but had heard of his reputation as a “150 percent Nazi.”<sup>67</sup> He had been a refugee and spent time in a postwar displaced persons camp and was outraged that “despite the good intentions of the responsible offices to help refugees, the bad intentions of a few often twist these positives around.”

Surprised by the disparity between Fischer-Schweder’s bad reputation in Memel and the self-image he was trying to promote, Böhnke wrote to a former acquaintance, Wilhelm Kersten, about the issue. Although the two had not seen each other since 1939, Böhnke knew that Kersten had worked under Fischer-Schweder in Memel. Moreover, Böhnke had learned that Kersten “was arrested on account of this man [Fischer-Schweder].” He forwarded Fischer-Schweder’s letter to the editor and asked, “What do you think about this situation, my dear Mr. Kersten? Should we accept this defense of Fischer-Schweder’s, which combines poetry and truth? Or would it not be better to at least bring a little of his behavior in Memel to light? What can you say about this from your own knowledge?”<sup>68</sup>

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<sup>67</sup> Otto Böhnke to Kersten (30 May 1955), EL 302 I, Bü 305, SL.

<sup>68</sup> Otto Böhnke to Kersten (30 May 1955), EL 302 I, Bü 305, SL.

Slightly over a month later, Kersten responded.<sup>69</sup> Writing from Hannover, he seemed genuinely glad to have heard from an old colleague. Regarding the situation at hand, Kersten was baffled. Fischer-Schweder's claims had rested on two main points: first that he had joined the SS against his will, and second that he had acted with charity toward all civilians, regardless of race or creed. Both hit false notes for Kersten. Regarding Fischer-Schweder's alleged victimization by the SS, he replied to Böhnke, "Mr. Fischer had explained to me that he did everything he could in order to go from the SA to the SS." Kersten had also shared the letter to the editor with another former Memel policeman, Max Kahlberg, and upon reading the claims, "He could only shake his head that he [Fischer-Schweder] had supposedly been a friend to Jews and Poles." According to Kersten, "Fischer-Schweder...led the first shooting of some 100 Jews in Garsden."<sup>70</sup>

After receiving this incriminating statement, Böhnke seems to have gone first to the refugee camp where Fischer-Schweder had worked to determine the best course of action. There he was put in touch with the main Baden-Württemberg Jewish cultural organization, the Israelitische Kultusvereinigung – Württemberg und Hohenzollern. An Ulm representative of the agency responded to the Fischer-Schweder allegations with frustration that "such a man could slip by all denazification authorities" and forwarded the statement on to the head of the organization, Josef Warscher.<sup>71</sup> Warscher, a Buchenwald survivor, had been head of the organization since it was re-founded in 1945.<sup>72</sup> Its predecessor, forced to close by the

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<sup>69</sup> Wilhelm Kersten to Otto Böhnke (3 July 1955), EL 322/II, Bü 1, SL.

<sup>70</sup> Wilhelm Kersten to Otto Böhnke (3 July 1955), EL 322/II, Bü 1, SL.

<sup>71</sup> Woldmann to Israelitische Kultusvereinigung (21 July 1955), EL 302 I, Bü 305, SL.

<sup>72</sup> Warscher to Fritz Holldack (23 July 1958), 1026 IK – Israelitische Religionsgemeinschaft, Bd. 294 - Politische Angelegenheiten, StS.



Nazis in 1933, dated back to the early nineteenth century, and as such, the organization's re-founding formed an important part of reconstituting Jewish life in West Germany.<sup>73</sup> By the mid-1950s, the agency spoke for over five hundred Jews living in the state, and this collective voice, as the surviving remnant of the substantial pre-1933 Jewish community, could have substantial effect if brought to bear on the judiciary.<sup>74</sup>

On September 12, 1955, Warscher forwarded the Kersten allegations on to the Ulm prosecutor's office.<sup>75</sup> The information had a tremendous and immediate impact, more significant in many ways than the initial Poneleit allegations. Warscher wrote a one-sentence letter stating, "We hereby file a criminal complaint against Mr. Fischer-Schweder and, regarding that, refer to the section marked in red on the second page." What followed was a copy of Kersten's letter to Böhnke with the allegations of a mass execution in Garsden heavily underlined. This letter affected both the prosecutors and investigators. For Saup and Mettler, the intervention of this external, critical public voice added the sense of urgency absent from the first few months of the investigation. The Fischer-Schweder case had always threatened to scandalize the state, and perhaps because of this, there was little overt pressure to dig up details about his past if no one was asking. But now, the main Jewish agency of the region was asking and in fact demanding an investigation. This did not mean that the Ulm prosecutors needed to devote maximum effort, but at least something above the tokenism of sending a few investigators off on a handful of interrogations.

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<sup>73</sup> Findbuch, 1026 IK – Israelitische Religionsgemeinschaft, StS.

<sup>74</sup> Speech, Alfred Marx (21 February 1954), 1026 IK – Israelitische Religionsgemeinschaft, Bd. 667 – Mitgliederversammlungen, StS.

<sup>75</sup> Warscher, Israelitische Kultusvereinigung - Württemberg und Hohenzollern to Staatsanwaltschaft Ulm (12 September 1955), EL 322/II, Bü 1, SL.

Mettler sent the Kersten letter on to the Stuttgart detectives a few days after receiving it “with the request for the instatement and instigation [*Anstellung und Veranlassung*] of the necessary investigations.”<sup>76</sup> For Weida and Opferkuch, the Kersten allegations provided the needed shot in the arm. Even the explosive sentence revealed three crucial details: “Fischer-Schweder...led the first shooting of some 100 Jews in Garsden.”<sup>77</sup> The place name of Garsden gave immediate strength to the investigation. As the Günther and Schwerdtfeger statements indicated, asking about vague crimes led to vague answers. Asking about a specific crime, though, greatly enhanced their ability to extract actionable responses from the witnesses. It also got the investigators off their misguided emphasis on unknown camps and ghettos, focusing instead on executions carried out within a small town. Second, the implication that this was only the first execution turned the investigators on to the fact that there was a complex of mass shootings during the period. If Fischer-Schweder had only been involved in one of these, at the very least that meant there were others who also had been involved. Finally, Kersten contradicted the Schwerdtfeger claim that only partisans and spies were shot with his explicit assertion that those killed had been Jews.

Most important was that the investigators now had a few more people to interrogate. Kersten and his colleague Kahlberg had both suggested intimate knowledge of Fischer-Schweder and the executions. To determine whether or not these actions rose to the level of a prosecutable crime, Opferkuch and Weida followed up with the two men. Since both witnesses lived far north in Hanover, the detectives turned to the local Hanoverian police to carry out the interrogation. Weida wrote them with a list of five questions for Kersten and

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<sup>76</sup> Mettler, Staatsanwaltschaft Ulm to Landespolizeidirektion Nordwürttemberg - Kriminalhauptstelle (Ulm, 16 September 1955), EL 322/II, Bü 1, SL.

<sup>77</sup> Wilhelm Kersten to Otto Böhnke (3 July 1955), EL 322/II, Bü 1, SL.

Kahlberg. Straightforward questions, they concerned who “organized and carried out the shootings,” what “role Fischer-Schweder played,” whether or not these executions were carried out due to a “court order or on the order of a superior office,” what the precise details of the shootings were, and finally “names and addresses of additional witnesses.”<sup>78</sup>

This process of relying on local police officials to carry out interrogations became the norm during the first year of the investigation. From June 1955 until May 1956, the Stuttgart detectives traveled for the case just six times.<sup>79</sup> Two of these had already come during the Günther and Schwerdtferger interrogations. For the most part, they outsourced their interrogations, trusting in the capacity of their fellow police officers to pursue the case as best they could. A sheet of questions, they reasoned, could provide adequate answers. By contrast, during the last two years of the investigation, from May 1956 until the case was prepared for trial in January 1958, the detectives traveled 102 times. To some extent, this reflects the general slow pace of the first year of the investigation, compared with its second phase. But the farming out of interrogations to other departments also significantly led to this disparity in travel time devoted to the investigation. Although less expensive, the reliance on other departments became detrimental to the investigation later on, as will become apparent in the next chapter. During the first year of the investigation, Weida and Opferkuch tended to analyze interrogations, but carried out few of their own.

Hanoverian police spoke first with Kersten on Friday, October 7.<sup>80</sup> The fifty-year old East Prussian native offered detailed and incriminating information about Fischer-Schweder.

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<sup>78</sup> Weida to Kriminalpolizei Hannover (27 September 1955), EA 48/2 I, Bü 3110, SL.

<sup>79</sup> Travel information comes from reimbursement forms submitted by the investigators and prosecutors. See, EL 322/II, Bü 62-63, Kostenbelege, SL.

<sup>80</sup> Statement by Wilhelm Kersten (7 October 1955, Hannover), EL 322/II, Bü 1, SL.

He described how “a few days after the outbreak of war with Russia, the first execution of Jews was carried out in Garsden, Lithuania (about 20 kilometers from Memel).” Although he did not know who ordered the shooting, he recalled that “some 200 Jews (men, women, and children) had to dig out their own grave. Then they were shot about ten each by officers, who were under the leadership and oversight of Police Director Fischer-Schweder, in the presence of multiple Gestapo officers.” As a driver in the police, Kersten stated that he observed these executions, but did not take part in the shootings. “I myself watched,” he stated, “as Fischer-Schweder, following the actions of the officers, shot Jews dying in the grave with his pistol.” As to the question of whether these executions were performed based on “a court order or the order of a superior office,” Kersten claimed not to know.<sup>81</sup>

After the weekend, detectives interrogated Max Kahlberg, who also lived in Hannover and like Kersten, had been a driver in the Memel police.<sup>82</sup> Unlike Kersten, he claimed he did “not see or witness anything with my own eyes.” Nevertheless, he had been Fischer-Schweder’s driver with regularity and stated, “At the time, I had the feeling that Fischer-Schweder took a great deal of pleasure, joy [*Lust*], and lust [*Wollust*] in these executions of Jews and always was interested in them. He was an outspoken Jew-hater.” When the Hanover detectives pressed him on details, Kahlberg described an execution that had taken place not in Garsden, but in Polangen, north of Memel along the North Sea coast. In June 1941, he had “to drive some 22 police officers to Polangen. My comrades later explained to me...that over seventy Jews had to be shot.” He could only recall a few particularities of the execution, such as that “before the shooting the Jews took off their

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<sup>81</sup> Statement by Wilhelm Kersten (7 October 1955, Hannover), EL 322/II, Bü 1, SL.

<sup>82</sup> Statement by Georg Füllhase (10 October 1955, Hameln), EL 322/II, Bü 1, SL.

jewelry.” He stated that similar executions took place in Krottingen and Garsden. He also reported a story he heard about Fischer-Schweder at the Polangen execution that “one Jew, who only had his finger shot off, in mortal fear started a scuffle with Fischer-Schweder, who then killed him with his pistol.”<sup>83</sup>

Following these interrogations, the detectives had gleaned important details. Weida and Opferkuch were now able to establish a clear timeline for any crimes: late June 1941. Since both alleged executions had taken place on Lithuanian soil, these massacres could only have occurred following the June 22, 1941 invasion. Further, they had learned of three likely sites of execution: Garsden, Polangen, and Krottingen. No statements could fully corroborate the details of the other’s, but all witnesses were in agreement that police officers from Memel, under the leadership of Fischer-Schweder, had comprised the firing squad at these sites. Moreover, every witness to this point had made an explicit point of depicting Fischer-Schweder negatively. Kersten and Kahlberg had even described particular instances of Fischer-Schweder carrying out murder. Disagreement remained over whether or not the victims were primarily Jewish or state opponents. In all, the investigators were beginning to construct a solid case. Thanks to the intervention of the Israelitische Kultusvereinigung, they now had crime sites, a timeframe, a possible victim group, and at least one perpetrator.

### **“A Seedy and Questionable Impression”**

On November 3, 1955, Opferkuch filed a forty-four page criminal complaint to the Ulm prosecutor's office against Fischer-Schweder “on suspicion of multiple crimes of

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<sup>83</sup> Statement by Max Kahlberg (Hannover, 10 October 1955), EL 322/II, Bü 1, SL.

murder...and creating false identification” (the latter based on his postwar frauds).<sup>84</sup> After summarizing the efforts to date, the report concluded with a plan for the remainder of the investigation. Thanks to the recent statements they had gathered, Opferkuch began to feel more confident in the future of the case. No longer vainly searching for information, they were accumulating names of former Memel police officers and had precise questions to ask these potential witnesses. Nevertheless, there was a long ways to go between evidence of crimes and a prosecutable case. One aim was to interrogate old witnesses once more. In light of subsequent statements, Schwerdtfeger’s earlier claims not to have known of any shootings in the area were “not to be trusted.” Opferkuch intended to bring him in for further questioning. He also wanted to speak with Kahlberg and Kersten personally because of the “considerable importance” of their statements. Finally, regarding the target of the case, Opferkuch wrote, “The interrogation of Fischer-Schweder will not take place until newly discovered witnesses are interrogated about the person and events in question.”

The investigation had developed into a predictable pattern by this point. With the Cold War in full swing and financial resources pinched, there was no conversation about investigating the crime sites in Lithuania, which lay beyond the Iron Curtain. Opferkuch and Weida aimed to build their case instead on testimony from former colleagues of Fischer-Schweder. They would speak with one, ask questions about the executions, and try to pinpoint Fischer-Schweder’s role therein. Each witness would then offer names of additional witnesses. This helped the detectives uncover the dispersed network of ex-Memel police in West Germany. Conspicuous in their absence from this investigative approach were the Ulm prosecutors. Characteristic of Saup’s office, Mettler did not directly involve himself in the

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<sup>84</sup> Anzeige gegen Fischer-Schweder, Bernhard; Landespolizeidirektion Nordwürttemberg, Kriminalhauptstelle (Stuttgart, 3 November 1955), EL 322/II, Bü 1, SL.

investigation. What developed was a one-sided affair, in which Weida and Opferkuch pursued the case, filed summaries of their findings off to Ulm, and received little in the way of direction, beyond that they maintain a focus on Fischer-Schweder. This absence of involvement indicates passive support for the investigative strategy of relying on former Memel police testimony to build the case.

This testimony, however, came with serious, if not yet fully realized limitations. Already, Weida and Opferkuch had come to realize that at least one witness had likely held back significant information. Prying accurate accounts from many witnesses, particularly when this would often involve self-incriminating information, proved an extraordinary challenge. In subsequent interviews, when the investigators had more precise questions, Schwerdtfeger and other's memories suddenly returned, and they were able to recall precise names and dates that had earlier eluded them. Even if individuals were forthcoming about their own involvement in executions, moral and legal questions surfaced. The best witnesses would be those with the most firsthand knowledge of the crimes involved, which implied that many of these key witnesses would have been co-perpetrators of the same crimes for which Fischer-Schweder was being investigated. The investigators and prosecutors needed to confront whether or not to enlarge the investigation to these individuals.

One of the strongest challenges of this kind came when investigators finally located Günther's other adjutant, Werner Schmidt-Hammer. The detectives had tried to locate him since the Poneleit statements back in April, and only now, via an association of former Memel residents, had they succeeded in tracking the optometrist to his home in

Heidenheim.<sup>85</sup> Schmidt-Hammer's statements from November 9 provided the clearest picture yet of how the execution in Garsden was carried out, and his recollections seemed most reliable because of their self-incriminating nature.<sup>86</sup> He recalled that shortly after the war with Russia started, he and others in Memel learned that "the rear guard of the advance German troops in Lithuania were killed by partisans." As a result, Fischer-Schweder "ordered the creation of an execution squad, which was drawn from members of the Schutzpolizei from the Memel police." This unit was approximately ten to twelve strong, and "I was appointed by Major Günther as leader of this squad." The squad members were told that an SD unit had already arrested partisans, and the police would carry out the executions. The unit drove to Garsden, and upon arrival, Fischer-Schweder asked "that we be shown where the soldiers had been killed by partisans."<sup>87</sup>

When they arrived at the execution site in Garsden, Schmidt-Hammer saw a grave twenty-meters across and recalled SD officers guarding a group of forty to fifty people. "I had the impression," he stated, "that it really was a question of partisans, because these people made a rather seedy and questionable impression...My opinion was that there were no Jews among these people." Before the executions commenced, Fischer-Schweder approached Schmidt-Hammer, as leader of the squad, and instructed that "I should explain to the partisans why they are to be shot." Soon, the SD troops brought out approximately a dozen prisoners, stood them before the grave in a line parallel to the execution squad. Schmidt-

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<sup>85</sup> Görke, Arbeitsgemeinschaft der Memelländer to Landespolizeidirektion Nord-Württemberg (13 October 1955), EA 48/2 I, Bü 3110, SL; Landespolizeidirektion Nord-Württemberg to Herbert Görke, Arbeitsgemeinschaft der Memelländer (24 September 1955), EA 48/2 I, Bü 3110, SL.

<sup>86</sup> Statement by Werner Schmidt-Hammer (Oberkochen, 9 November 1955), EL 322/II, Bü 1, SL.

<sup>87</sup> Statement by Werner Schmidt-Hammer (Oberkochen, 9 November 1955), EL 322/II, Bü 1, SL.



Hammer then informed the prisoners, “You are being shot in the name of the Führer for the murder of German troops.” The executions “took about thirty minutes.”<sup>88</sup>

Schmidt-Hammer’s statements were a mixed bag for the investigators. On the one hand, he offered detailed and precise information on the Garsden executions. He did so in a forthcoming and polite fashion, presenting his account as one police officer to another, not behaving like a criminal with something to hide.<sup>89</sup> For example, he informed the detectives that he had led an additional two executions within a week of Garsden. By placing himself in a central role, Schmidt-Hammer lent credibility to his claims. His account also established Fischer-Schweder as a principle architect of these executions. On the other hand, Schmidt-Hammer revived claims that partisans, not Jews, were the victims of the shootings. He insisted that neither women nor children were among the victims, only adult male partisans. If the victims were enemy combatants, the legal parameters of the case shifted dramatically. In essence, Schmidt-Hammer’s statements clarified key aspects of the shooting, but blurred the most important detail that would determine the legality of the executions.

Following Schmidt-Hammer’s statements, the investigation entered into its most productive period of the first year. During the two weeks leading up to December 15, the investigators conducted nine new interrogations. In the subsequent six months, only seven interrogations would occur. This spike in activity owed to the names and information gathered through the Schmidt-Hammer interrogation. Of the nine, there were five former Memel policemen (two, Kersten and Kahlberg, were being re-interrogated); one member of the border police office (Grenzpolizeikommissariat) in Memel; one Kreisleiter in Memel; and

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<sup>88</sup> Statement by Werner Schmidt-Hammer (Oberkochen, 9 November 1955), EL 322/II, Bü 1, SL.

<sup>89</sup> Werner Schmidt-Hammer to Kriminal-Polizeiamt Stuttgart (18 November 1955), EA 48/2 I, Bü 3110, SL.

two senior officials in East Prussia, one a commander in the Ordnungspolizei in Königsberg, the other District President of Gumbinnen.<sup>90</sup> Although the nine interrogations continued the plan of speaking with former state employees (and likely co-perpetrators), the investigators found breadth in the types of employees they interrogated.

These nine interrogations also yielded three significant new witnesses. One had been a police officer in Memel and was assigned to the execution squad in Garsden and Krottingen under Schmidt-Hammer. Richard Freyth, a native of Memel, was able to offer precise detail on these shootings, even recalling the names of several of the victims. A second witness, Herbert Schmidtke, a Memel native who was now living in Tuttlingen, had worked in the Grenzpolizeikommissariat in Memel and had little contact with Fischer-Schweder but firsthand knowledge of the shootings. His office, under the leadership of Erich Frohwann, was organized under Abteilung III of Stapostelle Tilsit. At the time, Harm Harms headed that division, and the entire Tilsit office was overseen by Hans-Joachim Böhme.<sup>91</sup> Schmidtke at the time stated none of this, except that Frohwann had led the Memel office. This posed little threat to anyone else though, including Schmidtke himself, since “Frohwann had committed suicide in Prague in 1945.”<sup>92</sup> A final new witness was Kurt Grau, the Kreisleiter of Memel. Not directly affiliated with the police, Grau had been a senior official within the Memel

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<sup>90</sup> Statement by Fritz Quittschau (29 November 1955, Oberhausen), EL 322/II, Bü 1, SL; Statement by Müller-Boenigk (Krefeld, 9 December 1955), EL 322/II, Bü 1, SL; Statement by Herbert Rohde (Krefeld, 9 December 1955), EL 322/II, Bü 1, SL; Statement by Richard Freyth (Oberhausen, 8 December 1955), EL 322/II, Bü 1, SL; Statement by Herbert Schmidtke (Tuttlingen, 29 November 1955), EL 322/II, Bü 1, SL; Statement by Arthur Poesze (Castrop-Rauxel, 6 December 1955), EL 322/II, Bü 1, SL; Statement by Max Kahlberg (Hannover, 6 December 1955), EL 322/II, Bü 1, SL; Statement by Wilhelm Kersten (Hannover, 6 December 1955), EL 322/II, Bü 1, SL; Statement by Kurt Grau (Cologne, 7 December 1955), EL 322/II, Bü 1, SL.

<sup>91</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

<sup>92</sup> Statement by Herbert Schmidtke (Tuttlingen, 29 November 1955), EL 322/II, Bü 1, SL.

government. He had been a witness to the Garsden shootings, and had regular contact with Fischer-Schweder. The two even hunted game together in the forests outside Memel.

These three statements in particular, combined with the other six statements carried out during this two-week period, provided on-the-ground information about the shootings as well as the complicated command structure of the East Prussian police at the outbreak of war. Significantly, Opferkuch and another Stuttgart detective carried out seven of these interrogations on their own during a six-day trip north.<sup>93</sup> Of Freyth, Schmidtke, and Grau, only Schmidtke was interrogated by local police and not by Opferkuch. This meant that the Stuttgart detectives could press witnesses immediately on unclear or contradictory points, where proxy interrogators lacked the background knowledge to challenge witnesses. As the investigation began to enter into its core weeks of activity, Weida and Opferkuch came to focus on three dominant questions. First, what exactly happened at the execution sites of Garsden, Krottingen, and Polangen? Second, what was the identity of the victims: Jews or partisans? Third, had Fischer-Schweder or a higher office given the orders for the executions? The ability of the investigators to answer these questions during the first year of investigation hinged on the outcome of these nine interrogations.

To answer the first question, the investigators began to rely on a strategy of finding shared visual identifiers or moments from the executions to construct a solid case. Since one-to-one mapping of memories regarding execution sites among the different participants seemed unlikely, the detectives tried to locate common points of reference within these conflicting memories. Upon reinterrogating Kersten and Kahlberg, Opferkuch pressed for specific details and visual markers from the executions. Kersten recounted his knowledge of

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<sup>93</sup> All but the interrogations of Schmidtke and Quittschau; EL 322/II, Bü 62-63, SL.

Garsden offering more precise information than his initial statement. He recalled that “about 200-300” were kept in a “fenced-in horse pen” with a few Russians among them, including one woman.<sup>94</sup> Meanwhile, Kahlberg stated that he had earlier misidentified Krottingen as Polangen. He insisted that his statements were true, but he had confused the place name. Now, he described in detail the Krottingen execution site as about five hundred meters from town near a “thicket [*Wäldchen*] with a barn or woodshed surrounded by straw or hay.”<sup>95</sup> Inside the barn were about fifty men, with their wives and children outside who “wept and wailed and wanted to try to save their own from the shooting.” These details about a horse-pen in Garsden and a thicket and woodshed in Krottingen became points of orientation for the investigators as they moved the case forward.

Richard Freyth, the newly identified Memel police officer had been present at both sites and corroborated certain but not all aspects of their statements.<sup>96</sup> Before the Garsden shooting, he was assigned to a unit for a “special assignment,” but “we were not informed about its aims or nature.” Recalling neither dead Germans nor Russians in the town center, he remembered Jews being kept in a “small meadow,” which “could have been an area fenced in as a horse-pen.” He estimated that 100 to 120 were killed, and he “dimly recalled” one Russian woman among the victims. During the day, there was a Russian air attack against Memel and a “mushroom cloud” was visible in the sky. He also recounted a short version of the Krottingen executions, but could not recall any thicket or woodshed. Herbert Schmidtke of the Grenzpolizeikommissariat in Memel recalled the Garsden executions along similar

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<sup>94</sup> Statement by Wilhelm Kersten (Hannover, 6 December 1955), EL 322/II, Bü 1, SL.

<sup>95</sup> Statement by Max Kahlberg (Hannover, 6 December 1955), EL 322/II, Bü 1, SL.

<sup>96</sup> Statement by Richard Freyth (Oberhausen, 8 December 1955), EL 322/II, Bü 1, SL.

lines as Freyth, stating that a reserve lieutenant (Schmidt-Hammer) gave the firing squad orders to shoot groups of ten to twelve Jews.<sup>97</sup> Also present at the site in his account were Fischer-Schweder, Frohwann, and a few SS officers. Schmidtke claimed only an observational role for himself at the shootings.

Grau, the Kreisleiter, could confirm a number of these details. Not directly affiliated with the police, Grau represented a senior official within the Memel government, and as such had regular contact with Fischer-Schweder. When the war broke out, Grau worked to assist women and children in the rear areas of the assault. Fischer-Schweder informed him on the morning of June 24 that a number of civilian “snipers” had been captured in Garsden. Around eleven o’clock, Grau arrived to the town, where he saw a group of civilians being held by SD Tilsit members in a “horse-pen.” Fischer-Schweder then informed him that all would be shot for partisan activity. When asked if the SD personnel would carry out the executions, Fischer-Schweder said, “It was laughable that the SD with so few people could carry out the execution of so many.” After a group of police arrived, Fischer-Schweder explained to Grau “that because the SD was represented so weakly, he decided to take over the execution of those locked up with a shooting squad he had selected.” Grau stood slightly over fifty meters away as he watched the executions, until a “mushroom cloud” over Memel called him back to the city.<sup>98</sup>

In his summary of the investigations from December 15, Opferkuch informed the Ulm prosecutors that they had likely uncovered four distinct executions.<sup>99</sup> Although the

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<sup>97</sup> Statement by Herbert Schmidtke (Tutlingen, 29 November 1955), EL 322/II, Bü 1, SL.

<sup>98</sup> Statement by Kurt Grau (Cologne, 7 December 1955), EL 322/II, Bü 1, SL.

<sup>99</sup> Ermittlungsverfahren gegen Fischer-Schweder, Bernhard; Landespolizeidirektion Nordwürttemberg - Kriminalhauptstelle (Stuttgart, 15 December 1955), EL 322/II, Bü 1, SL.

accounts of these did not fully fit together, key pieces of information did overlap. Most evidence focused on a shooting in Garsden, but additional witnesses pointed to crimes in Krottingen. Since Freyth and Kahlberg widely disagreed on the Krottingen shooting, Opferkuch concluded that two separate executions had taken place. The final execution, alleged by Freyth, involved the shooting of jailed partisans near Pogegen.<sup>100</sup> Kahlberg had also indicated several other executions sites, but had no details on these.<sup>101</sup> The recurring memory of a horse-pen used as an impromptu jail proved a distinctive feature of the Garsden executions. As Kahlberg's shifting stance on whether a recalled shooting took place in Polangen or Krottingen indicated, place names could not be recalled with complete accuracy, but unusual visuals like a horse-pen or a woodshed allowed the investigators to at least recognize that witnesses were discussing the same event.

The second investigative aim during this two-week burst was to determine the identity of the victims and the motivations for the executions. Interestingly, the rank-and-file were of one mind on the issue: those killed were Jews. Kersten insisted once again that women and children were among the victims and that "there were no partisans present because they simply did not exist after two or three days of war with Russia."<sup>102</sup> Kahlberg concurred that "weeks after the beginning of the hostilities with Russia there were to my knowledge still no partisans."<sup>103</sup> Instead, he could tell "by their Jewish dialect" that the victims were Lithuanian Jews.<sup>104</sup> Many Jews living in Garsden had only recently fled from

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<sup>100</sup> Statement by Arthur Poesze (Castrop-Rauxel, 6 December 1955), EL 322/II, Bü 1, SL.

<sup>101</sup> Statement by Max Kahlberg (Hannover, 6 December 1955), EL 322/II, Bü 1, SL.

<sup>102</sup> Statement by Wilhelm Kersten (Hannover, 6 December 1955), EL 322/II, Bü 1, SL.

<sup>103</sup> Statement by Max Kahlberg (Hannover, 6 December 1955), EL 322/II, Bü 1, SL.

<sup>104</sup> Statement by Richard Freyth (Oberhausen, 8 December 1955), EL 322/II, Bü 1, SL.

Memel upon its takeover by the Germans, and Freyth knew several victims personally, such as the sixty-five year old Korfmann and his three adult sons who worked at the cattle market in prewar Memel. Herbert Schmidtke, who worked in the Grenzpolizeikommissariat, described Garsden's local population as "very anti-Jewish...without any influence from German propaganda."<sup>105</sup> Not only did Germans target the town's Jewish population, but he alleged that Lithuanian police had assisted in the executions.

By contrast, the argument that those killed had been partisans remained the hallmark explanation of the more senior officers. Already, Schmidt-Hammer and Schwerdtfeger, two lieutenants in the Schutzpolizei, had explicitly made these arguments, and now Kreisleiter Grau presented his own version. He recalled virtually no partisan activity in the area, except for a "center of resistance" in Garsden.<sup>106</sup> "It was said," Grau explained, "that resistance in Garsden was carried out not by Russian troops, but from the civilian population." Although he could tell "by their clothing" that many among them were Jews, Grau insisted that they were targeted as partisans. His demeanor in these explanations unnerved Opferkuch, who wrote that Grau "showed little understanding" about the seriousness of the investigation, even asking the detectives, "Why are you digging up these old things that we've moved beyond over the past fifteen years?" Opferkuch wrote that Grau, both then and now, "found the shootings of civilians fully in order."<sup>107</sup>

In his summary of these many interrogations, Opferkuch concluded that the identity of the victims had not yet been determined "with absolute certainty." The split between the

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<sup>105</sup> Statement by Herbert Schmidtke (Tuttlingen, 29 November 1955), EL 322/II, Bü 1, SL.

<sup>106</sup> Statement by Kurt Grau (Cologne, 7 December 1955), EL 322/II, Bü 1, SL.

<sup>107</sup> Statement by Kurt Grau (Cologne, 7 December 1955), EL 322/II, Bü 1, SL.

officers and the non-officers only confused the issue, and many claims conflicted. Kersten insisted that many women and children had been shot, but others disagreed. Opferkuch wrote, “It is only certain that the lion’s share of those shot was made up of Jews.”<sup>108</sup> Whether these people were shot because they were Jews or because they had engaged in partisan warfare against the invading Germans remained unresolved.

The third major point of inquiry pursued following Schmidt-Hammer’s statements concerned the exact role that Fischer-Schweder played in authorizing the executions. To a man, the witnesses identified Fischer-Schweder as involved in the shootings, and those present in Garsden all recalled the police director’s presence at the shooting site. Yet, none could state with certainty whether Fischer-Schweder had acted on orders or had initiated the shootings on his own. The Memel police were least likely to know the provenance of senior orders, but the presence of Schmidtke’s unit and other SS officers lent credibility to the idea that the plan for the execution did not originate with Fischer-Schweder. As a senior official, Grau described in detail Fischer-Schweder’s involvement in preparing and carrying out these executions, but even he was unsure if the orders for the execution originated with the Memel police or from higher up.<sup>109</sup> Another witness, who had been a commander in the order police in Königsberg, informed Opferkuch that if Fischer-Schweder had received his orders from a higher office and not carried those out, he would have faced charges of “insubordination” and a “likely a minimum punishment of being sent to a concentration camp.”<sup>110</sup>

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<sup>108</sup> Ermittlungsverfahren gegen Fischer-Schweder, Bernhard; Landespolizeidirektion Nordwürttemberg - Kriminalhauptstelle (Stuttgart, 15 December 1955), EL 322/II, Bü 1, SL.

<sup>109</sup> Statement by Kurt Grau (Cologne, 7 December 1955), EL 322/II, Bü 1, SL.

<sup>110</sup> Statement by Müller-Boenigk (Krefeld, 9 December 1955), EL 322/II, Bü 1, SL.



This information led Opferkuch to inform the Ulm prosecutors that the provenance of the orders did not come from the local government. If Fischer-Schweder himself had not authorized the executions, which remained a possibility, the orders likely hailed from the Reich Security Main Office (Reichssicherheitshauptamt) in Berlin, the SS- and Polizeiführer in Königsberg, or from SD Tilsit. Opferkuch then suggested two courses of options: “Either Fischer-Schweder should be interrogated next...or the people listed below and in the attached statements, so far as it’s possible, should be investigated first and heard as witnesses.”<sup>111</sup>

### **“Infected by the Pessimistic Attitude of the Ulm Prosecutor’s Office”**

Following the productive burst of interrogations in late 1955, the case waned for the next five months. The Ulm prosecutor’s office faced a choice: commit more resources and personnel to allow the investigation to develop as needed, or bring it to a close. The types of crimes uncovered to date spread well beyond Fischer-Schweder, and action was needed to determine how this would affect the investigation. Saup, not surprisingly, stalled for months. In February 1956, both he and Mettler asked the detectives to follow up with new witnesses, as they began to prepare indictments. On February 4, 1956, Saup wrote to his superior in Stuttgart explaining the plan for the investigation, and Mettler wrote his own letter to the detectives with directives for the coming months. Both letters conveyed a lack of enthusiasm for the direction of the case and a desire to do the minimum needed to end it.

In Saup’s letter to State Attorney General Erich Nellmann, he complained that “the investigation is complicated by the fact that the events date far back in time and the relatively few witnesses to interrogate are scattered throughout West Germany. The witness statements

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<sup>111</sup> Ermittlungsverfahren gegen Fischer-Schweder, Bernhard; Landespolizeidirektion Nordwürttemberg - Kriminalhauptstelle (Stuttgart, 15 December 1955), EL 322/II, Bü 1, SL.

largely contradict each other. Only the interrogations carried out by the appropriate detectives at the Stuttgart office themselves have been of use.”<sup>112</sup> As a result of these complications, Saup intended to continue the investigation, relying on Opferkuch and the other Stuttgart detectives to conduct interrogations as much as possible. Once additional individuals had been interrogated, they would bring in Fischer-Schweder himself. These efforts, he wrote, “will take some time.” Although Saup recognized the incompleteness of the investigation and the resources required to bring it satisfactorily to a close, he neither freed Mettler from his other caseload, nor did he appoint another prosecutor to assist in the case.<sup>113</sup>

Saup had also “not yet decided whether to extend the current investigation against the three police officers investigated so far living in West Germany.”<sup>114</sup> To this point, the case had focused exclusively on the involvement of Fischer-Schweder, but the investigation had widened the web of culpability to include many others who had been involved in decision-making roles during the same sets of executions. Schmidt-Hammer, for example, had given the actual firing orders in Garsden and elsewhere, and Saup needed to determine whether to extend his case to include him, ignore this incriminating information, or defer it to the court with jurisdiction where Schmidt-Hammer currently lived. To this point, Saup displayed no interest in expanding the case, and likely considered only the latter two.

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<sup>112</sup> Saup to Nellmann (4 February 1956), EL 302 I, Bü 304, SL.

<sup>113</sup> Erwin Schüle, Aktenvermerk über die am 21.6.1956 bei der Staatsanwaltschaft Ulm a.D. und beim Landgericht Ulm a.D. in der Strafsache Fischer-Schweder geführten Dienstbesprechungen (Stuttgart, 23 June 1956), EL 302 I, Bü 305, SL.

<sup>114</sup> Likely a reference to the officers Schmidt-Hammer, Schwerdtfeger and Günther. Günther was deceased at this point, but investigators did not yet know that.

In Mettler's letter to the detectives from the same day, he outlined a series of investigative imperatives for them to work on over the coming months.<sup>115</sup> First, he instructed them to look into allegations made by a number of witnesses that other executions had taken place in nearby towns, such as Telschei, Polangen, and Salanti. They needed to determine how widespread the executions were along the German-Lithuanian border. To help him make sense of all these towns, he also requested a map of the area as it was in 1941. Second, the issue of partisan activity needed attention. Third, Mettler worried about the Schmidtke statement, which had been recorded by local detectives in Tuttlingen and which Mettler found to be “not sufficient.”<sup>116</sup> He instructed Opferkuch to conduct another interrogation with him personally. Among several other minor points, Mettler wanted clearer information on the involvement of personnel within the Memel police.

Saup and Mettler's position on the case emphasized minimal action over the coming months. Additional resources for an expansion of the case were not forthcoming, so investigators instead had to focus merely on tracking down the few remaining witnesses, verifying information, and preparing the case to be handed off fully to the prosecutors. For the investigators, this seemed a complete let down. They had learned of massive and substantial crimes not yet prosecuted, but were told to turn over no additional stones. Another prosecutor later worried that the “investigators are no longer in a good place with the case, having been infected by the pessimistic attitude of the Ulm prosecutor's office.”<sup>117</sup> The

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<sup>115</sup> Mettler to Landespolizeidirektion Nordwürttemberg - Kriminalhauptstelle (Ulm, 4 February 1956), EL 322/II, Bü 1, SL.

<sup>116</sup> Mettler to Landespolizeidirektion Nordwürttemberg - Kriminalhauptstelle (Ulm, 4 February 1956), EL 322/II, Bü 1, SL.

<sup>117</sup> Schüle, Aktenvermerk über die am 21.6.1956 bei der Staatsanwaltschaft Ulm a.D. und beim Landgericht Ulm a.D. in der Strafsache Fischer-Schweder geführten Dienstbesprechungen (Stuttgart, 23 June 1956), EL 302 I, Bü 305, SL.

investigation had proven difficult enough, but now that investigators seemed on the verge of breaking through and building a corpus of evidence, these instructions deflated their efforts.

From late 1955 until May 1956, the detectives interrogated only an additional six people in addition to conducting a reinterrogation of Schmidtke with Opferkuch present. Several of those interrogated had been senior individuals within the East Prussian government who provided information on command structures within the Third Reich.<sup>118</sup> The only major advance made during these six months was the discovery of a new witness, Kurt Neubacher, who had been in the execution squad led by Schmidt-Hammer.<sup>119</sup> In January 1956, Neubacher provided an additional perspective on the Garsden and Krottingen murders. He confirmed key details about Garsden: Jews had been the victims, but they were partisans; one Russian woman was also killed; an air raid took place in Memel at the end of the shootings; some kind of enclosure stood near the execution site. His version of Krottingen hewed close to earlier statements by his colleague Freyth, but Neubacher remembered a crucial aspect involving the selection of men to be shot. The prisoners appeared one-by-one before Fischer-Schweder, a group of Gestapo officers, and a Lithuanian, who then sent them to the left or right. In the end, the larger of the two groups with about eighty men were shot in a similar fashion as in Garsden. Neubacher also recalled an additional shooting of one hundred men in Polangen that took place in the dunes along the Baltic coast.

By March 1956, the investigation had effectively run its course. The detectives had interrogated those they could find with the resources available and turned up a lot of potential

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<sup>118</sup> For example, the former Höhere SS- und Polizeiführer in Königsberg; Statement by George Ebrecht (Lindau, 20 February 1956), EL 322/II, Bü 1, SL.

<sup>119</sup> Statement by Kurt Neubacher (Berlin, 24 January 1956), EL 322/II, Bü 1, SL.

evidence. Nevertheless, as Opferkuch noted in his report to the Ulm prosecutors, “The investigation carried out has provided as of yet no clarification on the fundamental question of whether Fischer-Schweder carried out the shootings of Jews based on orders from a higher office or on his own initiative.” As for the issue of the identity of those killed – whether Jewish or partisan – Opferkuch wrote that the “statements...are very contradictory.”<sup>120</sup>

Opferkuch then appended a chart that showcased how a banker’s mind functioned as a detective.<sup>121</sup> Spanning several large sheets of paper, Opferkuch had drawn up a grid and tabulated the statements received to date. Running across the top of the columns was a list of categories: witness, execution site, execution date, number of Jews arrested, number of those shot, Fischer-Schweder’s location, characteristics of the area, special notes, and so forth. As he then filled in the details gleaned, the chart grew to include eight entries on Garsden alone, and many others on Krottingen, Polangen, Pogegen, and other alleged execution sites. Of the entries on Garsden, all but one placed Fischer-Schweder at the site, all but one agreed Schmidt-Hammer led the execution squad, and the majority placed the date in late June 1941.

But discrepancies became apparent. The estimates on those killed in Garsden ranged from fifty to three hundred. Some claimed the shootings took place in a field, others by a horse-pen, still others on the edge of town. These were not trivial mistakes. Imprecise or contradictory statements eroded the entire basis of a legal argument for prosecution. If they could not prove what exactly happened on the day of the shootings, there would be no possibility of a conviction for Fischer-Schweder. The entire case already rested on testimony

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<sup>120</sup> Ermittlungsverfahren gegen Fischer-Schweder, Bernhard; Landespolizeidirektion Nordwürttemberg - Kriminalhauptstelle (Stuttgart, 1 March 1956), EL 322/II, Bü 1, SL.

<sup>121</sup> Opferkuch, Übersicht über den Inhalt der bisherigen Zeugenaussagen bezüglich der Erschiessungen (1 March 1956), EL 322/II, Bü 1, SL.

from others involved in the crimes; if this testimony failed to agree with itself, the case would fall apart. For Opferkuch the banker, the case did not add up. The only option left was to interrogate Fischer-Schweder.

After reviewing this chart and Opferkuch's conclusions, Mettler and Saup agreed that the only remaining step was to bring in Fischer-Schweder. Saup wrote to State Attorney General Erich Nellmann in early April informing him of the intention to interrogate the main target of the investigation.<sup>122</sup> To close out the case, Mettler asked the North-Württemberg government for access to his personnel files, which contained Fischer-Schweder's application materials and records from his leadership of the Ulm refugee camp.<sup>123</sup> On April 28, 1956, Mettler filed a request to the Ulm district court (Amtsgericht) for an arrest warrant against Fischer-Schweder for “at least 400 counts of murder.”<sup>124</sup> Specifically, the warrant request alleged that the Memel police director had pulled together a unit for executions which had:

1. On June 24, 1941 in Garsden shot at least 100 Jews, among them women and children, and
2. At the end of June 1941 in Krottingen shot at least 200 Jewish men and around 100 Lithuanian men.

During the Garsden executions, Mettler wrote, Fischer-Schweder had shot with a pistol those who were still alive, and during the Krottingen shootings, he had put together an “improvised court” (Schnellgericht) to decide which Lithuanians would live or die.<sup>125</sup> These last two points, since they showed Fischer-Schweder acting of his own volition and thereby either internalizing the base motives of the orders or displaying blood lust, allowed Mettler to make

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<sup>122</sup> Saup to Nellmann (4 April 1956), EL 302 I, Bü 304, SL.

<sup>123</sup> Mettler to Regierungspräsidium Nordwürttemberg (21 April 1956), EL 322/II, Bü 102, SL.

<sup>124</sup> Staatsanwaltschaft Ulm to Amtsgericht Ulm (28 April 1956), EL 322/II, Bü 1, SL.

<sup>125</sup> Staatsanwaltschaft Ulm to Amtsgericht Ulm (28 April 1956), EL 322/II, Bü 1, SL.

a case for crimes of murder. At 6:20 in the evening on May 3, 1956, the Ulm court issued an arrest warrant for Fischer-Schweder.<sup>126</sup>

### **The Memel Police Director**

Although they had never met Bernhard Fischer-Schweder, Opferkuch and Weida had spent almost an entire year getting to know him as well as they possibly could. They had reviewed his wartime record with the assistance of the Berlin Document Center. They had spoken with his former colleagues and associates from Memel, as well as others who knew him from his time in Berlin and Breslau. Working with the state government, they studied his postwar deceptions on his denazification and Article 131 forms, looked into his tenure as camp director in Ulm, and followed the progress of his lawsuit before the labor court. Through all of these endeavors, they had come to form opinions not only about his criminal behavior in Lithuania but also about the man himself.

The near consensus opinion depicted Fischer-Schweder as an egotistical, harsh, and deeply committed Nazi and anti-Semite. In statements about Fischer-Schweder, few kind words were ever spoken. Certain individuals had express reason to dislike the police director. Kersten was quite forthcoming about the sources of his contempt. While on service in Memel, he had unknowingly cited Fischer-Schweder's wife for walking her dog without a leash. Consequently, the police director sentenced him to a two-week prison sentence.<sup>127</sup> Additionally, Kersten's name had been "Kerschies" until Fischer-Schweder required him to change it because he had wanted "the members of his office to have German sounding

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<sup>126</sup> Staatsanwaltschaft Ulm to Amtsgericht Ulm (28 April 1956), EL 322/II, Bü 1, SL.

<sup>127</sup> Statement by Wilhelm Kersten (December 6, 1955), H. Nissen, SU.

names.”<sup>128</sup> Another witness had been sent to Sachsenhausen for four months by Fischer-Schweder for “agitating the public and telling horror stories [*Greuelmärchen*]” about the war with Russia.<sup>129</sup> Even nominal friends, like his hunting partner Grau, described him at best as “reserved.” Others who professed to have no close relationship or knowledge of Fischer-Schweder still made a point to state that he was not well liked.

The widely negative view that emerged of Fischer-Schweder seems not to have been mere self-exculpatory statements made by co-perpetrators, eager to shift the focus onto a brutal police director. Had that been the case, one might have expected similarly harsh character assessments of others deeply involved in officer roles in the shootings, such as Schmidt-Hammer, but this was not the case. Kersten, so quick to implicate Fischer-Schweder in murder, expressed deep regret over having to involve Schmidt-Hammer in such matters. “I’m truly sorry,” he said, “that through my statements I have to incriminate not only Fischer-Schweder, but also Schmidt-Hammer, who I got to know as a humane and highly respectable officer.”<sup>130</sup> Kahlberg similarly praised Schmidt-Hammer as “a good, dear chap [*Kerl*],” who was “harmless and generally liked.”<sup>131</sup> These statements contrasted sharply with the portrayal of Fischer-Schweder and suggest that, however limited the perpetrator testimony might be on other points, they converged in their critical assessment of the brief tenure of the police director of Memel.

These depictions formed the basis for Weida and Opferkuch’s understanding of Fischer-Schweder. They knew him chiefly as a brutal and sadistic Nazi leader in Memel, but

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<sup>128</sup> Statement by Wilhelm Kersten, December 6, 1955, Record Group EL 322/II, Bü 1, SL.

<sup>129</sup> Statement by Fritz Quittschau (Oberhausen, 29 November 1955), EL 322/II, Bü 1, SL.

<sup>130</sup> Statement by Wilhelm Kersten (Hannover, 6 December 19 1955), EL 322/II, Bü 1, SL.

<sup>131</sup> Statement by Max Kahlberg (Hannover, 6 December 1955), EL 322/II, Bü 1, SL.



he had worn many other hats during his life. In addition to being a passionate and committed Nazi who had joined the party early in 1925, he had been a police officer, a SA officer who opposed the SS, and later a SS officer himself. He had been a prisoner of the Nazis and later of the Allies. He was a defrauder of, a civil servant in, and a claimant against the West German state. He had been a father and a husband (twice) and an intermittent salesman. When he came into the police office in Ulm on May 2, a day prior to the issuing of his arrest warrant, Fischer-Schweder was again employed as a salesman, and it seems it was this hat that he decided to wear to the interrogation. He impressed Weida, who later recalled him as a “tall, good looking, very dynamic and energetic older man.”<sup>132</sup> He had to employ all his dynamism and craft that day against the detectives as he pitched the hardest sell of his life: disprove the preponderance of evidence the detectives arrayed before him that pointed to his role as an architect of the Holocaust in Lithuania.

The interrogation of Fischer-Schweder began on the morning of May 2 and lasted into the afternoon. He asked at one point if they could pause so he could go home for lunch, at which point Weida and Opferkuch had him placed under provisional arrest to prevent him from leaving. The interrogation began with broad questions about his background and how he came to Memel. He described his work there as “not very easy.”<sup>133</sup> The police department he inherited had “extremely slovenly operations,” with men often drinking beer and schnapps in the backroom. His efforts to clean up the place, he claimed, were likely a reason for the many disparaging portraits of his leadership. He depicted a complicated and overlapping chain of command, with him ostensibly in charge of the various Memel police units, but

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<sup>132</sup> Robert Weida, “Unbewältigte Vergangenheit” (undated), in possession of the author.

<sup>133</sup> Statement by Bernhard Fischer-Schweder (Ulm, 2 May 1956), EL 322/II, Bü 1, SL.

subject to the interventions of various regional authorities. The interrogation then moved into his activities after Memel, continuing through the postwar period. Through all of this, Weida and Opferkuch did not ask any questions about executions or the aim of the investigation.

A quarter of the way through the interrogation, the investigators leveled their case. “You are accused,” they stated, “of having organized and personally participated in the carrying out of multiple executions of Jews in June and July 1941 during your tenure as Police Director in Memel. Is this correct?” Fischer-Schweder responded, “The accusation is untrue.” He then launched into a long description of the origins of the Garsden executions.<sup>134</sup>

He described the general uncertainty that prevailed regarding jurisdiction upon the rapid expansion of the German Reich after war began with Russia. Memel abutted the Lithuanian border, and higher up officials looked to his police unit to assist in maintaining peace along the border towns. In particular, the town of Garsden, which he described as “only inhabited by Jews,” had been a center of resistance. On June 23, Frohwann, the head of the GPK in Memel, spoke with Fischer-Schweder and informed him that “the Staatspolizei had jurisdiction over Jews.” Frohwann’s chief, Stapostelle Tilsit leader Böhme, then called Fischer-Schweder and explained that Berlin had instructed him to carry out the execution of the partisans. These individuals, Fischer-Schweder emphasized, were to be shot “not as Jews, but as snipers and murderers of German soldiers.” Böhme, however, “had no people to organize into a shooting squad,” and he requested the assistance of the Memel police. The following day, Frohwann brought Fischer-Schweder an order to this effect issued from the Befehlshaber of the Ordnungspolizei. Günther and Frohwann then took the initiative in

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<sup>134</sup> Statement by Bernhard Fischer-Schweder (Ulm, 2 May 1956), EL 322/II, Bü 1, SL.

organizing the execution squad. Fischer-Schweder went on to describe his recollections of the Garsden execution itself.<sup>135</sup>

He stated that “except for the previously mentioned case in Garsden” he played no organizational role in any additional executions. He had attended a shooting in Krottingen “by chance,” but could not remember whether Memel police officers had taken part. Interestingly, he confessed to having shot one man who attempted to flee the execution, but had shot him “purely instinctively” because he believed him to be “a convicted criminal.” The responsible parties, according to Fischer-Schweder, were Hitler’s inner circle, the GPK Memel officer leader Frohwann, Memel Schutzpolizei commander Günther, and Stapo Tilsit leader Hans-Joachim Böhme. Conveniently for Fischer-Schweder, all but Böhme were dead, and no one had seen Böhme since war’s end.<sup>136</sup>

In assessing his statements, Opferkuch wrote that Fischer-Schweder’s testimony contained “extensive contradictions with the previous statements of witnesses and participants.” Due to time constraints, they had been unable to press him on all of these contradictions, and when they did, Fischer-Schweder affected a haughty demeanor. Confronted with the allegations of Kahlberg about a shooting in Krottingen, Fischer-Schweder called them a “pure product of his imagination.” In deciding how best to move forward with the case, Opferkuch stated that “further investigations to clarify the facts of the case...are urgently needed.”<sup>137</sup>

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<sup>135</sup> Statement by Bernhard Fischer-Schweder (Ulm, 2 May 1956), EL 322/II, Bü 1, SL.

<sup>136</sup> Statement by Bernhard Fischer-Schweder (Ulm, 2 May 1956), EL 322/II, Bü 1, SL.

<sup>137</sup> Opferkuch analysis, in Statement by Bernhard Fischer-Schweder (Ulm, 2 May 1956), EL 322/II, Bü 1, SL.

Over the next few weeks, Opferkuch and Weida conducted several additional interrogations, including a week-long interrogation in Stuttgart of Fischer-Schweder, who remained in police custody.<sup>138</sup> Apart from a few additional details and a hand-drawn chart by Fischer-Schweder of the Memel police chain of command and a sketch of the shooting in Garsden, these interrogations did not substantially alter the case. In essence, the state of the investigation had not changed since Opferkuch's chart from early March. They had amassed a core of statements regarding executions along the Lithuanian border, but significant disagreements over details and the origins of the orders for these executions remained.

Nevertheless, on June 4, 1956, Saup wrote to State Attorney General Nellmann about the case. He enclosed all the materials gathered to date and informed Nellmann, "It is intended to submit in the near future a request for a preliminary investigation [*Voruntersuchung*]." <sup>139</sup> This meant that the case had taken the form Saup saw fit to begin to prepare the case for trial. Those interrogated would be required to make a formal statement before an interrogating judge, and Mettler would use these judicial statements to draft an indictment against Fischer-Schweder. The investigation would likely soon come to an end, and Fischer-Schweder alone would be indicted.

## **Conclusion**

When Mettler and Saup decided to launch a formal investigation into Fischer-Schweder in June 1955, they joined a small group of West German prosecutors. That year

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<sup>138</sup> Other statements include: Statement by Eduard Fritz (Ulm, 5 May 1956), EL 322/II, Bü 1, SL; Statement by Werner Schmidt-Hammer (Baden-Baden, 8 May 1956), EL 322/II, Bü 1, SL; Statement by Gerhard Schwerdtfeger (Kaiserslautern, 9 May 1956), EL 322/II, Bü 1, SL; Statement by Georg Jedicke (Wiesbaden, 14 May 1956), EL 322/II, Bü 1, SL; Statement by Karl Bock (Starnsberg, 18 May 1956), EL 322/II, Bü 2, SL; and Statement by Fischer-Schweder (Stuttgart, 17 May 1956), EL 322/II, Bü 2, SL.

<sup>139</sup> Saup to Nellmann (4 June 1956), EL 302 I, Bü 304, SL.

only 276 new investigations for Nazi crimes were opened in the Federal Republic. Though the number may seem impressive, this was down from a postwar high of 4,160 in 1948 and just above the low set the previous year.<sup>140</sup> Later in the decade, in part as a result of the investigation they initiated against Fischer-Schweder, new investigations would again top one-thousand annually. But at the time the case was initiated, West German prosecutions for all Nazi crimes were at their nadir, and many of the crimes charged did not involve the capital offenses of which Fischer-Schweder was accused. This decline in prosecutions reflected the broader disengagement in postwar society from dealing with the consequences of the Nazi past, and this disengagement had a serious impact on the initial months of the Fischer-Schweder investigation. Part I discussed how this process took the form of a victimization narrative that gave harbor to perpetrators, but this same shift reverberated throughout the judiciary and created conditions that hindered prosecutors and investigators' ability to pursue Nazi criminals.

In understanding the first year of preparation for the trial, it is important to consider the ways that Saup and Mettler's approach was inflected with the same pervasive lack of interest in Nazi crimes trials affecting most of the West German judiciary. They had not torpedoed the investigation, but neither had they made the case a priority. Mettler was completely overworked and unable to monitor or make a priority of the Fischer-Schweder investigation. For months, he did not correspond with the detectives, instead only passively receiving infrequent reports. When the detectives had made little progress after a few months, there was no letter of concern or pressure for results coming from the Ulm prosecutors. Only with the intervention of the Israelitische Kultusvereinigung did the Ulm

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<sup>140</sup> See, Eichmüller, "Zahlenbilanz," 626.

office begin to consider the case a priority. Most significantly, as the investigation uncovered a web of criminal behavior, the prosecution insisted on a Fischer-Schweder focus. They closed off the investigation once a general consensus of criminality emerged, but well before they had identified exact details or concrete evidence not based on the fluid and deceptive testimony of co-perpetrators.

This lack of oversight was particularly harmful for the investigation given the background of the investigators and the nature of the crimes. Neither Weida nor Opferkuch had experience with Nazi crimes cases, and they struggled to sustain a measured pace to the investigation. They knew of no central resource to consult for information on these crimes, and no agency existed to coordinate their efforts. The two men were isolated and burdened with the near insurmountable task of reproducing whole cloth the mechanisms of the Holocaust during early 1941 in Lithuania. Added to that, neither detective had access to the crime locations or even knowledge of the area. Moreover, the events in question were extraordinarily complex, with overlapping chains of command and various units involved in the massacres. As a result, the investigators had found many witnesses but gathered little concrete evidence. With few resources at their disposal, they had few other choices than to focus on perpetrator testimony, and even then, they needed to rely on other departments to conduct interrogations. The investigators had done the best they could do with the hand they had been dealt, but they had been dealt a very bad hand.

Many of these problems manifested as a result of the culture of the Ulm prosecutor's office under Saup. He epitomized the postwar prosecutor strategy of placing minimal effort into Nazi prosecutions. This is not to say that all of the other district attorneys in Ulm felt likewise, but rather that few resources and scant manpower were devoted to such

investigations. This was the case with the Ulm trial. Saup pursued the case only until enough had been done that they needed do no more. With an investigation into Fischer-Schweder convincingly carried out (in his mind), Saup prepared to close the investigation and move on to an indictment. This was Saupian strategy at its clearest. Although their investigation revealed that Fischer-Schweder had been simply one of many responsible parties in the executions of at least several hundred Lithuanian Jews and communists, Saup ignored the broader web of involvement and pushed ahead in the prosecution of the individual against whom initial allegations had emerged.

Understanding why Saup would pursue the Fischer-Schweder case in this way suggests the lingering but still powerful belief in areas of postwar society that if the delicate narrative of German victimization was to be upheld, any challenges to it needed to be handled with a doctor's care. Individuals who challenged this, such as Fischer-Schweder, needed to be carefully excised from society. Saup did not consider it good practice to rip open the wounds of the past and expose whole pockets of unacknowledged criminality. He was a rare individual who remained in the judiciary throughout the entire Nazi period without joining the party, sacrificing his career in the process. Thus, there can be no suspicion that Saup had any residual sympathies for Nazi ideologues like Fischer-Schweder.

Instead, Saup's unwillingness to devote needed resources to the investigation indicates that he continued to emphasize stability over division, a choice he had faced when confronted with the social chaos of the immediate postwar period. During those years, he successfully rehabilitated the Ulm office and prevented the dissolution of a functioning judiciary in that region. Nevertheless, by the mid-1950s, Germany's judiciary no longer needed to be preserved: it had to be reformed, and Saup was not a reformer. Placing blinders

on an investigation did not prevent social tensions, it invited them. In still believing himself to be on the side of preserving social stability, he came to devalue the preponderance of Nazi criminals in West Germany and the need to investigate them.



## V. Investigation: The Einsatzkommando Tilsit Case

*This trial is first being carried out today only because the defiant appearance of one of the accused in public alerted us to the whereabouts of his former subordinates and set the ball in motion. Once this got going, it took tremendous legwork to uncover these relationships and to find the documents that weren't in German hands. One could only guess how many police were at one point involved in this case. With this in mind, allow me to thank the detectives in particular because they did far more than their duty. I feel that I should also thank the American Consulate, the American Air Force, and the Document Center for the support which was extended to us.*

*– Erwin Schüle, closing statements of the 1958 Ulm Einsatzkommando trial*

As the Ulm prosecutors prepared to bring the Fischer-Schweder case to a close, a sudden intervention by Baden-Württemberg Attorney General Erich Nellmann altered the trajectory of the investigation. On June 9, 1956, Nellmann wrote letters to the Justice Ministry of Baden-Württemberg and to Rudolf Saup, the head prosecutor in Ulm. Nellmann informed them, “I have reviewed the current progress of the investigation and have come to the conclusion that further extensive investigations are necessary to clear up the facts of the case.” He added that “the current investigation was insufficient and that it must be started over practically from scratch.” His suggestions entailed an expanded investigation, and he asked Saup to “free Dr. Mettler up from his other duties for this task.”<sup>1</sup> That week, Nellmann also appointed the Ludwigsburg Senior State Prosecutor Erwin Schüle to assist Ulm prosecutor Rudolf Mettler on the case.

Nellmann’s intervention and the appointment of Schüle to the case marked the clear moment of delineation between the conventional approach to the case undertaken the

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<sup>1</sup> Nellmann to Oberstaatsanwalt bei dem Landgericht (9 June 1956), EL 302 I, Bü 304, SL; Nellmann to Justizministerium Baden-Württemberg (9 June 1956), EL 302 I, Bü 304, SL.

previous year and the radical transformation of the investigation that would culminate in the prosecution of ten defendants. Schüle's first involvement in the case came just a few days after Nellmann's letter, when Schüle sent a copy of amateur historian Gerald Reitlinger's *The Final Solution* to the Ulm prosecutor's office.<sup>2</sup> Based on research of wartime documentation, Reitlinger's work had only recently been translated from English into German and was the first major attempt to chronicle the Nazi destruction of European Jews. By sending the book to the prosecutor's office, Schüle indicated the new empirical and historical approach he intended to take towards the investigation.

Over the coming year – culminating in the formal indictments of ten individuals on June 25, 1957 – the case underwent a complete structural overhaul. Most significantly, the target of the investigation shifted from Fischer-Schweder as the sole suspect to all perpetrators involved in the mass murders. This conceptualization of the case eventually became known as investigating the “crime complex.”<sup>3</sup> Fischer-Schweder's crimes had taken place only in the context of a much broader web of criminality along the borders of Lithuania in 1941, which involved far more than one man. The new target of the investigation would focus on this entire criminal apparatus. Such a shift, though, placed far more pressure on the investigators and prosecutors, as the burden of proof grew heavier with the expanded case. Investigators now needed to uncover the inner workings of the Third Reich in Eastern Europe at the outbreak of war – from Hitler's inner circle to low level policemen, from SS architects of the Holocaust to local Wehrmacht personnel. This substantial undertaking resulted in the expansion of the case from one defendant to ten in just under a year.

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<sup>2</sup> Schüle to Staatsanwaltschaft Ulm (12 June 1956), EL 322/II, Bü 102, SL.

<sup>3</sup> Nellmann to Justizministerium Baden-Württemberg (22 July 1958), EA 4/106, Bü 2, HS.

To accomplish these new aims, Schüle and the Ulm investigators needed to pioneer new approaches to Nazi crimes cases. Even though they had to prosecute the crimes in accordance with West German criminal law, these cases could not be investigated like contemporary murder cases. The struggles of the first year of the investigation made clear that traditional approaches were not effective. With no accessible crime scenes and only a collection of flawed perpetrator memories, new types of evidence and strategies for investigating were needed. With increased resources and dedication, the investigators widened their efforts. Investigators traveled throughout Germany in the search for witnesses to testify, mastered the scholarship on the Third Reich, uncovered archival materials, developed a network of survivor groups, and facilitated an international flow of information and materials. All of these measures yielded a far more substantial body of evidence against the defendants than had been accumulated during the first year of the case. At the end of the investigation, Schüle's indictments of the ten men culminated in a detailed 212-page history of the Lithuanian Holocaust in 1941, based on a host of archival evidence, expert testimony, and statements from over two hundred witnesses.<sup>4</sup> Under Schüle, the team had become West Germany's de facto legal experts on the Holocaust.

Taken together, the crime complex approach and its corollary investigative strategies transformed the case from a parochial Ulm affair to an internationally prominent Nazi crimes prosecution. The unlikely emergence of this massive trial in the city of Ulm can only be understood as a consequence of the involvement of officials within the Baden-Württemberg state judiciary. With the backing of the state, the investigators could pursue all leads in the case, without concern for resources, and as a result the case quickly spilled beyond West

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<sup>4</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

Germany's borders. Over the coming year, the investigators worked with agencies and individuals throughout Western Europe, North and South America, Africa, and the Middle East. Through these engagements, the case broke through the limitations of the first year of the case. The prosecutors, in short, could expand the case from one to ten defendants because they had expanded the investigation from the disinterested Ulm prosecutor's office to an international network of allies actively seeking to strengthen the investigation by providing information and resources on crimes in Lithuania and the Holocaust.

Despite the prolific accomplishments of the Ulm team, the investigation still encountered serious limitations in the capacity of the West German legal system to deal with the Nazi crimes issue. Schüle and his team were able to innovate and transform the investigative strategies, but they operated within a constrained system. Communication with the communist east, for one, remained impossible. Other weaknesses involved the limited willingness of the federal government to engage in the issue, jurisdictional debates with other state prosecutors' offices, and unreliable police departments throughout Germany. No solutions existed for addressing these problems, so Schüle and his team were forced to devise their own strategies and innovations. In 1950s West Germany, for a prosecutor's office to bring successful indictments against a Nazi criminal enterprise required a massive and sustained international effort to learn the complicated workings of the Nazi state at war.

### **The Independent Attorney**

During the middle of the Ulm trial, Baden-Württemberg Attorney General Erich Nellmann reflected on his 1956 decision to overhaul the case. He wrote, "Fischer-Schweder, who up until then was the only Ulm trial defendant in custody, would have been set free and

the case dropped if the Prosecutor's Office of the Higher Regional Court [Erwin Schüle] had not intervened."<sup>5</sup> Even before the verdict in the case was handed down, Nellmann believed that his decision had rescued the case from collapse. By halting Ulm prosecutor Rudolf Saup's efforts to move the case to indictment and deputizing Schüle to oversee the investigation, he made a priority of a case that had received only minimal attention the previous year. Similarly, the Baden-Württemberg Justice Ministry had expressed no interest in the direction Nellmann was attempting to move the case. In response to Nellmann's 1956 letter, an internal memo to the Justice Minister, Wolfgang Haussmann, stated, "It is not clear why State Attorney General Nellmann intends to prevent the Ulm prosecutor's office from moving the case to the preliminary investigation stage [*Voruntersuchung*]."<sup>6</sup>

Nellmann's intervention therefore seems to have been a decision that originated in his office. Neither Saup beneath him nor Haussmann above expressed interest in anything but a speedy resolution to the case. Nellmann alone favored expansion. What motivated Nellmann to call explicitly for a more sustained investigation? Was he a staunch opponent of Nazism, a career opportunist hoping to make his mark, or something else altogether? This single decision did more than any other to shape the trial in Ulm, and in an attempt to understand its causes, we must look first to Nellmann himself.

Born in 1895, Nellmann was not a young man at the time of his involvement in the Fischer-Schweder case. He would reach mandatory retirement age a few years later in 1961, and had already entered the twilight of a career that stretched back to the early 1920s.<sup>7</sup> He

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<sup>5</sup> Nellmann to Justizministerium Baden-Württemberg (22 July 1958), EA 4/106, Bü 2, HS.

<sup>6</sup> Aktenvermerk, Baden-Württemberg Justizministerium (11 June 1956), EA 4/412, Bü 1, HS.

<sup>7</sup> Much of the personal information comes from Nellmann, Personalbogen, EA 4/153, Bü 399, HS.

grew up in a Protestant family in the town of Grossachsenheim, near Stuttgart. He attended school mostly in Stuttgart and across the Neckar River in Bad Canstatt. Like most men of his generation, Nellmann served in World War I and saw action in France in the field artillery, where he was fortunate to survive the killing fields of Verdun in 1916. In 1923, he married his wife Hilde, and the couple remained together until his death in 1968. They had four children, the last born in 1932. With the exception of his experience in the trenches during World War I, Nellmann lived his entire life within fifty miles of Stuttgart.

Like Saup and others, Nellmann trained in law at the University of Tübingen. Completing his degrees in 1925, he began a quick ascent up the legal profession. Following a series of promotions, Nellmann became a prosecutor in 1927 and by 1934 a judge (*Amtsgerichtsrat*) for the district court in Tübingen. At that point, however, his career stalled under the Nazi dictatorship. Also like Saup, Nellmann never joined the Nazi Party, only acquiring membership in a few Nazi-affiliated organizations.<sup>8</sup> Without party membership, Nellmann faced little prospect of further promotions. Seemingly apolitical, at no point in his career did he ever belong to a political party from any part of the spectrum.

Whatever his motivations for not joining the Nazi party, he willingly continued on as a judge during the entirety of the Third Reich. Moreover, his lack of party membership did not deter his superiors from praising his professional services to Hitler's state. The District Court President (Landgerichtspräsident) in March 1936 wrote that Nellmann "has proven to be a very good criminal judge," describing him as "reliable," "decisive," and in possession of "good skills and good powers of judgment." He added that "his trial performance is calm and

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<sup>8</sup> Nellmann joined the official Nazi jurist organization, the Nationalsozialistischer Rechtswahrerbund; the massive Nazi social welfare group, the Nationalsozialistischer Volkswohlfahrt; and in 1936 the paramilitary air defense unit, the Reichsluftschutzbund. Nellmann, Personalbogen, EA 4/153, Bü 399, HS.

deliberate, benevolent but resolute.”<sup>9</sup> The head of the Tübingen court a year later similarly described a man whose “political demeanor is faultless. His leadership in office is impeccable and to my knowledge there are no faults in his out of office conduct.”<sup>10</sup> Such statements suggest that any personal opposition to the Nazi state did not prevent him from carrying out his service to that state in such a way as to earn the accolades of his superiors.

His lack of membership served him well in the postwar period. A 1946 decision allowed him to retain his post, as the Allied occupation struggled to reconstruct a denazified judiciary from the personnel of a highly-nazified profession.<sup>11</sup> For the next two years, he served as the de facto State Attorney General (Generalstaatsanwalt) in Württemberg-Hohenzollern, with its capital in Tübingen, though he retained the lesser title of Director of the District Court (Amtsgerichtsdirektor). This required Nellmann to conduct the duties of a higher office, while reaping none of its financial or professional gains. In 1948, the Justice Ministry sought to make this appointment official, noting his “great zeal and untiring diligence” in the post.<sup>12</sup> For unclear reasons, however, the French-occupation authorities decided against this nomination. Nellmann bristled at the rejection. He requested a return to his old position, explaining acerbically:

As you know, I neither desired nor wanted this appointment, but only at your urging and after two years of maintaining the position did I no longer oppose my appointment. But if the Military Government, which for two years had no objection to my appointment... now is not content with it, then I think that after two years of the

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<sup>9</sup> Zusammenstellung der Dienstzeugnisse über Nellmann, Erich (ca. 1939), EA 4/153, Bü 399, HS.

<sup>10</sup> Zusammenstellung der Dienstzeugnisse über Nellmann, Erich (ca. 1939), EA 4/153, Bü 399, HS.

<sup>11</sup> Staatssekretariat, Landesdirektion der Justiz to Landgericht Tübingen (28 February 1947), EA 4/153, Bü 399, HS.

<sup>12</sup> Justizministerium to Monsieur le Comandant, Chef du Controle de la Justice regionale en Wurtemberg, Gouvernement Militaire, Service des Affaires Administrative, Tübingen (6 February 1948), EA 4/153, Bü 399, HS.

most intense work I am owed at least the right to retire from this never sought and never liked position.<sup>13</sup>

The Justice Ministry tried to make things right by appointing him later that year to serve on a denazification panel (Spruchkammer), but a Nellmann scorned had no desire for the post and told them to appoint “a substitute.”<sup>14</sup> The following year, he accepted a promotion to District Court President (Landgerichtspräsident) in Hechingen, south of Tübingen.<sup>15</sup> By 1950, Württemberg-Baden, sought to poach Nellmann and appoint him Senior State Prosecutor (Oberstaatsanwalt) in Stuttgart.<sup>16</sup> Again, Nellmann opposed the promotion.<sup>17</sup>

In 1953, the merger of the states of southwest Germany forced the reshuffling of the judiciary, and Nellmann received an appointment to Assistant Secretary (Ministerialrat) in the Justice Ministry of Baden-Württemberg, a position that, for once, he accepted.<sup>18</sup> A few months later, the State Attorney General Richard Schmid received a promotion, which opened up his post. The Justice Ministry, referring to Nellmann as a “very experienced prosecutor” with “more than four years of leadership of the State Attorney General position in Tübingen” under his belt, nominated him.<sup>19</sup> Nellmann accepted without objection.<sup>20</sup> Later that year, Justice Minister Wolfgang Haussmann publicly announced Nellmann’s new appointment and praised the new attorney general: “His long career as a judge, prosecutor,

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<sup>13</sup> Nellmann to Justizminister (28 April 1948), EA 4/153, Bü 399, HS.

<sup>14</sup> Nellmann to Justizministerium Tübingen (9 September 1948), EA 4/153, Bü 399, HS.

<sup>15</sup> Staatskanzlei to Justizministerium (Tübingen, 3 November 1949), EA 4/153, Bü 399, HS.

<sup>16</sup> Ernennungsurkunde (Stuttgart, 5 December 1950), EA 4/153, Bü 399, HS.

<sup>17</sup> Nellmann to Ministerpräsident Maier (21 December 1950), EA 4/153, Bü 399, HS.

<sup>18</sup> Justizministerium Baden-Württemberg to Nellmann (18 March 1953), EA 4/153, Bü 399, HS.

<sup>19</sup> Justizministerium Baden-Württemberg to Ministerpräsident Stuttgart (12 September 1953), EA 4/153, Bü 399, HS.

<sup>20</sup> Empfangsbescheinigung (Stuttgart, 17 September 1953), EA 4/153, Bü 399, HS.



district court president, and division leader in the Justice Ministry have made him appropriate for the high office, in addition to the fact that he has already handled the duties of an attorney general successfully under the difficult conditions of the postwar years in Tübingen.”<sup>21</sup>

Anecdotal evidence indicates that in the postwar period Nellmann associated with a circle of colleagues, mostly graduates of his generation from Tübingen, who expressed interest in a stronger judicial process of dealing with Nazi era crimes.<sup>22</sup> Two colleagues in particular hint at Nellmann’s attitudes towards coming to terms with the Nazi past. The first was Richard Schmid, who became head of the state supreme court and was Nellmann’s predecessor as attorney general. A lifelong socialist and postwar member of the SPD, Schmid had been an opponent of the Nazi regime.<sup>23</sup> Later on the eve of the Ulm trial, Schmid would appoint a hand-picked judge to oversee the proceedings in hopes of securing a conviction.<sup>24</sup> The second colleague of Nellmann’s was his attorney general counterpart in Hesse, Fritz Bauer. The preeminent West German jurist advocating for Nazi crimes prosecutions, Bauer was a Stuttgart native and attended Tübingen along with Schmid and Nellmann.<sup>25</sup> Bauer notably introduced the concept of the “unjust state” as a way of approaching Nazi Germany from a legal perspective. For Bauer, the legal challenge of prosecuting individuals for carrying out the orders of the state could be circumvented by characterizing the Nazi state

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<sup>21</sup> Rede des Herrn Justizministers Dr. Wolfgang Haussmann (7 November 1953), EA 4/153, Bü 399, HS.

<sup>22</sup> Based on the author’s conversation with Klaus Beer, a former judge in Ulm; Klaus Beer, conversation with the author (1 February 2011). See also, Klaus Beer, “Der Ulmer Einsatzgruppenprozess von 1958. Wie zufällige Personenkonstellationen rechtsstaatliche Aufarbeitung ermöglichen,” *Betrifft Justiz*, Nr. 97 (March 2009), 11-16.

<sup>23</sup> Hans-Ernst Böttcher, editor, *Recht, Justiz, Kritik - Festschrift für Richard Schmid zum 85. Geburtstag* (Baden-Baden: Nomos, 1985).

<sup>24</sup> Landgerichtspräsident to Staatsanwalt Ulm (4 November 1959), EL 322/II, Bü 14, SL.

<sup>25</sup> Irmtrud Wojak, *Fritz Bauer, 1903-1968. Eine Biographie* (Munich: Beck, 2009).

itself as an illegal and unjust organization. The notion of the unjust state found resonance in legal circles in West Germany, and this phrase later appeared in Nellmann's explanations of the Ulm trial.<sup>26</sup> The possible influence of these individuals on Nellmann's own thoughts regarding the Ulm case provides important insights into the ways that individual motivations and influential colleagues could tilt the balance from an unmotivated and lackadaisical judiciary to a massive effort harnessing the potential of the state.

What emerges from this portrait of Nellmann is less a fierce opponent of Nazism (though he may have had such feelings) or a career opportunist, than a surprisingly independent-minded government official. Although he refused to join the Nazi party, he executed its laws as a judge for the entire dictatorship. He sacrificed his career by not joining the Nazi party, but he also declined a postwar appointment to sit on a denazification panel. After the war, Nellmann refused numerous promotions and found himself appointed to the supreme prosecutor position in the state despite his obstinacy, seemingly on the strengths of his abilities as a legal mind. Also, by 1956, he had advanced to one of the most senior positions in the state, and with forced retirement looming in 1961, he was even freer to act independently and without regard for any possible career considerations.

This independent-mindedness suggests that Nellmann's intervention in the Fischer-Schweder investigation dovetailed with his own predilections to act as he saw fit, regardless of norms. As an individual who had spent his career going against career expectations – rejecting promotions, refusing party memberships – his decision to go against the legal pattern of pursuing the minimum in Nazi crimes cases by demanding that his prosecutors pursue the maximum displayed a continuity of personality. Interestingly, on paper he and

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<sup>26</sup> Nellmann, "Zentrale Ermittlungsbehörde muss Klarheit über NS-Verbrechen schaffen," *Stuttgarter Zeitung* (3 September 1958).

Ulm prosecutor Saup shared many similarities in terms of their careers and independence, but they emerged in the postwar period on totally different ends of the spectrum. Saup sought the preservation of a fragile social peace, while Nellmann in the eve of his career saw an investigation on the brink of failure for no reason but a lack of effort. The evidence available and his biographical record suggest that Nellmann's decision to expand the case was made by him alone without the input of (and apparently contrary to the interests of) higher offices.

### **Schüle and the New Approach**

Erwin Schüle assumed effective control of the case by late June 1956. The Ulm prosecutor Rudolf Mettler remained the lead prosecutor, but he began to suffer from a series of medical problems that took him away from the investigation for weeks at a time.<sup>27</sup> Even when Mettler was healthy, the innovation and élan that Schüle brought to the case left no doubt who was driving the prosecution forward. Schüle, a former Nazi party member from 1937, took to the case with great energy.<sup>28</sup> Forty-two years old, he had carved a similar career as Mettler; both seem to have joined the Nazi party from career opportunism rather than ideological commitment. But Schüle had a fundamentally different approach to Nazi crimes prosecutions. While Mettler preferred a deskbound style of operation, Schüle liked to work in the field, often conducting interrogations himself and travelling throughout Germany alongside his detectives on the frontlines of the investigation.

Schüle first set about evaluating the strengths of the team working on the case. Immediately, he ran into the stubborn lack of interest that radiated from the Ulm prosecutor's

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<sup>27</sup> Saup to Generalstaatsanwalt (29 June 1956), EA 4/412, Bü 1, HS.

<sup>28</sup> Vermerk, Justizministerium Baden-Württemberg (Stuttgart, 6 February 1961), EA 4/106, Bü 1, HS.

office that threatened to “infect” those too long exposed.<sup>29</sup> Sympathetic to Mettler’s illnesses, Schüle nevertheless insisted in a meeting with Saup on June 21 that someone fill in during Mettler’s absences. Even though many Ulm prosecutors complained that their “current workload made it impossible to do anything in the Fischer-Schweder case,” Schüle received the assistance he needed.<sup>30</sup> Whenever Mettler fell ill, another prosecutor stepped up to assist Schüle on the case.

The following week Schüle met with lead detective Robert Weida. The investigator had just learned that the Stuttgart police department intended to reassign him, but he explained to Schüle that “he would prefer to remain on the Fischer-Schweder case.” If Weida left, in all likelihood the less experienced Helmut Opferkuch would assume leadership on the case. For the previous few weeks Weida and Opferkuch had routinely subjected Fischer-Schweder to interrogations, and Weida noted a troubling trend in Opferkuch’s demeanor. “Every afternoon that Fischer-Schweder was present here in Stuttgart,” Weida explained, “Opferkuch would make him coffee. In this way, Fischer-Schweder apparently gained the upper hand.” The conversation led Schüle to conclude that “Weida appeared stronger than Opferkuch.” Although he “did not want to say anything negative about Opferkuch as a detective,” Schüle agreed that the case would be best served if both detectives remained on the case with Weida in the supervisory role.<sup>31</sup>

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<sup>29</sup> Schüle, Aktenvermerk über die am 21.6.1956 bei der Staatsanwaltschaft Ulm a.D. und beim Landgericht Ulm a.D. in der Strafsache Fischer-Schweder geführten Dienstbesprechungen (Stuttgart, 23 June 1956), EL 302 I, Bü 305, SL.

<sup>30</sup> Schüle, Aktenvermerk über die am 21.6.1956 bei der Staatsanwaltschaft Ulm a.D. und beim Landgericht Ulm a.D. in der Strafsache Fischer-Schweder geführten Dienstbesprechungen (Stuttgart, 23 June 1956), EL 302 I, Bü 305, SL.

<sup>31</sup> Aktenvermerk (Stuttgart, 29 June 1956), EL 302 I, Bü 305, SL.

With the team consolidated, Schüle turned his focus to overhauling the investigation. Fundamentally, what the case needed was a change in the minimal goals, narrow focus, and culture of low expectation that prevailed during the first year in the Ulm prosecutor's office. With little interest in pursuing the case and few resources to do so, the investigators had consequently been pursuing a narrow track of inquiry that led them to find only what they sought out to prove: the case could begin and end with Fischer-Schweder. Nellmann and Schüle realized that this culture had produced flimsy results. The first order of business, consequently, was to encourage the staff to consider new approaches to the case and to allow them to follow the evidence, even if that led beyond Fischer-Schweder.

With the backing of Nellmann and his pledge of material support, the investigation shifted into a gear not possible during the first year. The detectives continued their program of interrogating witnesses and plying them for the names of additional witnesses, but for several reasons these efforts became much more successful over the coming year. First, additional investigators from Stuttgart assisted Weida and Opferkuch on the case. Second, the detectives now traveled across Germany to conduct interrogations themselves, rather than relying on local police departments to do so. Employing experienced and knowledgeable interrogators proved crucial in confronting reluctant and mendacious witnesses. As Schüle later explained:

Witnesses who were interrogated by local police departments denied either knowing anything about the events in question or they made such empty claims regarding the time period that their statements led nowhere. These same witnesses who were later re-interrogated by specialized officers proved to be well informed and often made statements about specific events of which the investigators themselves were unaware.<sup>32</sup>

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<sup>32</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

Despite the great financial expenses for the state, Weida, Opferkuch, and the other detectives could now conduct interrogations themselves in order to detect inconsistencies in accounts and to achieve a degree of specificity not possible earlier.

These two advantages reached their apex in December 1956, when Schüle planned a nine-day investigation operation requiring the involvement of six detectives. The detectives formed three teams: “Group Oberpfalz-Franken,” a two man team led by Weida, would conduct interrogations in eastern Germany; “Group Ostsee-Nordsee,” led by detective Fahrion, deployed to the north; and “Group Berlin,” consisting of Schüle, Opferkuch, and a third detective, planned a research trip into the divided city.<sup>33</sup> Mettler stayed in Ulm because Schüle “considered it necessary at this point in the investigation for there to be one prosecutor available at all times.”<sup>34</sup> In this one week, they planned to interrogate sixteen witnesses; during the entire first year, detectives had only spoken with thirty-two.

Beyond Schüle’s ability to put more men into the field, he had access to resources that allowed him to expand the reach of the case and pursue leads that might earlier have gone cold. For example, shortly after Schüle took over the case, Fischer-Schweder put forth an alibi through his lawyers that he had vacationed at the Baltic Sea resort town Schwarzort (Juodkrantė) with a woman, not his wife, at the start of July 1941. This established, his defense team argued, “how and why the accused neither knew nor could know of additional shootings in the time from July 1 to July 31, 1941.”<sup>35</sup> Fischer-Schweder provided only the last name of his presumed mistress and likely hoped that they would be unable to find her.

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<sup>33</sup> Weida to Mettler (30 November 1956), EL 302 I, Bü 305, SL.

<sup>34</sup> Schüle to Mettler (29 November 1956), EL 302 I, Bü 304, SL.

<sup>35</sup> Schmid, Weller, Wild to the Staatsanwaltschaft Ulm (6 June 1956), EL 322/II, Bü 3, SL.

Over the next two months, however, the detectives located her former husband and then tracked her down to Baghdad, where her second husband, a British officer, was stationed.<sup>36</sup> When she reentered Germany to visit family, detectives were ready and she was interrogated in Kiel. She stated, “In no way was I in Schwarzort with Mr. Fischer in July 1941. I say that with certainty because the war with Russia started about a week after my return from Schwarzort.”<sup>37</sup> With additional resources, the Ulm investigators could take on substantial field work throughout and beyond Germany and follow up on details however minor.

The investigators’ interrogations of former members of the Nazi state continued to constitute one core aim of the investigation under Schüle, but Schüle took a broader view on the issue. He wanted military personnel, Gestapo officers, and above all senior Nazi officials brought into the investigation. By looking beyond Memel, Schüle hoped to better understand what had happened there. In the year following Schüle’s involvement, the investigators interrogated or corresponded with over two hundred witnesses. They continued to track down those involved in the police and government in the Memel area, but they branched out to interrogate individuals involved at all levels of the Third Reich. This information provided a wider context for understanding the mechanisms of Nazi rule as it manifested itself in Eastern Europe and as it targeted the extermination of Jews living there.

The most significant change Schüle brought to the investigation was his decision to avoid building the case solely on perpetrator testimony. Their accounts were too partial, contradictory, and self-exculpatory to stand up to a withering assault from defense attorneys. Too many terms of the case were being dictated by what the defendants chose to reveal, and

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<sup>36</sup> Statement by Georg Goschzik (Kiel, 26 July 1956), EL 322/II, Bü 3, SL.

<sup>37</sup> Statement by Ellen Stebbing (Kiel, 6 August 1956), EL 322/II, Bü 3, SL.

this imbalance inevitably favored the perpetrators. In the first year of the investigation, this approach barely succeeded in finding information sufficient to indict Fischer-Schweder. Over the coming year, they added nine additional witnesses to the investigation, and they did so by finding other means of gathering evidence. As Schüle later explained:

When exposing still prosecutable Nazi crimes—murder, manslaughter, as well as aiding and abetting—the generally agreed upon methods for investigating capital crimes break down. We cannot survey the crime scene and therefore cannot secure any evidence. We have no bodies and cannot get the fingerprints or other information of the perpetrators. The crimes lay fifteen and more years back, so witnesses and their statements are to be evaluated particularly critically. Therefore, the prosecutor, whose job it is to identify these crimes, must look for other ways and means of bringing the facts to light.<sup>38</sup>

Schüle and his team identified two main avenues for identifying other types of sources. One involved a search for non-perpetrator, non-German witnesses to the shootings; the other relied on scholarship, which led to the discovery of wartime records and documentation.

To find these two source groups, Schüle came to depend increasingly on “historical consultants.”<sup>39</sup> In business, companies often encounter situations demanding skills outside their typical purview; in such cases, they turn to external consultants who provide the expertise lacking within the company. The essence of the transformation of the Fischer-Schweder investigation can be understood through Schüle’s decision to rely on historical consultants with expertise in the areas of the Nazi state, the Holocaust, and Lithuanian Jews. Schüle saw that many of the questions that had arisen in the case demanded a degree of knowledge about the past that none of the investigators possessed. The German judiciary had few answers; without any centralized agency or group focused on assisting in Nazi crimes

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<sup>38</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

<sup>39</sup> Author’s term.



cases, Schüle had no support network within the state. Consequently, he turned to non-state actors: Jewish rights associations, professors, historians, archivists, and other organizations. Schüle had to construct this network of historical consultants, in the process bringing many of these groups which shared similar goals into contact with one another for the first time.

### **The Search for Survivors**

One of the most important partnerships Schüle developed came from his decision to reengage a familiar face in the investigation. In November 1956, several months after Schüle took over the case, he reached out to the Israelitische Kultusvereinigung based in Stuttgart. Under the leadership of Josef Warscher, the Jewish organization for Baden-Württemberg had already proven instrumental in advancing the case against Fischer-Schweder. Over a year earlier, Warscher had been responsible for forwarding allegations to the Ulm prosecutors, which for the first time alerted the detectives about a massacre in Garsden. More substantively, the critical voice the organization provided on behalf of the victims of these crimes gave the case a more concrete public purpose and motivated the investigators. For Nellmann, this pressure contributed to his decision to expand the case. As he noted in his seminal letter from June 9, 1956, “I should also point out that the charges have been filed by the Israelitische Kultusgemeinde [sic]. A rapid and complete clarification of the facts of the case is therefore necessary for a variety of reasons.”<sup>40</sup> The organization had played a clear role to this point in determining the floor for the investigation: detectives needed to pursue the case at the very least to a level that would satisfy the Jewish community of the state.

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<sup>40</sup> Nellmann to Justizministerium Baden-Württemberg (9 June 1956), EL 302 I, Bü 304, SL.

When Schüle reached out to Warscher in early November, the organization soon came to define the case's ceiling. The upper reaches of what the case could accomplish rested in part on the abilities and resources of the Israelitische Kultusvereinigung and its leader. Previously, the organization had loomed over the investigation and shaped it through public pressure. Now, Schüle turned to Warscher and solicited the active engagement of the organization. It is unclear what exactly Schüle said to Warscher or where the decision to tap into the potential of the community stemmed from, but on November 8, Warscher fired off a barrage of letters to a global network of associations interested in the fate of European Jewry.

Although the involvement of the Kultusvereinigung greatly expanded the scale of the investigation, it was not the first such network that the investigators had attempted to access. When Schüle and Nellmann first decided to restructure the case, they saw that the over-dependence on the testimony of former perpetrators hindered their ability to secure a conviction. But finding non-perpetrator witnesses proved extraordinarily difficult. The first idea that Nellmann devised and Schüle implemented involved clergy and the Lithuanian Red Cross. Several days after Nellmann ordered Saup to re-launch the investigation, he sent the Ulm prosecutor a list of priests obtained from a contact who had formerly been stationed in Lithuania.<sup>41</sup> He wanted the investigators to speak with them and hopefully learn which clergy had worked in the towns where mass shootings occurred. He explained his rationale to Saup: "These priests could then make statements about how those shot were gathered together, whether there was partisan fighting, and whether court proceedings were held."<sup>42</sup> A few weeks later, Schüle fumed after a meeting with Saup that left him "convinced that nothing

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<sup>41</sup> Domkapitular Dr. Hufnagel to Nellmann (11 June 1956), EL 322/II, Bü 102, SL.

<sup>42</sup> Nellmann to Staatsanwaltschaft Ulm (13 June 1956), EL 302 I, Bü 304, SL.

has been done either in the direction of the Lithuanian clergy, the Lithuanian Red Cross, or anything else.”<sup>43</sup> He made the pursuit of these groups a core aim over the summer of 1956.

One of the Ulm prosecutors followed up on Schüle’s demands shortly after their meeting. In a letter to the priests that Nellmann had located, an Ulm prosecutor asked Fathers Alfonsas Riskus and Anton Bunga whether they had knowledge of any crimes carried out in warzone Lithuania.<sup>44</sup> Neither offered information, but they did alert the prosecutors to possible sources of information. Bunga suggested that they speak with Bishop Vincentas Padolskis, who had been bishop in the diocese in question and was now stationed in Rome.<sup>45</sup> Riskus later sent Vogelmann the address for the Lithuanian Central Committee (*Litauisches Zentralkomitee*), which could potentially help them locate Lithuanians with information.<sup>46</sup>

On July 21, the Ulm prosecutor’s office sent a letter to Rome addressed to Bishop Padolskis, which suggested that because he had been bishop in the diocese “perhaps you might be able to provide statements about these incidents.”<sup>47</sup> Barring that, they beseeched the bishop to list the names of any priests stationed in Garsden, Polangen, Krottingen, or Pogegen. In mid-August Padolskis’ response arrived. Unable to recall the names of any priests working in the area, Padolskis offered a few details of German anti-Jewish policies. In 1941, they had carried out a program “of special actions against the Jews,” which involved ghettoization and mass executions. He underscored that while the churches opposed all such

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<sup>43</sup> Aktenvermerk über die am 21.6.1956 bei der Staatsanwaltschaft Ulm a.D. und beim Landgericht Ulm a.D. in der Strafsache Fischer-Schweder geführten Dienstbesprechungen (Stuttgart, 23 June 1956), EL 302 I, Bü 305, SL.

<sup>44</sup> Vogelmann to Pfarrer Alfonsas Riskus (11 July 1956), EL 322/II, Bü 102, SL; Vogelmann to Pfarrer Anton Bunga (11 July 1956), EL 322/II, Bü 102, SL.

<sup>45</sup> Letter from Anton Bunga to Staatsanwaltschaft Ulm (Memmingen, 14 July 1956), EL 322/II, Bü 2, SL.

<sup>46</sup> Riskus to Vogelmann (18 July 1956), EL 322/II, Bü 102, SL.

<sup>47</sup> Landgerichtsrat to Bischof Vincentas Padolskis (21 July 1956), EL 322/II, Bü 2, SL.

measures, they had no recourse for affecting policy. A Lithuanian official had told him at the time, “In these affairs nothing can be changed and nothing can be done to help because the Germans are in control and no Lithuanians should involve themselves in these issues.”<sup>48</sup>

Though the clergy strategy yielded few new witnesses for the investigation, it did showcase both the creativity and naïveté of the new prosecutors on the case.<sup>49</sup> Nellmann and Schüle were convinced of the need to transform the case, but neither had a blueprint for how to do this. The decision to look to Catholic priests for help on the case represented a degree of innovation previously unseen in the Fischer-Schweder investigation. Ostensibly, many of these priests would have been pushed out of Lithuania following the communist takeover, which put them geographically within reach of the prosecutors. Moreover, the prosecutors clearly felt that the priests, as community leaders, could offer a moral perspective unassailable in court, in sharp distinction from the self-serving perpetrator testimony. But in thinking along these lines, they also projected back into the past their own conceptions of church behavior, which often failed to correspond to the historical record. Far from neutral observers of the crimes committed against Jews, priests were often conduits for the spread and legitimatization of anti-Semitism in the east.<sup>50</sup> That Schüle and Nellmann were unaware of this is not surprising, as even scholars had yet to fully understand this complicity, but their unawareness underscores that, at all levels of the investigation, the state faced an enormous information deficit.

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<sup>48</sup> Letter from Vinzenz Padolskis, Weihbischof to Lörcher (Rome, 8 August 1956), EL 322/II, Bü 3, SL.

<sup>49</sup> Later in 1957, Riskus and Padolskis were formally interviewed about what they knew, and these statements suggested a degree of familiarity with the crimes not indicated in their earlier letters. Both were called as witnesses to the Ulm trial; Statement by Alfonsas Riskus (Biberach, 21 March 1957), EL 322/II, Bü 10, SL; Statement by Vinzenz Padolskis (Rome, 23 April 1957), EL 322/II, Bü 12, SL.

<sup>50</sup> Michael Phayer, *The Catholic Church and the Holocaust, 1930-1965* (Bloomington: Indiana University Press, 2000).

By November, the prosecutors decided to turn to the Israelitische Kultusvereinigung in an effort to advance the case. The decision, though logical, was not obvious. Throughout postwar Germany, Jewish communities struggled to regroup and establish old connections. Very few German Jews had survived the Holocaust, let alone returned home after, and many of the estimated 250,000 survivors within postwar German borders in 1946 were displaced persons from the east.<sup>51</sup> In this context, the Israelitische Kultusvereinigung reformed in order to rebuild the Jewish community of Württemberg. The group had as few as nine members in 1946, but a decade later the number had risen to 569.<sup>52</sup> Though a significant increase, the group remained relatively small, and its main work focused on providing material aid for its members. On the occasions when it did interact with the state government, this typically concerned issues such as the preservation of Jewish sites, Hebrew education opportunities in the area, and other matters important for the reconstitution of Jewish life. Although the organization had earlier intervened to file a criminal complaint against Fischer-Schweder, it was not clear how, if at all, the Kultusvereinigung could actively assist in the investigation.

The small size of the organization actually concealed a number of its strengths. First, the Kultusvereinigung was not a self-sustaining organization. It relied on aid from various foreign Jewish organizations invested in the redevelopment of Jewish communities, which meant that the group had knowledge of and access to an array of international organizations. Second, the association had extensive contacts with Jewish survivors. Significant numbers of displaced Jews had spent some time in the Baden-Württemberg area, and the association had advocated on their behalf. These contacts meant that the Kultusvereinigung had developed a

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<sup>51</sup> Grossmann, *Close Encounters*, 1.

<sup>52</sup> Speech by Alfred Marx (21 February 1954), 1026 Israelitische Religionsgemeinschaft, Bd. 667, StS.

particular set of skills that enabled Warscher and his staff to locate Jews who had fled their communities in the wake of the Holocaust.

This network had been put to some use in earlier prosecutions. In the immediate postwar years, the Kultusvereinigung had filed numerous claims in southwest German courts on behalf of the region's Jewish community. Most involved restitution for damaged, destroyed, or looted property during the Third Reich, in particular during Kristallnacht in November 1938.<sup>53</sup> In 1951, the association had also relied on information from organizations such as the Yidisher Visnshaftlekher Institut (YIVO) in New York and the Centre de Documentation Juive Contemporaine in Paris to provide evidence for the allegations.<sup>54</sup> These contributions, however, had all but ended by the mid-1950s. Moreover, the involvement seemed a one-way street, in which the Kultusvereinigung brought claims, as it had against Fischer-Schweder, but the state prosecutors did not solicit the office's engagement. Schüle's decision to enlist Warscher's support proved to be a decisive moment for the investigation.

On November 8, 1956, Warscher sent off letters to a series of Jewish organizations: the Wiener Library based in London, the United Restitution Organization in New York, and Yad Vashem in Jerusalem.<sup>55</sup> In these, he explained that the prosecutors in Ulm were investigating individuals "who allegedly took part in the murder of Jews in Lithuania... The

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<sup>53</sup> See Politische Angelegenheiten, 1026 Israelitische Religionsgemeinschaft, Bd. 667, StS.

<sup>54</sup> Warscher to Centre de Documentation Juive Contemporaine, Paris (4 May 1951), 1026 Israelitische Religionsgemeinschaft, Bd. 295, StS; YIVO to Israelitische Kultusvereinigung (16 August 1951), 1026 Israelitische Religionsgemeinschaft, Bd. 296, StS.

<sup>55</sup> Warscher to Dr. Harry Knopf, URO, Tel Aviv (8 November 1956), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS; Warscher to Daniel Cohen, Jad Va'schem (8 November 1956), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS; Warscher to Reichmann, Wiener Library (8 November 1956), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

prosecutor's office has so far come a long ways, but they are hoping to make more arrests.”<sup>56</sup>

In this interest, Warscher wrote, “I have been asked to identify literature about the era of persecutions in Lithuania and, when possible, witnesses as well.” Although Warscher realized that “there may not be many survivors because Jews in Lithuania were killed in such great numbers,” he held out hope that eyewitnesses might be found. As he later explained:

The jurors of the court will not be as impressed by depictions based on available literature as they will be by an eyewitness explanation of his own experiences. This makes an entirely different and ultimately deeper impression. You must not forget that since the time of these events – since the end of the war – more than ten years have passed, and the memories of the war years have surely faded for the jurors. So it is necessary to depict the horror before the court, as clearly and dramatically as possible, and for that the involvement of eyewitnesses is of the greatest importance.<sup>57</sup>

To help find witnesses, Warscher sent along the names of the execution sites under investigation, as well as the prosecutors' information so they could be contacted directly. A few weeks later, he extended similar letters to two other groups, the World Jewish Congress and the YIVO, both in New York.<sup>58</sup> By January, clearly encouraged by Warscher's efforts, the Ulm investigators prepared especially for him an eight-page summary of the investigation and photographs of the seven defendants by that point in custody, which they asked him to “forward to relevant agencies to identify witnesses.”<sup>59</sup>

The Israeli organization Yad Vashem took to Warscher's call for witnesses with great zeal. The seeds for this organization were sown as early as 1942, when Zionist proposals

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<sup>56</sup> Warscher to Dr. Harry Knopf, URO, Tel Aviv (8 November 1956), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>57</sup> Warscher to YIVO (11 February 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>58</sup> Warscher to World Jewish Congress (23 November 1956), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS; Warscher to YIVO (13 January 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>59</sup> Stimpfig to Warscher (31 January 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

circulated about the creation of a memorial to victims of the Holocaust.<sup>60</sup> By 1953, the Israeli Knesset passed the Holocaust and Heroism Memorial Act, which established the Authority for the Martyrs and Heroes of the Holocaust, known as Yad Vashem. Conceived in broad terms, the memorial would consist of a physical monument, but also of an institution with the mission “to gather, investigate, and publish all evidence of the Holocaust and heroism.”<sup>61</sup> This research wing became a central database of records relating to the Holocaust, including an extensive effort to catalog and identify victims and survivors of the Holocaust. As a repository of testimony and accounts of survival, Yad Vashem had emerged by the 1950s as a preeminent scholarly resource for information on the victims of Nazi crimes.

Immediately upon his involvement in the case, Warscher had written to Daniel Cohen, an employee at Yad Vashem he learned of through an associate of the Kultusvereinigung, but received no response until January.<sup>62</sup> The delay had nothing to do with a lack of interest on the part of the Israeli organization to assist the German prosecution. To the contrary, as Cohen explained in his letter to Warscher from January 7, “Upon my return to Jerusalem I found your letter from November 8, 1956 still unopened...I immediately forwarded its contents to the leader of the Yad Vashem Archive, Dr. Kermisz. This research will be carried out as quickly as possible, and he will then contact you directly about his findings.”<sup>63</sup>

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<sup>60</sup> Tom Segev, *Seventh Million*, 104.

<sup>61</sup> Holocaust and Heroism Memorial Act of 1953, quoted in Segev, *Seventh Million*, 462.

<sup>62</sup> Warscher to Daniel Cohen, Jad Va'aschem (8 November 1956), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>63</sup> Daniel Cohen, Jewish Historical Society of Israel, The Jewish Historical General Archives, Jerusalem to Warscher (7 January 1956), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.



When Josef Kermisz received the contents of Warscher's letter, he at once went into action locating information of use for the investigation. After identifying a number of publications detailing the fate of Jews in Lithuania, he wrote to their authors on January 6. Kermisz told them, "The prosecutors need information and witnesses about the period of persecution in Lita [Jewish settlement area of Lithuania]. We did not obtain any information regarding the names of criminals, the dates they participated in the persecution, etc., because this is indeed a secretive matter... Thus we are coming to you with a question: do you hold information about the activities of German war criminals in the places mentioned above?"<sup>64</sup> Three days later, he heard back from one of the authors, Israel Kaplan, a survivor from Lithuania who had gathered survivor testimony immediately after the Holocaust.<sup>65</sup> Kaplan informed Kermisz, "Two weeks ago, I communicated with the Wiener Library in London, and I promised to help them as much as I can regarding the preparation for the trial in Stuttgart." Despite his willingness to assist in the case, Kaplan regretted to tell the archivist, "From the district of Tilsit (the villages near the Memel belt to Wirballen and Augustowo) where the Gestapo was active, remains a terrifyingly small number of Jews, and only a few of them [less than ten] are in Israel."<sup>66</sup>

On January 13, Kermisz sent his preliminary findings to the Kultusvereinigung in Stuttgart. With "apologies for the delay of our response," the Yad Vashem scholar presented Warscher with an array of potential sources. In addition to including a translated copy of Kaplan's letter, Kermisz listed references to Lithuanian Jews in the International Military

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<sup>64</sup> Kermisz to Liptz (6 January 1957), translated by Atar Stav, O.4, File Number 488, YVA.

<sup>65</sup> Wieviorka, *Era of the Witness*, x.

<sup>66</sup> Kaplan to Kermisz (9 January 1957), translated by Atar Stav, O.4, File Number 488, YVA.

Tribunal records, then suggested a number of individuals who had written on Lithuanian Jews that may be of use. He identified references to Krottingen in one author's account, a description of Polangen in another, and of Garsden in still one more. New York City, he wrote, was home to the Jewish-Lithuanian Cultural Society, which had also published a number of works that might be of interest. Additionally, Yad Vashem had possession of a list of Lithuanian war criminals if the prosecutors had interest in that, and he had written to the Wiener Library for additional support. Kermisz concluded, "It goes without saying that we will keep your request in mind as we carry out further review and processing of our materials, and you will be informed immediately of any new information."<sup>67</sup>

Between Kermisz's receipt of Warscher's request and his letter of response, only a week had elapsed. Yet in that week, Kermisz had identified and brought to their attention a half-dozen scholars and new sources of information. Without Warscher and Kermisz's involvement, almost certainly none of these materials – being not only far off in Israel but largely in Yiddish and Hebrew – would ever have come to the Ulm prosecutors' attention.

While Yad Vashem was making inroads regarding possible survivors in Israel, YIVO was producing similar results in the United States. Originally founded in 1925 in Vilnius, the Yidisher Visnshaftlekher Institut (Yiddish Scientific Institute) had the purpose of serving as a scholarly research center into Jewish culture and history in Eastern Europe. With the advent of World War II, YIVO relocated to New York, and there it began to assume a form similar to Yad Vashem as it emphasized the collection and publication of information related to the fate of European Jews.<sup>68</sup> In mid-January 1957, Warscher contacted YIVO in the interest of

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<sup>67</sup> Kermisz, Behörde für das Gedenken an Grauen und Heldentum, Jerusalem, to Warscher (13 January 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>68</sup> "Introduction," YIVO website, site accessed February 2012, <http://www.yivo.org/about/>.

locating witnesses because “as yet no witnesses can be found in Germany.”<sup>69</sup> At the end of the month, a representative at YIVO responded, “We have asked our experts on Lithuanian issues to assemble everything that might be of service for your and the Stuttgart Attn. General’s use.” Thus far, they were able to offer the names of individuals with knowledge of the Holocaust in Lithuania. They also suggested Warscher turn to Yad Vashem which held “extensive materials and reports from eyewitnesses on the destruction of Jews in Eastern Europe.” Finally, they offered “to engage the entire Yiddish press in America this week about our search on your behalf for Lithuanian Jews who survived the destruction of the Lithuanian town Garsden.”<sup>70</sup>

The Yad Vashem and YIVO reports arrived to Warscher less than two weeks apart and both reports converged on one individual who might have information. Eliezer Jeruschalmi, who currently lived in Haifa, had recently authored a Yiddish work titled *Destruction of Jews in Shavli Ghetto and in Neighboring Shtetls*, in which he referred to executions of children in Polangen.<sup>71</sup> In late February, Jeruschalmi wrote to Warscher about what he knew.<sup>72</sup> His son, Mordechai, had earlier penned an account of a “Soviet children’s camp [Kinderlager]” in Polangen, a German translation of which Yad Vashem forwarded in July 1957.<sup>73</sup> He also claimed to be in possession of over 4,000 documents relating to the Holocaust in Lithuania, though most of these related to the Schaulen ghetto, outside

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<sup>69</sup> Warscher to YIVO (13 January 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>70</sup> P. Schwartz, YIVO to Warscher (24 January 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>71</sup> Kermisz to Warscher (13 January 1957), translated by Atar Stav, O.4, File Number 488, YVA.

<sup>72</sup> Dr. Eliezer Jeruschalmi to Warscher (27 February 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>73</sup> Dr. J. Kermisz, Yad Vashem to Warscher (24 July 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

Einsatzkommando Tilsit's area of activity. His most hopeful insight, however, related to two individuals who may have survived the shootings: Kuschnir and Reifer, addresses unknown.

Although this seemed the moment that Warscher and the Ulm prosecutors had been waiting for – the first concrete eyewitness accounts from a survivor – the network of Jewish associations soon ran out of luck. Kermisz at Yad Vashem spent several months tracking down Kuschnir and Reifer. He succeeded in locating “Reifer,” whose actual name was Elijah Reif.<sup>74</sup> Though Warscher wrote for information, this witness never materialized. Kermisz pursued the Kuschnir lead all the way to the Israeli Department of the Interior and the Department of Familial Inquiry, but in both instances, Kermisz learned that the state was unable to provide additional information.<sup>75</sup> The search for survivors in Israel had gone cold.<sup>76</sup>

A few weeks later, in early May 1957, the YIVO-led search in American arrived at the same conclusion. In a letter to Warscher, Executive Secretary Schwartz wrote, “Many announcements were made in the press – by us, by the URO, by the Jewish Worker’s Committee.” Unfortunately, these efforts had resulted in only a few possible leads, and none to date had resulted in credible witnesses. Schwartz came to a dour conclusion about their efforts. “We deeply regret,” he stated, “that the results are so limited, but what more can you or I do? Put simply: 99 percent of the witnesses have already died years ago.”<sup>77</sup>

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<sup>74</sup> Kermisz to Jeruschalmi (25 April 1957), translated by Atar Stav, O.4, File Number 488, YVA.

<sup>75</sup> Kermisz to Department of Familial Inquiry (21 April 1957), translated by Atar Stav, O.4, File Number 488, YVA.

<sup>76</sup> Department of the Interior, Sector of Residents’ Registry to Kermisz (7 May 1957), translated by Atar Stav, O.4, File Number 488, YVA; Department of Familial Inquiry to Yad Vashem (undated), translated by Atar Stav, O.4, File Number 488, YVA.

<sup>77</sup> P. Schwartz, YIVO to Warscher (7 May 1957), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

Warscher had no choice but to inform Schüle on May 17 that despite attempts made over the past seven months, he had not identified any survivors.<sup>78</sup> In a later letter, Warscher explained to Schüle that the crimes in question are “some of the tragic cases that were so total that there were no survivors.”<sup>79</sup> As to be expected, the absence of survivor accounts came as a blow to the investigation. Schüle responded on May 20, “I take it that your investigation into witnesses in Israel and the USA have unfortunately, as I feared, come to naught.”<sup>80</sup> But as a nimble jurist, Schüle refused to abandon the effort as wasted. He explained to Warscher, “As shocking as the facts are, in order to use this for the case I need to be able to present official copies of the widespread calls for witnesses made on the radio and in newspapers.” By asking Warscher for documentation of all efforts made to identify witnesses, Schüle was devising an alternate strategy. If no survivors could be found, then their absence could be used as evidence of the extensiveness of the crimes committed.

The involvement of the Israelitische Kultusvereinigung, and by extension of the URO, YIVO, Wiener Library, Yad Vashem, and other Jewish associations, in the search for survivors of Einsatzkommando Tilsit’s crimes constituted a significant and overlooked aspect of the Ulm investigation. Because these efforts yielded no survivors, it may be tempting to consider the strategy a failure. Yet, as Schüle noted, the extent to which these organizations attempted to find witnesses simply underscored the severity of the crimes committed. Numerous organizations circulating efforts throughout Israel, America, and Western Europe could not find a single surviving Jew from the Memelland.

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<sup>78</sup> Warscher to Schüle (17 May 1957), EL 322/II, Bü 12, SL.

<sup>79</sup> Warscher to Schüle (2 June 1958), EL 322/II, Bü 18, SL.

<sup>80</sup> Schüle to Warscher (20 May 1957), EL 322/II, Bü 12, SL.

It is important as well not to reduce these organizations' involvement to a simple calculus of success or failure to locate witnesses. Investigations are not measured solely by their outcome; they can be evaluated by the expansiveness of their efforts. Schüle approached the case not from the narrow confines of perpetrator accounts, but considered the possibilities of engaging bystander and victim testimony as well. He widened the array of the potential witnesses, and in so doing he raised the bar for what the case could hope to achieve. To pursue these potential sources, he reached out to an organization with no formal relation to the state. But it did have connections, and these were what Schüle and the investigators lacked. Schüle recognized the limitations on his team to locate witnesses, and so, rather than close off that possibility, he found other channels through which to pursue this goal. In the end, the strategy of engaging these networks of Jewish associations revealed Schüle's flexible and innovative approach to the case.

Finally, the experience of working with Warscher and the other organizations showcased a new means of investigating and prosecuting war criminals. Since war's end, most of these associations had worked extensively on gathering, sifting through, and processing information on the Holocaust. Increasingly, these groups spoke to one another: Yad Vashem could recommend the Wiener Library to Warscher, and YIVO could recommend Yad Vashem. They were constructing a hitherto untapped network of Holocaust scholars and a repository for survivors and their testimony. Thanks to Warscher, Schüle learned the potential of this resource. Without fail, these associations proved eager to assist. By reaching out to them, Schüle expanded the labor force of his investigation exponentially. A single request for information reverberated throughout the international Jewish community; that Schüle's searches found no voices does not mean they fell on deaf ears.

## Scholars and their Sources

In 1959, Schüle reflected back on the difficulties of Nazi crimes investigations. He wrote that these cases often lead to a situation where “even when convinced of the guilt of a person, I could see no possibility for providing evidence of guilt.”<sup>81</sup> This was the situation when Schüle first came to the case. Though Fischer-Schweder’s criminality seemed apparent to all, Nellmann and Schüle clearly did not believe that the Ulm prosecutors would be able to prove this conclusively in a court of law. As Schüle looked over the progress made prior to his assignment to the Ulm case in 1956, he found a possible solution:

After I became acquainted with the material, I suddenly realized that I could still find and evaluate crime evidence, even if of a different form than traditional crimes. I realized that this evidence was no less reliable than that found in more recent crime cases. I consider documents among these pieces of evidence. We need to subdivide these documents into those which have an official nature and therefore irrefutable value as evidence, particularly those stemming from the perpetrators themselves, and those which come from the few survivors of the extermination efforts.”<sup>82</sup>

Although the search for these few survivor accounts had come up short, finding wartime documentation from the perpetrators became a key aim of his investigation and one which yielded substantial results. From the very first day that Schüle joined the case, he emphasized a scholarly approach to the investigation, which would augment witness accounts with scholarship and wartime documentation. Schüle believed that anchoring the fluid imprecision of human memory in the science of academia and the data of archives could provide an empirical case against the defendants.

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<sup>81</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

<sup>82</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

Beyond making a symbolic gesture, when Schüle sent the Ulm team Reitlinger's *The Final Solution*, he was pointing out potential new sources. As a logistical guide, Reitlinger's work had a number of recommendations. One of the first historical attempts at a systematic and source-based analysis for the evolution and implementation of Nazi genocidal policies against Jews, Reitlinger's narrative drew heavily on records from the International Military Tribunal in Nuremberg and the successor trials.<sup>83</sup> At the time, those records constituted the best combination of Nazi documentation and testimony for understanding the mechanisms of the Holocaust. The Nuremberg proceedings had relied extensively on wartime documentation to make their case against the defendants.<sup>84</sup> This documentation became not only a crucial source for Reitlinger, but also provided an investigative model that Schüle aimed to replicate.

The primary Nuremberg trial records had by this point been published in a series of volumes, which offered the investigators a collection of wartime records from Hitler's inner circle on the Holocaust in Eastern Europe. Although available to the investigators, during the first year of the case they went unused. Quite possibly, Mettler and the detectives were unaware of the publication until the Reitlinger work brought them to their attention. Another likelihood is that the records did not appear as relevant prior to Schüle's involvement. With the narrow focus on Fischer-Schweder and a few select crime sites in Lithuania, the Ulm prosecutors' office had never considered these records as a useful source, since they documented higher level decisions and structures of power within the Nazi state. Only once Schüle arrived did the apparatus of criminality become central to the case.

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<sup>83</sup> Reitlinger, Gerald. *The Final Solution: The Attempt to Exterminate the Jews of Europe, 1939-1945*. South Brunswick, NJ: T. Yoseloff, 1968.

<sup>84</sup> Wieviorka, *Era of the Witness*.



As the team began to go through these records, they realized that in fact a great deal of information relating specifically to the murder of Jews in Lithuania did exist, but the documents existed in unpublished records from different cases. In addition to the main proceedings at Nuremberg against the Nazi inner circle for war crimes and crimes against humanity, the Allies prosecuted a number of other groups of criminals in the so-called “successor trials.” These trials involved Nazi doctors, corporations, the foreign ministry, and – most important for the Ulm investigators – the Einsatzgruppen. In *The United States of America vs. Otto Ohlendorf, et al.*, members of the various Einsatzgruppen were tried for their murder of over one million civilians during the war.<sup>85</sup> As the detectives in Ulm learned of the case, they began to focus on the trial aspects relating to Einsatzgruppe A, which targeted the Baltic States.

As early as June 1956, Nellmann expressed interest in gaining access to the information gathered for the Einsatzgruppen trial.<sup>86</sup> In particular, he gravitated towards the records concerning Martin Sandberger, a co-defendant at the Ohlendorf trial who had been head of Sonderkommando 1a of Einsatzgruppe A. In this unit, Sandberger had followed behind the Wehrmacht during the June invasion of Soviet-controlled Lithuania. The investigators hoped the court records that led to his conviction might hold information of use for the Einsatzkommando Tilsit case. Since the case had taken place under the jurisdiction of the American authorities, access to the records, however, presented obstacles. On July 24, 1956, Nellmann wrote to the American consulate to explain the situation.<sup>87</sup> He informed the

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<sup>85</sup> Earl, *The Nuremberg SS-Einsatzgruppen Trial*.

<sup>86</sup> Nellmann to Justizministerium Baden-Württemberg (25 June 1956), EA 4/412, Bü 1, HS.

<sup>87</sup> Nellmann to Richard C Hagan (24 July 1956), EL 302 I, Bü 304, SL.

consulate that these records would be “of the utmost importance for conducting the investigation of Fischer-Schweder,” and he requested that the detectives be granted access to the materials. A week later, Richard Hagen at the consulate responded: “A representative of your office may see them at any time...The American Embassy stands ready and willing to cooperate in this respect.”<sup>88</sup>

Over the summer and fall of 1956, the prosecutors and investigators mined these and other documents from the Einsatzgruppen trial. They quickly began to recognize their significance as a resource distinct from testimony. Although the team initially found little on the actual crimes carried out along the Lithuanian border, volumes of information about other mass executions in Eastern Europe emerged. These depicted a pattern of Einsatzgruppen shootings that mirrored the executions in Garsden, and as a result, they cast doubt on the claims made by Fischer-Schweder and others that the shootings there had been in response to partisan activity. The more the investigators uncovered, the clearer it became that Jews were targeted as Jews.

By far the most significant set of historical documents to emerge from their research was the *Ereignismeldungen*, operational reports of the Einsatzgruppen itself. These daily summaries detailed the activities of the death squads as they proceeded through Eastern Europe, and they amounted to, as an Ulm newspaper later referred to them, “a ledger of death.”<sup>89</sup> By November, the team had identified five reports that contained information on the crimes of Einsatzkommando Tilsit. Ereignismeldung #14, dating from July 6, 1941, gave details on the crimes they had been researching for the previous two years. The report stated:

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<sup>88</sup> Richard Hagen to Nellmann (1 August 1956), EL 302 I, Bü 304, SL.

<sup>89</sup> “Die Buchhaltung des Todes,” *Schwäbische Donau-Zeitung* (27 June 1958).

From Tilsit three large cleansing actions [*Grosssäuberungsaktionen*] were carried out, and the following were shot:

- in Garsden 201 people
- in Krottingen 214 people
- in Polangen 111 people

In Garsden, the Jewish population supported the Russian border guards in the defense against the German attack. In Krottingen, during the night of the occupation one officer and two billeting officers [*Quartiermacher*] were surreptitiously shot by the population. In Polangen, on the day after the occupation one officer was furtively shot by the population.

In all three large operations, Jews were predominantly liquidated. To be found among them, however, were also Bolshevik functionaries and snipers, who had been handed over as such to the Sicherheitspolizei in part by the Wehrmacht.<sup>90</sup>

Another report, Ereignismeldung #19 from July 11, stated that units from Tilsit had killed 133 people in Tauroggen, 322 in Georgenburg, 316 in Augustowo, 68 in Mariampol, 192 in Wladislawo, 122 in Tauroggen, 63 in Krottingen, and 1 in Schmalleningkin.<sup>91</sup> “Thus far,” the report concluded, “1,743 people were shot.” According to their own records, Einsatzkommando Tilsit had carried out eleven mass executions in barely two weeks.

These reports established a concrete timeframe and specific numbers of victims for the crimes, which were two issues that had challenged the detectives since the first year of the case. If these records are contrasted with the chart Opferkuch had created during the first year of the investigation, the concrete information from the Ereignismeldungen solved many of the inconsistencies inherent in the perpetrator accounts. The specific information from the Einsatzgruppen reports involving victim numbers, dates of crimes, and locations meant that the prosecutors no longer needed to attempt the near impossible task of gleaning these specific details from fluid and contradictory perpetrator testimonies.

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<sup>90</sup> Ereignismeldung UdSSR Nr. 11 (3 July 1941), EL 322/II, Bü 80, SL.

<sup>91</sup> Ereignismeldung UdSSR Nr. 19 (11 July 1941), EL 322/II, Bü 80, SL.

Unfortunately for the detectives, the documents prolonged two points of contention. First, the Ereignismeldungen claimed that although the majority of those killed had been Jews, these killings resulted from partisan activity. The issue of partisan involvement, and by extension of the legality of the shootings in a wartime environment, saw no resolution through these reports. Second, the reports did not address the question of the provenance of the execution orders. Who authorized the Einsatzkommando Tilsit shootings did not appear in these reports, which allowed the defendants to continue to invoke the Befehlsnotstand, the claim that if they had not carried out orders, they would have risked their own lives.

Once the Ulm staff became aware of the Ereignismeldungen, they sought out all the additional iterations these took. The Nazi bureaucracy functioned like a massive distillery, such that lower levels produced reports, which were then summarized by mid-level officials, and finally the summaries of the summaries – the distilled essence of the originals – arrived at the top. The Ereignismeldungen were the summary of the original reports from the various Einsatzkommandos and Einsatzgruppen. The Ereignismeldungen were then summarized for Heydrich in the *Tätigkeits- und Lageberichte* (activity and situation reports).

As the Ulm staff continued to gather information during summer and fall 1956 on the Einsatzgruppen cases, they learned in mid-November that the Institut für Zeitgeschichte (Institute for Contemporary History) in Munich maintained copies of many of these documents in question.<sup>92</sup> Founded after the war, the Institut served as a documentation and research center into the Nazi era. In late November, Schüle convinced the deskbound Mettler

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<sup>92</sup> They received additional information on the Ohlendorf case from the Prisons Division of the American Embassy in July 1956, as well as a copy of the Ohlendorf verdict from the Nuremberg archive in the fall of 1956. See, Schabel to Amerikanische Botschaft Prisons Division (23 August 1956), EL 302 I, Bü 304, SL; Schüle to Staatsanwaltschaft Ulm (7 September 1956), EL 322/II, Bü 102, SL.

to travel to Munich and consult the records.<sup>93</sup> Mettler requested access to the following documents: Heydrich's summaries of the Ereignismeldungen, a number of affidavits, defendant information, and complete copies of the Ereignismeldungen.<sup>94</sup>

Of increasing interest were any of the original reports filed by Einsatzkommando Tilsit, which had eluded them thus far. Einsatzkommando Tilsit must, the prosecutors reasoned, have provided their own reports to the Einsatzgruppen which then appeared in summary form in the Ereignismeldungen. At the end of his letter to the Institut für Zeitgeschichte, Mettler wrote, "P.S. – In case there are any unit or operation reports, particularly from Stapo Tilsit (esp. those signed by its leader Böhme) or from SD Tilsit (esp. those signed by Hersmann), these would be of special interest."<sup>95</sup> By this point, both Hans-Joachim Böhme and Werner Hersmann had been named co-defendants in the investigation, the most senior Nazi officials of the eventual ten on trial. The Institut, however, did not have these records. Mettler then asked Weida to ask the defendants whether they had filed reports.<sup>96</sup> Confident that these reports had existed and desperate to find them, the Ulm team had Nellmann inquire whether they might be in the possession of the American consulate.<sup>97</sup> This effort too came up empty in the late 1950s.

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<sup>93</sup> Mettler to Institut für Zeitgeschichte (20 November 1956), EL 322/II, Bü 102, SL.

<sup>94</sup> Only a few of the Ereignismeldungen were in Munich at the time; the majority had been loaned to the URO on microfilm, which Schüle was able to access in December. See, Schüle to Mettler (12 December 1956), EL 302 I, Bü 304, SL; as well as Kurt May, URO, to Krausnick (25 October 1956), 103 - Korrespondenz Krausnick, Bd. 38, IfZ; Krausnick to May (27 November 1956), 103 - Korrespondenz Krausnick, Bd. 38, IfZ; May to Krausnick (4 December 1956), 103 - Korrespondenz Krausnick, Bd. 38, IfZ; Krausnick to May (14 December 1956), 103 - Korrespondenz Krausnick, Bd. 38, IfZ.

<sup>95</sup> Mettler to Institut für Zeitgeschichte (20 December 1956), EL 322/II, Bü 102, SL.

<sup>96</sup> Mettler to Weida (22 November 1956), EL 322/II, Bü 102, SL.

<sup>97</sup> Nellmann to Irvin, Amerikanische Generalkonsult (30 November 1956), EL 302 I, Bü 304, SL.

Ultimately, the intuition of the prosecution about existence of low level Einsatzkommando Tilsit reports was vindicated. These reports had been written and had survived the collapse of the Third Reich, but they remained locked away in Eastern European archives as hostages of the Cold War, unavailable to scholars and investigators alike until the collapse of the Soviet Union. Had these been made accessible to the Ulm prosecutors, the case may well have taken a different trajectory. In one pivotal report filed after the Garsden, Krottingen, and Polangen shootings, Hans-Joachim Böhme wrote that “[Head of Einsatzgruppe A] Stahlecker expressed his general approval to the cleansing actions.” The same July 1, 1941 report explained that later in the week, Böhme met personally with Himmler and Heydrich. Böhme wrote that they “received information from me on the measures initiated by the Stapostelle Tilsit and sanctioned them completely.”<sup>98</sup> As Jürgen Matthäus, the historian who first uncovered these documents, explained:

[Böhme] legitimize[d] the selection and execution of undesirable persons, primarily Jews, without waiting for specific orders from above...The authority to inflict suffering and death on civilians became detached from military rank and status, with lower- and middle-ranking officers [such as Böhme] taking the initiative while their superiors provided support, encouragement, or ex post facto legitimization.<sup>99</sup>

This document indicated that Böhme had, in fact, not acted on any explicit orders, but had willed the Einsatzkommando Tilsit executions into existence of his own volition. This would have obliterated the defendants’ claims to have only followed orders. But for the Ulm team, this operation report remained only an idea, and for the trial, the document became a tantalizing “what-if.”

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<sup>98</sup> Stapostelle Tilsit to RSHA IV (1 July 1941), RG 11.001 M01, Reel 10, USHMM.

<sup>99</sup> Jürgen Matthäus, “Operation Barbarossa and the Onset of the Holocaust, June-December 1941,” in Christopher Browning, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, 1939-1942* (Lincoln: University of Nebraska Press, 2004), 256; see also, Jürgen Matthäus, “Jenseits der Grenze,” *Zeitschrift für Geschichtswissenschaft*, v.44, no.2. (1996), 101-117.

Although certain material proved wholly inaccessible, the Ulm team made the most of what they could access and scoured West Germany for resources. Mettler, for example, enjoyed the change of scenery at the Institut, where he “was very well received and fully supported.”<sup>100</sup> There he found “a great deal of material,” including a number of potential witnesses for the investigation to explore. Another major effort came in December, the week following Mettler’s return from Munich, when Schüle and Opferkuch planned a trip to Berlin. Though the investigators had routinely taken to traversing Germany, Berlin presented its own set of challenges. With American assistance, the prosecutor and detective boarded a military aircraft in Frankfurt on December 2, 1956, which took them into the divided city.<sup>101</sup> While Opferkuch went around interrogating witnesses, Schüle worked at the Berlin Document Center and other organizations for a week to find personnel records and wartime information on the defendants.<sup>102</sup>

In addition to consulting with raw historical documents, Schüle and the detectives came to rely on scholarly accounts of the Nazi state and the Holocaust. From the beginning, such materials had constituted a key facet of the Israelitische Kultusvereinigung’s outreach efforts to different organizations. Warscher focused extensively on tracking down Jewish survivors for testimony, but his attempts to locate documentation and scholarship proved extremely useful for the investigation. Yad Vashem had furnished the investigation with a number of Yiddish and Hebrew sources, even providing translations upon the prosecutor’s request, and other organizations proved equally willing to help.

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<sup>100</sup> Mettler to Schüle (28 November 1956), EL 302 I, Bü 304, SL.

<sup>101</sup> Interview with Opferkuch; Weida to Mettler (30 November 1956), EL 302 I, Bü 305, SL.

<sup>102</sup> Statement by Kurt Neubacher (Berlin, 5 December 1956), EL 322/II, Bü 6, SL; Interview with Opferkuch.

Within a few days of Warscher's initial November 1956 letters of request for resources and witnesses, Eva Reichmann at the Wiener Library responded enthusiastically. She wrote, "Of course we are more than ready to assist as best we can with the procurement of materials regarding the persecutions in Lithuania and in the specified locations."<sup>103</sup> The library first came into existence in 1933 to document Nazi policies against Jews, and as such it can lay claim to being the first "Holocaust memorial institution."<sup>104</sup> By 1939, the organization moved from Amsterdam to London, where its offices remained in the 1950s. The Library played an important role in furnishing the Allies with documentation for the Nuremberg trials, and Reichmann herself had by this point emerged as a significant historian and sociologist of anti-Semitism and the Holocaust. With this background, Reichmann sent Warscher a number of references to Nuremberg materials, recommended Reitlinger's work, and suggested several Lithuanian societies to contact. Over the coming months, the Wiener Library provided the investigators with numerous scholarly resources that allowed the investigators to place the disparate documentary record they had collected into a more analytical and established framework of historical interpretation.

As a result of Warscher's efforts and the investigators' archival inquiries, two historians emerged as important experts for the investigation. A historian at Institut für Zeitgeschichte since 1951, Helmut Krausnick gave expertise on the Einsatzgruppen. Later the director of the Institut, Krausnick first became aware of the Ulm investigation upon

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<sup>103</sup> Reichmann, Wiener Library, to Warscher (14 November 1956), 1026 Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>104</sup> "A Short History of the Wiener Library," site accessed February 2012, <http://www.wienerlibrary.co.uk/aboutus/ben.aspx>.



Mettler's research visit in November 1956.<sup>105</sup> The historian had previously been involved in the Allied trial of Einsatzgruppen members and had published an important volume on the Third Reich.<sup>106</sup> Mettler and Krausnick became close and regularly exchanged letters over the coming year, addressing each other informally.<sup>107</sup> In late 1957, after the preparation of the indictments, Mettler sent him a copy for review, a significant gesture and vote of confidence since these were not made public until the trial itself. At the same time, Mettler turned to Krausnick with a request: "Would you or one of your coworkers be able to serve as an expert witness in the trial for questions regarding the question of the Befehlsnotstand and the general function of the Einsatzgruppen?"<sup>108</sup> Krausnick responded that he would need time to "go back over the material," but agreed to assist as best he could.<sup>109</sup>

As the case began to move toward trial, Schüle sought additional scholarly opinions, particularly on the issue of the Befehlsnotstand. In early 1958, the Ulm team came into contact with Hans-Günther Seraphim. A professor at the University of Göttingen and founder of its Contemporary History Division of the Institute for International Law (Zeitgeschichtliche Abteilung des Instituts für Völkerrecht), Seraphim had strong academic credentials.<sup>110</sup> He also possessed previous trial experience, since he worked as a historian

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<sup>105</sup> Wolfgang Benz, "Zum Tod von Helmut Krausnick," *Vierteljahrshefte für Zeitgeschichte*, 38, Heft 2 (April 1990), 349-352.

<sup>106</sup> Dieter Pohl, "Prosecutors and Historians: Holocaust Investigations and Historiography in the Federal Republic," in *Holocaust and Justice*, 122-123.

<sup>107</sup> Mettler to Krausnick (9 November 1957), 103 - Korrespondenz Krausnick, Bd. 38, IfZ; Mettler to Krausnick (21 September 1957), 103 - Korrespondenz Krausnick, Bd. 38, IfZ.

<sup>108</sup> Mettler to Krausnick (9 November 1957), 103 - Korrespondenz Krausnick, Bd. 38, IfZ.

<sup>109</sup> Krausnick to Mettler (6 December 1957), 103 - Korrespondenz Krausnick, Bd. 38, IfZ.

<sup>110</sup> Hans-Günther Seraphim to Staatsanwaltschaft beim Landgericht Ulm (12 February 1958), EL 322/II, Bü 16, SL.

gathering information for the Nuremberg trials and had served as an expert witness at several other trials during the 1950s.<sup>111</sup> After several months researching the Befehlsnotstand, Seraphim prepared a twenty-six page expert opinion for the trial. In this he sought to answer the key question: whether refusing to follow orders to execute civilians put oneself at risk. Based on his extensive knowledge of the available documentation, Seraphim concluded, “In more than a decade of research...the expert witness has not found a single case that would permit the conclusion that the refusal by an SS officer to execute an extermination order would have led to consequences damaging to his life and limb.”<sup>112</sup>

Through the work with Jewish organizations, case files, archives, and historians, the Ulm investigators succeeded in creating scaffolding for the criminal behavior of members of Einsatzkommando Tilsit. This structure stretched from Hitler in Berlin to ordinary police in Eastern Europe and encompassed the military and SS in between. Now, if the defendants claimed to have only killed a small number of people during the first weeks of war, the prosecutors had wartime documents establishing their murder of 5,502 from June to October 1941.<sup>113</sup> If the defendants argued that those killed were partisans or had been convicted by courts, they had Wehrmacht documents discounting partisan activity and extensive documentation on the spontaneous nature of Einsatzgruppen killings. If the defendants insisted that to not execute civilians would have meant risking their own lives, they had expert testimony to demonstrate that they faced no such dangers. By using various forms of

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<sup>111</sup> Pohl, “Prosecutors and Historians,” *Holocaust and Justice*, 118-119.

<sup>112</sup> Gutachten dem Schwurgericht beim Landgericht Ulm erstattet von Dr. Hans-Günther Seraphim (1 July 1958), EL 322/II, Bü 18, SL.

<sup>113</sup> Bericht des Dr. Stahlecker über die Tätigkeit der Einsatzgruppe A bis zum 15. Oktober 1941, EL 322/II, Bü 60, SL.

evidence to establish parameters for the crimes, they succeeded in counterbalancing the claims of the perpetrators.

### **From One to Ten**

The significance of Schüle's broad, historical approach to the investigation became clear through the rapid expansion of the case. In the first year of the investigation, the Ulm prosecutors barely found enough evidence to indict Fischer-Schweder, and Nellmann's June 1956 intervention made it clear that he found this insufficient to secure a conviction. By contrast, the subsequent year under Schüle witnessed the expansion of the case from one to ten defendants. This became possible because they were no longer targeting specific individuals, but an entire hierarchy of Holocaust complicity. When they learned of a crime in a given area, they knew that whoever, for example, had headed the border police responsible for securing a specific town must have played a leadership role in the execution. All they had to do was identify that person and criminal charges would follow. Thanks to the scaffolding they had created, the investigators were able to plug the criminals into their case, rather than create an entire case to fit the criminal.

Structuring all of this information on Nazi crimes, individuals, and chains of commands presented its own set of logistical problems for the investigators, who had to find a way to organize the information effectively. On a basic level, any new paperwork (correspondences, interrogations, and other information) went to the back of the file and was given a page number, which kept the main investigation records organized chronologically as the case unfolded. To make this information accessible, the team devised a series of card catalogs to sort and cross-reference the information. One catalog consisted of a list of

people.<sup>114</sup> Anyone mentioned in the case would have a sheet created, which included the person's birth date and current address (if known) and referenced any page number on which the person was mentioned. So, for example, Fischer-Schweder's former employer in 1954 had a short entry that included the page number in the main case file for a reference he wrote on Fischer-Schweder's behalf. Fischer-Schweder's file, by contrast, became several pages long with scores of references. Another card catalog involved specific crime locations and types, such as Garsden, the executions of women and children, or specific legal points to address, such as the Befehlsnotstand.<sup>115</sup> This system required multiple copies of files and constant maintenance and updating, but it rendered the huge volume of data uncovered under Schüle's expanded case searchable and efficient.

Now that the investigators were recreating the crime complex through a combination of testimony, scholarship, and wartime documentation and had a centralized system for accessing this information, they were able to undertake a rapid expansion of the investigation. Well before Schüle had come on board, they had turned up incriminating evidence against other perpetrators involved in the same crimes as Fischer-Schweder. As early as November 1955, for instance, Werner Schmidt-Hammer had admitted to issuing the execution orders in Garsden. But only once Schüle arrived did Schmidt-Hammer become a target of the investigation. On June 29, 1956, the prosecutors filed an appeal to open the preliminary inquiry (Voruntersuchung) against Fischer-Schweder and Schmidt-Hammer.<sup>116</sup> Within a few weeks of Schüle's involvement, the case had already grown to include a second

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<sup>114</sup> Personen-Index EL 322/II, Bü 27-28, SL.

<sup>115</sup> Index, EL 302 I, Bü 305, SL.

<sup>116</sup> Haftfristablauf (29 June 1956), EL 322/II, Bü 2, SL.

defendant. This document alleged that Fischer-Schweder had “deliberately and of his own volition cooperated with other perpetrators” in the murder of 550 people; Schmidt-Hammer meanwhile was accused of “having knowingly provided aid” in the murder of 490. At this point, the Ulm staff had evidence suggesting four shooting incidents (Garsden, Krottingen, Pogegen, and Polangen), with Fischer-Schweder present at all and Schmidt-Hammer at three.

On July 3, the state court approved the request for a preliminary inquiry, which acknowledged that the initial investigation had turned up sufficient evidence to warrant the appointment of an investigating judge to the case.<sup>117</sup> In West German investigations, the investigating judge conducted follow-up official interrogations with all material witnesses and provided judicial oversight for the case. For the Einsatzkommando Tilsit investigation, Fritz Lörcher, a 55-year old judge for the Ulm court, was assigned to the case in early July and remained on as investigating judge through the trial. Any expansions of the case required his approval, which, as became clear later on, was not always easily obtained.

The case soon expanded beyond Fischer-Schweder and Schmidt-Hammer. Fischer-Schweder’s statements, because of their self-exculpatory nature, pinned the responsibility for the executions on two others: Hans-Joachim Böhme and Erich Frohwann. The investigators began to search for these two men. Frohwann, it was rumored, had died at the end of the war, and the investigators sought proof.<sup>118</sup> In early July 1956, they received a letter from the Austrian Ministry of the Interior that Frohwann had died shortly after the war, having hung

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<sup>117</sup> Haftsache bezügl. Fischer-Schweder (Ulm, 3 July 1956), EL 322/II, Bü 2, SL.

<sup>118</sup> Besprechungspunkte am 21.6.1956 bei der Staatsanwaltschaft und dem Landgericht Ulm a.D. (Stuttgart, 21 June 1956), EL 322/II, Bü 102, SL.

himself “from the top of the Heuberg” outside Salzburg.<sup>119</sup> The investigators now wondered “whether Böhme is still alive and living in West Germany.”<sup>120</sup>

As the SS-Sturmbannführer who led Stapo Tilsit, Böhme had immediately become the prime target of interest for the investigation.<sup>121</sup> During July and August, the Ulm team revisited all the previous material witnesses to learn more about Böhme.<sup>122</sup> Some claimed not to know him, others recalled dim memories, and another insisted Böhme had died during the war.<sup>123</sup> By August, they had uncovered some information on Hans-Joachim Böhme (not “Hans” as they thought), including his SS number, rank, birth date, and hometown. Mettler sent this information to two offices. First, he requested that the Deutsche Dienststelle, which held records of war casualties, look for any persons matching Böhme’s details.<sup>124</sup> Second, he asked the Stuttgart police to run a search request for Böhme and two others in the West German police bulletins under the headline, “Urgent Place of Residence Investigation.”<sup>125</sup> Although Mettler did not reveal the exact nature of the investigation, the request asked,

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<sup>119</sup> Weida to Lörcher (7 August 1956), EL 322/II, Bü 3, SL; Sterbeurkunde (Hallwang, 28 June 1956), EL 322/II, Bü 3, SL.

<sup>120</sup> Ermittlungsverfahren gegen Bernhard Fischer-Schweder, Landeskriminalamt Baden-Württemberg (Stuttgart, 13 July 1956), EL 322/II, Bü 2, SL.

<sup>121</sup> Stimpfig, Landeskriminalamt Baden-Württemberg, D5 to Kriminalpolizei - 14. Kommissariat - Bonn (1 August 1956), EL 322/II, Bü 2, SL.

<sup>122</sup> Weida to Kriminal-Aussenstelle Tuttlingen (7 June 1956), EA 48/2 I, Bü 3110, SL; Weida to Kriminalpolizei Düsseldorf (7 June 1956), EA 48/2 I, Bü 3110, SL; Weida to Kriminalpolizei Lindau/Bodensee (7 June 1956), EA 48/2 I, Bü 3110, SL; Weida to Kriminalpolizei Köln (7 June 1956), EA 48/2 I, Bü 3110, SL; Weida to Kriminalpolizei München (7 June 1956), EA 48/2 I, Bü 3110, SL.

<sup>123</sup> Statement by Kurt Grau (Cologne, 18 June 1956), EL 322/II, Bü 1, SL; Statement by George Ebrecht (Lindau, 18 June 1956), EL 322/II, Bü 1, SL; Statement by Wilhelm Brindlinger (Munich, 18 June 1956), EL 322/II, Bü 1, SL.

<sup>124</sup> Stimpfig to Deutsche Dienststelle für die Benachrichtigung der nächsten Angehörigen von Gefallenen der ehemaligen deutschen Wehrmacht - Abwicklungsstelle - Berlin-Wittenau (2 August 1956), EL 322/II, Bü 2, SL.

<sup>125</sup> Stimpfig to Landeskriminalamt Baden-Württemberg - Abteilung II - Stuttgart (2 August 1956), EL 322/II, Bü 2, SL.

“What is known in police circles about these people during the war or after war’s end?”

Finally on August 20, these efforts paid off. A telegraph arrived to the Stuttgart police that day, stating that Böhme is “officially registered and lives in Karlsruhe-Grünwinkel.”<sup>126</sup>

Schüle immediately asked Mettler to request an arrest warrant for Böhme, confident that evidence placed him in a position of leadership in Krottingen and Garsden.<sup>127</sup> On August 23, Opferkuch and another detective went to Böhme’s office to arrest him. Böhme met them in his lobby. Told that he was under arrest, Böhme requested to return to his office on the third floor to gather his things. Under the guard of police, Böhme went upstairs and sprinted for his office window. His apparent suicide attempt was thwarted only through the quick response of the Stuttgart police.<sup>128</sup> A few nights later, Böhme again attempted suicide, this time in his jail cell as he jumped headfirst from his table. Through the fall, “he suffered a concussion, a laceration over his entire head, and a broken right arm. It’s not a life threatening situation.”<sup>129</sup> His fall succeeded in placing him under hospital care, unable to be interrogated for over a month. The circumstances surrounding this prolonged recuperation, however, would soon become a source of suspicion for the detectives. Once Böhme did recover, detectives interrogated him continuously for the first three weeks of October 1956, and he offered crime details and perpetrator names that had earlier eluded their efforts.

On October 4, a few days into his interrogation, Böhme provided Weida and Opferkuch with the name of the SD head in Tilsit who had played a co-leadership role in the

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<sup>126</sup> Beckert, Städt.Pol.Präs. Karlsruhe to Bundeskriminalamt Wiesbaden and Landeskriminalamt Stuttgart (20 August 1956), EA 48/2 I, Bü 3110, SL.

<sup>127</sup> Mettler to Landeskriminalamt Baden-Württemberg (22 August 1956), EL 322/II, Bü 4, SL.

<sup>128</sup> Ermittlungsverfahren gegen Fischer-Schweder, Schmidt-Hammer, und Böhme, Landeskriminalamt Baden-Württemberg (Stuttgart, 1 September 1956), EL 322/II, Bü 4, SL.

<sup>129</sup> Landeskriminalamt Stuttgart to Staatsanwaltschaft Ulm, Mettler (26 August 1956), EL 322/II, Bü 104, SL.

shootings: Werner Hersmann.<sup>130</sup> Two days later, Schüle wrote that based on the “strong charges” made against Hersmann, “it is intended to detain him and to have the Ulm court issue an arrest warrant.”<sup>131</sup> Schüle and Nellmann appeared to have no doubts about the continued expansion of the case. A letter from Nellmann’s office following Böhme’s arrest stated, “It is to be expected that the further investigations will lead to the detection of additional people who took a leadership role in the carrying out of mass shootings in Lithuania.”<sup>132</sup> Schüle’s instinctual decisions to request arrest warrants for both Böhme and Hersmann, before even interrogating the two, demonstrated that he was of one mind with Nellmann on this issue. The same, however, could not be said for other staff in Ulm, which reacted in alarm to his desire to arrest Hersmann.

On October 9, Schüle went to Ulm to douse the fire he had started. There he met with Mettler and Lörcher. Mettler appeared close to the breaking point. Schüle wrote that he “complained about his burden from other cases.” Saup had not lightened his load, and Mettler felt that he “could either properly work on the Fischer-Schweder, et al case or on the other 54 cases.” As a result, Mettler had grave concerns “about the planned ‘expansion of the investigation.’” Schüle found that the investigating judge Lörcher was “undergoing a crisis at the same time and feared that he would be burdened with more and more work by the investigation.” Schüle now had to rally his team from their dejected state. “We cannot afford half measures,” he explained. “The case must be completely resolved, even with the risk that the investigation will take somewhat longer.” Following the conversation, Schüle felt that

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<sup>130</sup> Statement by Hans-Joachim Böhme (Hohenasperg, 1 October 1956), EL 322/II, Bü 4, SL.

<sup>131</sup> Aktenvermerk (Stuttgart, 6 October 1956), EL 302 I, Bü 305, SL.

<sup>132</sup> Generalstaatsanwalt to Justizministerium Baden-Württemberg (25 August 1956), EA 4/412, Bü 1, HS.



Lörcher “once again saw things clearly and would return to his work with more courage.”<sup>133</sup> He hoped to aid Mettler with his work, but Saup ignored these requests.

With mutiny at bay, Schüle directed efforts back to readying an arrest warrant for Werner Hersmann. Because Hersmann had earlier been convicted by a court in Traunstein, investigators had no difficulty finding his current address in Frankfurt.<sup>134</sup> Over the next several weeks, the investigators looked into Hersmann’s past and his involvement in the shootings to prepare evidence for a warrant. On October 25, Mettler filed a warrant request for Hersmann, whom he described as “an old fighter in the NSDAP and a fanatic,” accusing him of “750 counts of murder.”<sup>135</sup> In addition to the shootings in Garsden and Krottingen, the prosecution had learned of additional crimes in Wirballen, Tauroggen, and Georgenburg. At three o’clock in the afternoon on October 29, Opferkuch arrested Hersmann at his work “without incident.”<sup>136</sup>

On October 26, Mettler requested another arrest warrant, this one for Harm Willms Harms.<sup>137</sup> The detectives had first heard of Harms earlier in September, when another witness stated that he had been head of the Grenzpolizeikommissariat in Tilsit, organized under Böhme.<sup>138</sup> From this post, Harms directed the various border police units who had been instrumental in rounding up and guarding the Jews of the Lithuanian border towns. By the end of September, they had learned that Harms was working as a shoemaker in Bremen,

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<sup>133</sup> Aktenvermerk über die Dienstsprechung mit der Staatsanwaltschaft Ulm am 9.10.1956 in der Sache Fischer-Schweder u.a. (12 October 1956), EL 302 I, Bü 305, SL.

<sup>134</sup> Weida to Mettler (5 October 1956), EL 322/II, Bü 4, SL.

<sup>135</sup> Staatsanwaltschaft to Amtsgericht Ulm (25 October 1956), EL 322/II, Bü 6, SL.

<sup>136</sup> Opferkuch to Stimpfig and Krim. Aussenstelle Ulm/D. (29 October 1956), EL 322/II, Bü 105, SL.

<sup>137</sup> Mettler to Amtsgericht Ulm (26 October 56), EL 322/II, Bü 5, SL.

<sup>138</sup> Statement by Fritz Marx (Paderborn, 6 September 1956), EL 322/II, Bü 3, SL.

and sent Opferkuch to interrogate him.<sup>139</sup> Similar to Schmidt-Hammer the previous year, Harms, perhaps panicking, offered a great deal of information, much of it self-incriminating. He described in detail five shootings, including two – in Batakiai and Eydtkau – that investigators had virtually no information on, and mentioned that there were “still other shootings” in towns he could not recall.<sup>140</sup> Based on his own accounts, Harms accepted that units under his control had contributed to the executions in Garsden and Eydtkau. On October 26, Mettler received an arrest warrant charging Harms with 110 counts of accessory to murder.<sup>141</sup> On November 5, he arrived in the Ulm prison, and the investigation now stood at five defendants.<sup>142</sup>

The case now proceeded with the arrest of additional perpetrators at a rate of one per month until ten were apprehended. In early November, they first located Böhme’s deputy (Vertreter) in Stapo Tilsit, Werner Kreuzmann.<sup>143</sup> Following his statements and those of Böhme, Hersmann, and Harms, Kreuzmann was arrested at his office on November 24.<sup>144</sup> Several weeks later, they interrogated Edwin Sakuth and Gerhard Carsten. Sakuth had worked at the SD Memel office, a subsidiary of Hersmann’s Tilsit office, and had coordinated with Fischer-Schweder and Frohwann on the early shootings.<sup>145</sup> Carsten headed

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<sup>139</sup> Lörcher to the Landeskriminalamt Baden-Württemberg - D5 (4 October 1956), EL 322/II, Bü 3, SL.

<sup>140</sup> Statement by Harm Willms Harms (Bremen, 18 October 1956), EL 322/II, Bü 3, SL.

<sup>141</sup> Haftbefehl, Amtsgericht Ulm (26 October 1956), EL 322/II, Bü 5, SL.

<sup>142</sup> Amtsgerichtsdirektor Heiss to Herrn Vorstand des Landesgefängnisses Ulm (5 November 1956), EL 322/II, Bü 5, SL.

<sup>143</sup> Statement by Werner Kreuzmann (Itzehoe, 2 November 1956), EL 322/II, Bü 9, SL.

<sup>144</sup> Haftbefehl, Amtsgericht Ulm (16 November 1956), EL 322/II, Bü 9, SL; Telegram from Kpst Itzehoe to Kripo Ulm/Amtsgericht Ulm and to Landeskriminalamt Baden-Württemberg (24 November 1956), EL 322/II, Bü 9, SL.

<sup>145</sup> Statement by Edwin Sakuth (Northeim, 8 December 1956), EL 322/II, Bü 6, SL.

the border police post in Schmallingken, which operated under Harms and had participated in several mass executions.<sup>146</sup> Sakuth was arrested two days after Christmas, and Carsten on January 18, 1957.<sup>147</sup> By the end of February, the detectives had finally tracked down Pranas Lukys (alias Jakys), the Lithuanian police chief who had assisted in the massacres.<sup>148</sup> Detectives had been seeking him out for over a year, and immediately arrested Lukys on February 21.<sup>149</sup> The final defendant, Franz Behrendt, worked under Harms at the Grenzpolizeikommissariat in Memel, and had been a person of interest for months. Following his interrogation, detectives arrested Behrendt on April 17, 1957.<sup>150</sup>

By June 1958, the investigators had interrogated over two hundred witnesses, and in the end identified ten as indictable. They settled on these ten for a number of reasons. First, all ten had been officers in command of units involved in the shootings. The prosecutors decided not to pursue the rank-and-file members of the execution squads, particularly since many of these men came from police units. As Schüle later explained, “In our view, members of police battalions who took part in executions, so long as they did not commit excesses, should not be investigated as suspects because typically in war these police officers were deployed in close formation by their officer and so a public refusal to carry out orders was

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<sup>146</sup> Statement by Gerhard Carsten (Arnsberg, 12 December 1956), EL 322/II, Bü 6, SL.

<sup>147</sup> Lörcher to Staatsanwaltschaft Ulm (27 December 1956), EL 322/II, Bü 10, SL.; Haftbefehl, Amtsgericht Ulm (3 January 1957), EL 322/II, Bü 9, SL; Opferkuch to Kriminalaussenstelle Ulm and to Staatsanwaltschaft Ulm, Mettler (18 January 1957), EL 322/II, Bü 9, SL.

<sup>148</sup> Landeskriminalamt Stuttgart to Staatsanwaltschaft Ulm (20 February 1957), EL 322/II, Bü 10, SL.

<sup>149</sup> Statement by Kurt Neubacher (Berlin, 24 January 1956), EL 322/II, Bü 1, SL.; Haftbefehl (21 February 1957, Landgericht Ulm -Untersuchungsrichter), EL 322/II, Bü 10, SL.

<sup>150</sup> Statement by Franz Behrendt (Hamburg-Harburg, 12 April 1957), EL 322/II, Bü 11, SL; Haftbefehl, Amtsgericht Ulm (17 April 1957), EL 322/II, Bü 12, SL.

impossible.”<sup>151</sup> As a result, individuals who actually fired the shots faced no charges. In this regard, Schmidt-Hammer occupied a kind of limbo status for the prosecutors. Although he had been an officer and issued the physical shooting orders in Garsden, he had also only been a member of the Schutzpolizei and never joined the Nazi party, the only defendant not to do so. As a result, though he became the second target of the investigation after Fischer-Schweder, he was the last to be arrested.<sup>152</sup> The last named defendant, Behrendt, had spent nearly three months in prison before Schmidt-Hammer had spent one day.

A second consideration in selecting out these ten involved the emergence of particular details that satisfied the strict definition of murder in West German law. Simply carrying out orders was insufficient to meet this condition, so detectives sought out details on the perpetrators that would indicate base motives, the internalizing of the racial ideology behind these orders, or cruel and malicious behavior. As a result, certain anecdotal evidence against these ten assumed substantial importance for the investigators. To cite a few of these claims: Fischer-Schweder had been accused of delivering the “coup de grâce” to still living victims in the Garsden pits and selecting a boy to be killed alongside his father.<sup>153</sup> Hersmann had supposedly singled out a Jewish doctor to be shot in Polangen, against the objections of soldiers whom the doctor was treating.<sup>154</sup> Later in the summer of 1941, Behrendt had advocated for the liquidation of a small ghetto of Jewish women and children, referring to

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<sup>151</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

<sup>152</sup> Bericht (Heidenheim, 5 July 1957), EL 322/II, Bü 14, SL.

<sup>153</sup> Statement by Wilhelm Kersten (7 October 1955, Hannover), EL 322/II, Bü 1, SL.

<sup>154</sup> Statement by Harm Willms Harms (Bremen, 18 October 1956), EL 322/II, Bü 3, SL; Urteil, EL 322/II, Bü 20, SL.

them as “useless eaters.”<sup>155</sup> Carsten had led the selection of Jewish women and children – by implication, individuals he could not have suspected of partisan activity – in Georgenburg, “in full knowledge of their fate.”<sup>156</sup> Significantly, such details allowed the prosecutors to portray these ten as particularly fervent enthusiasts of Nazi genocidal policies and ideology.

The decision to try ten men also signaled the maximum capacity of the Ulm detectives to round up all the possible leadership of Einsatzkommando Tilsit. Many members had long ago died, either in the war or, as in the case of Erich Frohwann, by their own hand. Certainly, had Frohwann or others been alive, the case would have expanded to accommodate them. In other instances, though, the Ulm prosecutors were limited by jurisdictional disputes and international law.

The case had briefly been the Ulm eleven, until the Cologne court intervened. On December 14, 1956, Mettler received an arrest warrant for Wolfgang Ilges, who now lived in Cologne and had been the former assessor in Stapo Tilsit under Böhme.<sup>157</sup> In this position, he had provided essential support in the decision-making process for the executions. On December 19, Schüle interrogated Ilges with the Cologne senior prosecutor present.<sup>158</sup> Two days later, the Cologne office requested their own warrant for Ilges, which set off a jurisdictional battle between Ulm and Cologne.<sup>159</sup> By March, Mettler ceded the Ilges case to Cologne, because “Ulm has no regional jurisdiction.”<sup>160</sup> Beginning in April, a full year

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<sup>155</sup> Statement by Pranas Lukys (Augsburg 21 February 1957), EL 322/II, Bü 10, SL.

<sup>156</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

<sup>157</sup> Haftbefehl, Amtsgericht Ulm (14 December 1956), EL 322/II, Bü 112, SL.

<sup>158</sup> Statement by Wolfgang Ilges (Stuttgart, 19 December 1956), EL 322/II, Bü 7, SL.

<sup>159</sup> Haftbefehl, Amtsgericht Ludwigsburg (21 December 1956), EL 322/II, Bü 112, SL.

<sup>160</sup> Einstellung des Verfahrens, Staatsanwaltschaft Ulm (27 March 1957), EL 322/II, Bü 112, SL.

before the Ulm trial opened, the Cologne court tried Ilges and sentenced him to four years in prison on May 4, 1957.<sup>161</sup> Revealingly, no other prosecutors objected to the Ulm court prosecuting war criminals harbored within their jurisdiction, as this would have required that office to assume additional work that the Ulm team already had offered to do for them.

Another potential defendant was Wilhelm Gerke. In April 1957, this former detective who worked under Harms provided a statement revealing first-hand knowledge of the crimes in Garsden.<sup>162</sup> Statements by other witnesses suggested he had a great deal of involvement in these crimes. In late April, Schüle requested an arrest warrant for Gerke.<sup>163</sup> The problem, though, was that Gerke lived in Sweden. His statement had been carried out by a German attaché in Gothenburg. Schüle continued to request and receive warrants, which the Swedish government refused to honor.<sup>164</sup> This led to a protracted extradition debate between Germany and Sweden, which found its way to the German foreign office and required a year to resolve.<sup>165</sup> Eventually, in June 1958, Gerke was extradited to Germany, in time to testify at the Ulm trial but too late to sit in the docket as Schüle intended. Later, he would be tried and convicted in Dortmund for these same crimes.<sup>166</sup>

Despite these setbacks, in less than a year the Ulm team had succeeded in transforming a middling investigation into Fischer-Schweder into a massive case involving

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<sup>161</sup> Urteil (Cologne, 4 May 1957), Nr. 444, *Justiz und NS-Verbrechen*, CD-ROM.

<sup>162</sup> Statement by Wilhelm Gerke (Göteborg, 18 April 1957), EL 322/II, Bü 11, SL.

<sup>163</sup> Schüle to Lörcher (29 April 1957), EL 302 I, Bü 304, SL.

<sup>164</sup> Haftbefehl, Landgericht Ulm (5 December 1957), EL 302 I, Bü 305, SL; Justizministerium Baden-Württemberg to Untersuchungsrichter Ulm (9 October 1957), EL 302 I, Bü 305, SL.

<sup>165</sup> Botschaft der Bundesrepublik Deutschland Stockholm to Auswärtige Amt, Bonn (16 September 1957), EL 302 I, Bü 305, SL.

<sup>166</sup> Urteil (Dortmund, 5 February 1963), Nr. 547, *Justiz und NS-Verbrechen*, CD-ROM.

ten defendants. In the process, they had uncovered a set of crimes far more extensive than those of the initial investigation. Where the investigators had initially examined a small set of crimes occurring during the days of confusion in the wake of the invasion of the Soviet Union, Schüle and his team had uncovered a web of criminality involving the ad hoc unit Einsatzkommando Tilsit. Assembled on the eve of the invasion, this unit for an entire summer had laid waste to the Lithuanian Jews living along the German border. These crimes had never before come before a court of law, its activities unknown save to those who had witnessed them. Now, thanks to the expansion of the case under Nellmann and Schüle, this was about to change.

### **Ghosts in the Machine**

After his second suicide attempt, when Hans-Joachim Böhme injured himself jumping from a table in his prison cell, the defendant was sent to the hospital in Hohenasperg, a centuries-old prison northwest of Stuttgart.<sup>167</sup> Although his injuries were not life threatening, the prison physician Dr. Gerhard Mauch explained to Schüle that Böhme was not fit for interrogation because of the levels of “blood sugar and acetone” in his system. Schüle told Mauch that “although I am just a medical layperson, I cannot imagine that his blood sugar is so serious as to make him unfit for interrogation,” to which the doctor gave an “evasive answer.” Schüle then sought a second opinion on the issue which confirmed his suspicions that “normally diabetes does not affect one’s ability to be interrogated.” But Mauch, as the lead physician, refused to clear him.<sup>168</sup>

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<sup>167</sup> Landeskriminalamt Stuttgart to Staatsanwaltschaft Ulm, Mettler (26 August 1956), EL 322/II, Bü 104, SL.

<sup>168</sup> Aktenvermerk (Stuttgart, 29 August 1956), EL 302 I, Bü 305, SL.

A week followed with little progress. Mauch informed Schüle that Böhme could “not yet stand up.”<sup>169</sup> Clearly agitated, Schüle retorted, “I don’t want to know when he can stand up, just when he can be interrogated.” Mauch gave a prognosis of another week for interrogation and a month for him to be transported back to his prison cell. A few days later, Mauch revised this and stated that Böhme would be unfit for another two weeks, and not movable for another six.<sup>170</sup> On September 15, Nellmann requested a different doctor attend to Böhme.<sup>171</sup> By early October, Böhme was finally cleared for interrogation, but after a few days he complained of a headache, at which point Mauch informed Weida that “he could not be interrogated any longer.”<sup>172</sup> The following day, Mauch claimed that Böhme had suffered a heart attack and would be out an additional week. For Schüle and his team, the inability to interrogate their lead defendant proved worrisome. The investigation was entering its peak months, and more significantly, every day that Böhme did not appear before the detectives was a day he could prepare his responses so as to minimize his own guilt.

The longer Mauch delayed the detectives’ access to Böhme, the more Mauch himself became a target of their suspicions. None of the detectives believed that Böhme had medical problems so severe as to prevent his interrogation, and they began to wonder whether this doctor was not in fact harboring him from the investigation. Upon investigation, the detectives learned that Mauch had been an SS-Obersturmführer during the war.<sup>173</sup> More

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<sup>169</sup> Aktenvermerk (4 September 1956), EL 302 I, Bü 305, SL.

<sup>170</sup> Mauch and Söll, Landesstrafanstalt Hohenasperg to Herrn Vorstand (7 September 1956), EL 322/II, Bü 104, SL.

<sup>171</sup> Nellmann to Justizministerium Baden-Württemberg (14 September 1956), EL 302 I, Bü 305, SL.

<sup>172</sup> Aktenvermerk (9 October 1956), EL 302 I, Bü 305, SL.

<sup>173</sup> Stimpfig to Schüle (2 October 1956), EL 302 I, Bü 305, SL.



troublingly, they discovered that the doctor's former house had been just a few doors down from Böhme's most recent address in Karlsruhe. The detectives sent a request to the Berlin Document Center for more information on this Nazi doctor.<sup>174</sup> In the end, the Karlsruhe connection seemed coincidental, and they could not prove their suspicions of collusion between Böhme and Mauch.

For the detectives and prosecutors of the Ulm case, however, the Mauch incident showcased an instinctual suspicion they had been forced to develop of any interruptions in the investigation by outside forces, even when those outside forces worked within the government. The sudden diabetes, headaches, and heart attacks were so perfectly timed and always favored Böhme over the investigation that they found no choice but to question his presiding physician, and with his SS background their suspicions proved partially correct. The Mauch case had not been the first incident in which the detectives encountered problems with former Nazis occupying government positions. With disturbing regularity, these individuals out of sympathy for the defendants, opposition to the detectives, or both chose to use their influence to gum up the progress of the investigation. Throughout the investigation and the trial itself, the investigators and prosecutors found that one of the great obstacles to pursuing these crimes could be found within West German law enforcement.<sup>175</sup>

As explained earlier, a pivotal decision Schüle made early on in the case was to have all interrogations carried out by his own team, no longer relying on local police. A strategic concern motivated this shift in part, as Weida and Opferkuch's knowledge of the case made

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<sup>174</sup> Stimpfig to Schüle (28 November 1956), EL 302 I, Bü 305, SL.

<sup>175</sup> For a broader discussion on the investigative challenges that came about from former Nazis working in the police, see Jan Kiepe, "Zwischen Ahndungsbemühung und –behinderung: Das gesellschaftliche und rechtspolitische Umfeld bei Ermittlungen gegen ehemalige Gestapo-Mitarbeiter," in *Die Gestapo nach 1945: Karrieren, Konflikte, Konstruktionen*, ed. by Klaus-Michael Mallmann (Darmstadt: WBG, 2009), 165-182.

for better interrogations. More significantly, the Ulm staff did not want to involve any other police departments because they could not be consistently trusted to safeguard the interests of the investigation. Schüle explained, “Another reason why we don’t like to work with unknown police departments is that we never know whether the officers doing the interrogating had themselves taken part in either the same or similar operations [as the executions].”<sup>176</sup> Many of the crimes in question had been carried out by police officers, and many of these same individuals had then succeeded in rejoining the civil service after 1945.

The Ulm investigators encountered numerous former Nazis working within the police during their investigation. In late December 1957, the detectives interrogated a former policeman from Memel, Johannes Möst in Pforzheim. Prior to coming to Memel in 1940, Möst had worked in the Schutzpolizei at Himmler’s villa on the Tegernsee, but was transferred “on Himmler’s personal order... because the work at Himmler’s house did not agree with me.”<sup>177</sup> He informed Weida that in Memel he took part in the Garsden executions. Although an important witness in his own right, Möst presented a delicate problem for the Baden-Württemberg state, since he was now employed as a senior detective in Pforzheim. Nellmann wrote to the Justice Ministry in early January that “this investigation has shown that multiple active police officers were involved in the mass executions.” He decided to inform the Ministry of the Interior of the sensitive issue and wanted the letter “delivered personally to the department head” because of the need for “confidentiality.”<sup>178</sup>

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<sup>176</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

<sup>177</sup> Statement by Johannes Möst (Pforzheim, 20 December 1956), EL 322/II, Bü 7, SL.

<sup>178</sup> Nellmann to Justizministerium Baden-Württemberg (3 January 1957), EA 4/412, Bü 1, HS.

Several months later, with the arrest of the tenth defendant, Franz Behrendt, the prosecutors learned just how widespread and potentially scandalous the problem of former Nazis in the police had become. A letter to Nellmann's office in May 1957 detailed the results of a search of Behrendt's home. There they found a series of letters between Behrendt, Otto Steinberger, and Herbert Schmidtke from 1956. The three had all served together in the Grenzpolizeikommissariat in Memel, though Steinberger had been assigned elsewhere during the 1941 shootings.<sup>179</sup> Schmidtke had already been interrogated during the first year of the interrogation, and had provided numerous statements to the investigators, but he never offered up Behrendt with whom he had been in regular contact.<sup>180</sup>

The letters that the detectives recovered from Schmidtke's house revealed a process by which these three men had served as references on each other's behalf, which allowed all three to again seek employment in the police service.<sup>181</sup> For the prosecutors, the case exposed a hole in the reintegration process in West Germany. "Because I am convinced," Nellmann's deputy wrote to the Baden-Württemberg Ministry of the Interior, "that these same methods are being used by other former members of different Stapo offices...I might venture to suggest that the Federal Minister of the Interior as well as the various state Ministries of the Interior be informed of my findings."<sup>182</sup>

The discovery of the prevalence of former Nazis and in many cases Holocaust perpetrators employed in West German law enforcement raised a number of issues for the

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<sup>179</sup> Bericht (Stuttgart, 25 February 1957), EL 322/II, Bü 9, SL.

<sup>180</sup> Statement by Herbert Schmidtke (Tuttlingen, 29 November 1955), EL 322/II, Bü 1, SL; Statement by Herbert Schmidtke (Mannheim, 27 February 1956), EL 322/II, Bü 1, SL.

<sup>181</sup> Schabel to Innenministerium Baden-Württemberg (16 May 1957), EA 4/412, Bü 1, HS.

<sup>182</sup> Schabel to Innenministerium Baden-Württemberg (16 May 1957), EA 4/412, Bü 1, HS.

Ulm investigation. At the highest level, where Nellmann and the state ministries were concerned, the Ulm case revealed problems in the reintegration policies of the Adenauer state. The Ulm investigation continued to turn up issues that risked scandal. To the credit of Nellmann and Ministry of Justice, Schüle was never instructed to turn a blind eye to these obstacles. Had the state been more concerned with preserving a self-image of successful denazification, the top judicial authorities might have discouraged such extensive investigations once they began to expose information that could damage the state's reputation. That they did not do so demonstrates a level of support for the investigation to pursue any and all leads regardless of potential blowback.

For the Ulm investigators, this problem raised a key issue of trust. Since they could not rely on their fellow police departments, the team decided to seal themselves off in an effort to control the outcome of the case. As a result, however, they became increasingly isolated from the mechanisms typically used in West German prosecutions. For example, the detectives had succeeded in locating Böhme because of an announcement placed in the federal and state crime bulletins. Although this declaration made no note of the crimes in question, it alerted every police department in West Germany that an investigation into Böhme was underway in Ulm. A successful approach in certain respects, this announcement served as a warning to any former colleagues of Böhme who had found their way back in the police. Schüle wrote, "We experienced that police officers, who later became defendants, followed our announcements in the federal investigation bulletins exactly and communicated this to former comrades, who we weren't aware, and warned them."<sup>183</sup> The risks of any

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<sup>183</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

potential information seeping out to perpetrators outweighed the advantages of using these bulletins. “For this reason,” Schüle wrote, “we stopped issuing announcements.”

Since the network that police normally relied on to solve cases became closed for the Ulm investigators, they came to rely evermore on the new networks Schüle was creating. The Jewish organizations, document centers, and academics that assisted in the investigation need to be seen in part as a response to this breakdown of traditional channels. The success of these networks was in many respects also the failure of the West German judiciary. These were structural problems in the West German judiciary that bedeviled investigations throughout the 1950s. Many prosecutors, such as Saup, had little interest in putting forth a sustained investigation, but even in instances when prosecutors did seek a more serious effort, they were confronted with a law enforcement apparatus that could actively work against the interests of the state. Schüle’s success – and the ultimate success of the Ulm trial – hinged on his ability to overcome these limitations and seek strengths from elsewhere.

The reluctance to engage with police out of fear they might hamper the investigation also highlighted another challenge for the investigators: the need to safeguard the details of the case. Despite the broad body of evidence that the investigators had gathered against the perpetrators, if the perpetrators learned of this information, the case could easily be swung back in the defendants’ advantage. Whether information leaked out through the press or through the police, any insights perpetrators could gain into the state’s investigation inevitably favored them. As Nellmann later explained, “A premature publication would raise the fear that some of the guilty parties would flea.”<sup>184</sup> This fear forced the judiciary to intervene with the Ulm press when they did catch wind of the investigation, asking them to

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<sup>184</sup> “‘Verwaltungsmassmord’ vor dem Schwurgericht,” *Schwäbische Donau-Zeitung* (6 July 1957).

wait until the indictments were prepared.<sup>185</sup> This fear motivated Schüle to stop placing announcements in police bulletins and raised the alarms against Mauch while he tended to Böhme. The chief advantage the prosecution possessed was that the defendants did not know what the prosecution knew; any unplanned information leaks threatened this advantage.

The need to preserve the advantage of the prosecution manifested itself in other ways, as well. Most significant was the treatment of the defendants following their arrest. Once placed in police custody, none of the ten defendants would be released until the trial ended. All filed repeated appeals to be released on bond, but every one of these appeals was denied. This meant that Fischer-Schweder had not left prison since his arrest in May 1956, two years before the trial would even begin. The prosecutors made a number of arguments to support this request. One concern was that the defendants posed a flight risk if allowed to leave. Such fears proved well founded. In 1952, Franz Rademacher, who had headed the Jewish desk of the Foreign Office, skipped bail from a Nuremberg court and fled to Syria.<sup>186</sup> Similarly, when the Ulm detectives uncovered the plans of Franz Behrendt to flee to South Africa upon learning of his pending arrest, their concerns were born out that to release the defendants might mean their ultimate escape from justice.<sup>187</sup>

The prosecution also worried that to release the defendants would raise the “danger of collusion” (Verdunklungsgefahr). Fleeing the country would certainly harm the investigation, but to have the defendants able to move about and interact freely with each other could also seriously impair the prosecution’s case. If they were able to coordinate stories and defense

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<sup>185</sup> “‘Verwaltungsmassmord’ vor dem Schwurgericht,” *Schwäbische Donau-Zeitung* (6 July 1957).

<sup>186</sup> Christopher R. Browning, *The Final Solution and the German Foreign Office* (New York: Holmes & Meier, 1978), 192-4.

<sup>187</sup> Statement by Franz Behrendt (Winsen/Luhe, 26 April 1957), EL 322/II, Bü 12, SL.

strategies, it could bring down the entire case. For this reason, the prosecutors not only insisted that the defendants remain in jail until the trial, they also made certain that the men never saw each other prior to the trial. This accommodation was no small feat. To keep ten men totally separate for over a year involved multiple prisons. At the time of the indictments, nine (Schmidt-Hammer was not yet arrested) were spread across six different prisons.<sup>188</sup>

Logistically, total separation proved a complicated process. If the ten men were just to remain in custody, this might not have been an issue, but they were involved in an active investigation and had to be summoned at various times to Stuttgart or Ulm, which created a game of musical chairs for the prosecution. At times, they had no choice but to double up the defendants and hope for the best. In October 1957, for example, Harms and Carsten were held in the same prison in Stuttgart for a single night. Carsten somehow learned of this and sought Harms out in the prison yard.<sup>189</sup> At that point, Carsten “tried to get him to testify in the case that he [Harms] had been informed by Carsten about the arrest and planned shooting of supposed snipers in Georgenburg and had given his approval.” The principal allegation against Carsten involved his responsibility for the Georgenburg executions, and this one moment of opportunity could jeopardize the prosecution’s case.<sup>190</sup> Luckily for the prosecutors, Harms himself reported the incident, claiming to have told Carsten that he “would not make any untrue statements.”<sup>191</sup> As if anticipating the problems the investigators

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<sup>188</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

<sup>189</sup> Aktenvermerk (Stuttgart, 9 October 1957), EL 322/II, Bü 14, SL.

<sup>190</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

<sup>191</sup> Aktenvermerk (Stuttgart, 9 October 1957), EL 322/II, Bü 14, SL.

were having with non-compliant police, Harms also reported “that the supervisors at the prison did not stop this conversation.”<sup>192</sup>

Few incidents more upset the prosecutors than the trial of Wolfgang Ilges in Cologne in May 1957. Not only had this case been split off from the main investigation, diverting a second set of resources into the same crimes, Ilges’ trial came a full year before the Ulm trial opened and nearly two months before the indictments of the ten were issued. Consequently, the Cologne case presented numerous challenges to the Ulm prosecutors’ ability to control the information from their own investigation. During the Ilges trial, Böhme and Hersmann were called to testify, which heightened the risk of collusion. Nellmann’s office requested that Lörcher take all pains to insure that the two would be transported and held separately for the Cologne trial.<sup>193</sup> Even if the two remained separate, the Ilges trial also made details of the Ulm case public that the investigators had worked on privately for nearly two years. Out of concern that this might lead to an influx of media requests about the investigation, Schüle requested that the Justice Ministry handle all media inquiries prior to the release of the indictments.<sup>194</sup> Finally, Nellmann objected to the Ilges proceedings not just because of the danger it posed for the Ulm case but as a jurist. After reviewing the Ilges indictment, he wrote “that the Cologne prosecutor’s office has made no investigation into the facts. Based on the summary of the indictment, it seems clear to me how unprepared the Cologne prosecutor’s office is for a conviction of Ilges.”<sup>195</sup>

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<sup>192</sup> Schüle to Fink (14 October 1957), EL 322/II, Bü 14, SL.

<sup>193</sup> Oberstaatsanwalt Schabel to Lörcher (11 April 1957), EL 322/II, Bü 105, SL.

<sup>194</sup> Aktenvermerk (15 April 1957), EA 4/412, Bü 1, HS.

<sup>195</sup> Nellmann to Justizministerium Baden-Württemberg (13 April 1957), EA 4/412, Bü 1, HS.



The Ilges case demonstrated that even well-intentioned West German jurists who were willing to prosecute Nazi criminals, such as the Cologne prosecutor, placed the Ulm case in jeopardy. Under Schüle, the investigators had launched an unprecedented investigation in West Germany. Through an international network of resources they crafted a balanced, extensive, and empirical case against ten Holocaust perpetrators at great expense to the state. Despite all these efforts, they possessed only a marginal advantage over the defendants. In the absence of survivors, perpetrator testimony remained significant. If the defendants had the opportunity to coordinate their claims, the state would likely be unable to convict many of them. An errant detail from the Ilges trial could set off a row of problems through the press. An announcement in the police bulletins could alert perpetrators of the investigation. A former SS doctor could delay access to the key defendant for weeks. In addition to the legion of difficulties facing the Ulm team in their investigation of crimes committed long ago and far away, elements in their own government were actively seeking to derail the case. These were the problems that all Nazi crimes cases faced in 1950s West Germany, and many of Schüle's new strategies – the reliance on documentation and historical consultants – were created to overcome these challenges.

## **Conclusion**

In May 1957, Mettler stepped down from the case. He had been sick periodically since the investigation had started, and on May 3 his doctor diagnosed him with “chronic gall bladder and small and lower intestine inflammation, bacterial problems, and as a

consequence persistent weight loss and serious exhaustion.”<sup>196</sup> Mettler was suffering from a nervous breakdown, and the doctor recommended extended treatment in a health resort.<sup>197</sup> His health kept him away from the case for almost six months, and upon his return Saup had appointed another prosecutor, Robert Schneider, to assist Schüle with the prosecution of the case. Saup later described the impact this had: “On the basis of his doctor’s diagnosis (nerves!), Mettler was taken out of work for five and a half months. Schüle was forced to go on alone and finish the indictments himself. This behavior had to be and was generally seen as deplorable: shirking (wimpy [*Kneifen*]), unprofessional behavior towards Schüle.”<sup>198</sup>

Mettler deserved better than the acrimonious judgment of Saup’s bitter words. He had devoted his time and energy to a case never fully supported by Saup. When Schüle came to the case, Mettler expressed no animosity or claimed any territorial authority over the case. Instead, he continued to labor on the case and developed strong relations at the Institut für Zeitgeschichte, which allowed the case to make substantial strides in its efforts to build a document-based case against the defendants. Moreover, Schüle himself seemed to harbor no ill will towards Mettler following his departure from the case. Mettler had done what he could, given the limitations of the prosecutor’s office where he worked. The weight of the case and magnitude of the crimes could have broken down any prosecutor’s health.

Saup correctly noted, though, that Mettler’s departure left Schüle alone to complete the indictments. At 212 pages, these were extensive to say the least, and they became the basis for the verdict handed down at the Ulm trial in August 1958.<sup>199</sup> Over the summer of

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<sup>196</sup> Aerztliches Zeugnis (Ulm, 3 May 1957), EL 322/III, Bü 2, SL.

<sup>197</sup> Mettler to Justizministerium Baden-Württemberg (4 May 1957), EL 322/III, Bü 2, SL.

<sup>198</sup> Dienstleistungszeugnis (28 December 1961), EL 322/III, Bü 2, SL.

<sup>199</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

1957, Schüle toiled to finish these and to lay out the entire case against the members of Einsatzkommando Tilsit. The indictments were the signature accomplishment of the investigative strategy pioneered over the previous year. Arguably the most extensive account of the Holocaust in Lithuania written to that point, and the most important source of information on Einsatzkommando Tilsit murders until the fall of the Soviet Union, these indictments showcased the virtues of the crime complex approach and the historical methodology that underpinned it.<sup>200</sup>

The indictments stated that upon the outbreak of war with Russia “the Einsatzgruppen and its subdivisions – the Einsatzkommandos – emerged with the goal of implementing Hitler’s orders to subject the Jewish race and other ‘potential opponents’ of the regime (communists) to ‘special treatment’ [*Sonderbehandlung*], meaning the physical destruction of these populations.”<sup>201</sup> On the orders of Stahlecker, as head of Einsatzgruppe A, “an Einsatzkommando was created with members of the Stapo and SD branches in Tilsit, which was assigned to carry out extermination measures in a 25-kilometer deep stretch eastwards of the former German-Lithuanian border area.” This unit then called on members of the Memel police and later members of the Lithuanian police to assist in these executions. The indictments provided detailed accounts of eighteen distinct mass executions during the summer of 1941, and stated that additionally “in other sites not investigated within the 25-kilometer zone, the Jewish women and children... were murdered by Stapo and SD Tilsit and

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<sup>200</sup> Matthäus, “Jenseits der Grenze.”

<sup>201</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

their Lithuanian accomplices.” Between June 24 and October 15, 1941, Einsatzkommando Tilsit murdered 5,186 civilians.<sup>202</sup>

In the end, Fischer-Schweder, Böhme, and Hersmann, as the respective leaders of the Memel police, Stapo Tilsit, and SD Tilsit, held core responsibility for the mass executions and were indicted “as murderers, having carried out the premeditated mass murder of people out of base motives and with cruel intentions.” Böhme and Hersmann were accused specifically of 5,108 counts of murder, and Fischer-Schweder of 711. The other seven defendants—Schmidt-Hammer, Kreuzmann, Harms, Sakuth, Carsten, Behrendt, and Lukys—were accused of “aiding and abetting [*Beihilfe*] deliberately through word and deed in the mass executions carried out by the above mentioned perpetrators at the same time and location.” They were indicted on “hundreds of counts of aiding and abetting in murder.”<sup>203</sup>

With the indictments in place, the case began to move towards trial. Because of the magnitude of the investigation, however, the trial itself would not begin for nearly a year. A wall of paper stood between Schüle and the trial, as he had to sort out the logistics of bringing all the witnesses to the courthouse, allow the defense attorneys sufficient time to review the case materials, and answer the endless appeals of the defendants to be released from jail. These factors insured a long delay between indictment and trial. While Schüle prepared the case for trial, the detectives continued their investigative efforts well beyond the indictments. Through the trial itself, they continued to learn of new witnesses and uncover additional sources of evidence against the defendants.

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<sup>202</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

<sup>203</sup> Anklageschrift (25 June 1957), EL 322/II, Bü 13, SL.

Although the investigation continued, the indictments marked the end of the remarkable year's investigation under Schüle. Since Nellmann's intervention in the fledgling Fischer-Schweder case in June 1956, the case had undergone a complete transformation. Weida and Opferkuch had struggled during the first year of the investigation to gather sufficient information for one indictment; now they were swimming in paperwork and evidence that had indicted ten. The case had changed from a local affair in a conservative West German backwater to the largest Nazi crimes investigation in West Germany since the end of the war, buoyed by an international network of organizations, scholars, and resources. As the prosecution succeeded in identifying unprecedented amounts and types of evidence, they proved able to reverse the tides that had favored the perpetrators in most 1950s West German Nazi crimes prosecutions.

## VI. Trial: Confrontation on the Danube

*The reason why many regard this trial as unpleasant lies in the fact that we all have a guilty conscience when we think back to the evil of those times. It's simply that, if we're honest with ourselves, we all judge ourselves harshly and have to agree with the witness Hartl: back then, we were all too cowardly.*

– Erwin Schüle, closing statements of the 1958 Ulm Einsatzkommando trial

The Ulm courthouse occupies a substantial area on the northern edge of the historic town center, less than a quarter mile from the towering church and just beyond that the Danube. Constructed in Italian Renaissance style during the last decade of the nineteenth century, the building recalls the massive building scale that dominated the Gründerzeit period in Central Europe. Reddish-brown sandstone flanks the wings in imposing blocks, but the eye is drawn to the central entrance where two lions frame a large stairway. Three archways lead inside, between which sit two reclining Greek goddesses of justice, Themis and Dike. The entrance is capped in substantial Corinthian columns and rounded windows that look onto the main foyer. Perched above it all over five stories above Olga Street are statues of the six anthropomorphic virtues of piety, patience, peace, prudence, wisdom, and truth.<sup>1</sup>

The trial of ten members of Einsatzkommando Tilsit took place in the main courtroom, located on the second floor. Matching the austere exterior, the courtroom in 1958 had dark wood paneling throughout. Lining one side of the room were tall windows which remained open, yet barred, for the spring and summer proceedings. At the head of the room was a long row of benches for the three judges and six jurors. The prosecutors sat just in

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<sup>1</sup> “Das Gerichtsgebäude, Landgericht Ulm,” accessed 11 June 2012, <http://www.landgericht-ulm.de/servlet/PB/menu/1169481/index.html?ROOT=1169472>.

front of these nine men, facing the rows of wooden pews in the gallery. The gallery itself divided into three sections: the first row for witnesses, the next two for members of the press, and the rearmost reserved for the general public. In the space between the gallery and the judges' table stretched the defendants' docket. Five defendants sat in one row parallel to the windows, with the other five across the way. Their attorneys took up position immediately in front of their clients. While the judges and prosecutors faced the public, the defendants faced each other throughout the trial.<sup>2</sup> Throughout the courtroom, a strong police presence guarded the entrance and sat alongside the defendants and witnesses. The only unique feature of the courtroom for this trial was a map. Standing throughout the proceedings next to the judges' table, the map portrayed the German-Lithuanian border in 1941 and was marked with the towns where Einsatzkommando Tilsit had carried out mass murders.<sup>3</sup>

The four-month long trial in Ulm of ten members of Einsatzkommando Tilsit thus marked a moment of confluence of a wide array of individuals and demographics. Government officials, civil servants, jurors, the public, the media, Holocaust perpetrators, civilian witnesses, defense attorneys – all intersected in the courtroom of Ulm and took part in a wide-ranging debate over the Nazi past and what that past meant in the postwar present. For four months, Ulm played host to the most significant public forum on Nazi crimes since the Nuremberg proceedings. Though the trial would quickly be eclipsed in public memory by the Eichmann trial several years later and the Frankfurt-Auschwitz trial thereafter, the Ulm Einsatzkommando trial showcased the most extensive investigations of one state into Nazi

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<sup>2</sup> Seating chart, EL 322/II, Bü 153, SL.

<sup>3</sup> “Auf Suche nach Wahrheit und Gerechtigkeit,” *Schwäbische Donau-Zeitung* (29 April 1958).

crimes in the postwar period, and its outcome would change the way West Germany prosecuted Nazi criminals.

The structure of the trial itself reflected the evolution of the Ulm investigation. The trial began first with the defendants attempting to create their own versions of the past that would allow them once more to escape justice, just as they had in the decade after 1945. Though the judges, prosecutor, and press all doubted the veracity of their statements and urged these men to come clean about their roles in Einsatzkommando Tilsit, the defendants obfuscated. In the process they succeeded in sowing confusion in the minds of courtroom observers. In the weeks of testimony following the defendants' claims, a series of former civil servants and colleagues of the defendants testified against them. Like the first year of the investigation, which focused exclusively on the statements of former associates, this phase of the trial failed to create an accurate and believable picture of the crimes. Though these witnesses had many damning comments regarding the defendants, courtroom observers found their testimony mendacious, self-serving, and unreliable. The first half of the trial had hardly been a victory for the defense, but the prosecution had not yet built an ironclad case against the defendants. An uneven and conflicting portrait of the past had emerged, which would make any conviction difficult.

The trial noticeably began to shift when Erwin Schüle, the main prosecutor, presented the court with an array of new forms of evidence – different types of witnesses, historical documentation, and expert opinions. Just as these sources of evidence had revolutionized the investigation, they shifted the entire tone of the trial. While many of the difficulties in the first weeks of the trial took Schüle by surprise, he had also clearly saved his strongest witnesses and evidence for the final weeks. He called to the stand an array of civilians,



priests, and senior officials that the press lauded as far more reliable than earlier witnesses. The presentation of contemporary Nazi records and expert analysis of these provided, in the view of the court and the press, a definitive and irrefutable set of evidence. Thus, the trial itself resembled the contours and evolution of the investigation, with the crucial distinction that this trial took place publicly. The four months in the courtroom chiefly aimed to determine the guilt of ten defendants, but they were also a referendum on the merits and the possible future of Schüle's new crime complex investigation strategy. The verdict would determine both outcomes.

### **The Trial Begins**

The long-awaited Einsatzkommando Tilsit trial began on April 28, 1958. The defendants were the first admitted into the courtroom. Beginning shortly after eight o'clock, these Holocaust perpetrators were brought from their jail cells and ushered into their seats. As they entered and passed by the various media on hand, many hid their faces. Bernhard Fischer-Schweder looked out at the press from behind a pair of dark sunglasses. Hans-Joachim Böhme, Werner Hersmann, and others ducked behind papers and held their hands over their faces to shield themselves from photographers.<sup>4</sup> From the vantage of the gallery, seated in profile on the left side were Böhme, Werner Schmidt-Hammer, Edwin Sakuth, Gerhard Carsten, and Werner Kreuzmann. Across from them were Fischer-Schweder, Pranas Lukys, Harm Harms, Hersmann, and Franz Behrendt.<sup>5</sup> Over the past year, they had been kept

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<sup>4</sup> "Der Ulmer Prozess," directed by Eduard Erne.

<sup>5</sup> Seating chart, EL 322/II, Bü 153, SL.

separate in jails across Germany. These few moments before their trial began were the first time they were all together since committing those thousands of murders in 1941.

A few minutes later, the defendants were joined by personnel from the Ulm investigation. Erwin Schüle took his place at the front of the courtroom as the lead prosecutor. Joining him was Robert Schneider, a thirty-eight year old prosecutor assigned to the case by the Ulm prosecutor's office to assist Schüle after Rudolf Mettler had resigned from the investigation. The decision to appoint two lead prosecutors to the case spoke to its scale and complexity.<sup>6</sup> Also present in the courtroom were the main investigators of the case, Robert Weida and Helmut Opferkuch. Throughout the proceedings, at least one of the two always attended, as their commentary on various points of the investigation proved essential. After years of effort, these representatives of the state finally had their opportunity to showcase the fruits of their extensive investigation before a West German court and public.

In addition to these familiar characters, the trial introduced several new groups of actors. Each defendant sought his own representation, which meant ten lawyers throwing up consistent objections and firing a seemingly endless barrage of paperwork against the state.<sup>7</sup> All ten defendants relied on the state to pay the bulk of these attorneys' fees, and a number of them had been appointed by the state. As a group, they represented a wide sampling of legal attitudes in the postwar period towards the Nazi era. Some were staunchly conservative, others more liberal. All but one seemingly had no overt desire to defend Holocaust

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<sup>6</sup> "Zwei Staatsanwälte in Fischer-Schweder-Prozess," *Stuttgarter Nachrichten* (22 April 1958).

<sup>7</sup> Representing the ten defendants: Dr. Rudolf Aschenauer (Hersmann); Ernst Keller (Sakuth); Dr. M. Marcushen (Fischer-Schweder); Dr. Rolf Nissen (Schmidt-Hammer); Heinz Schelbert (Harms); Beck (Böhme); Claus Joachim von Heydebreck (Kreuzmann); Dr. G. Meerroth (Carsten); Leibold (Behrendt); Ulrich Mattschas (Lukys/Jakys).

perpetrators. Yet, they took on the position and came to often surprising conclusions about the nature of the war years and the significance of postwar justice.

The key exception in this regard was defense attorney Dr. Rudolf Aschenauer. Since the end of the war, Aschenauer had made his young career by defending Nazi criminals, first through his work at the trial of Otto Ohlendorf in the Einsatzgruppen trial, then later as a lead advocate for the release of the Landsberg prisoners. He craved attention and relished the opportunity to defend Nazis and decry postwar injustice. The defendant Hersmann briefly joined forces in the postwar period with the Nazi apologist organization Stille Hilfe, which provided legal aid for perpetrators. Finding himself sorely in need of such assistance, he reached out to the organization. Writing to Helene Elisabeth Princess von Isenburg after his arrest, Hersmann stated, “Please continue to think about how we might convince or prompt Dr. Eschenauer [sic] to help. He is the only specialist and defense attorney in these matters that we still have.”<sup>8</sup> Through these pleas, Hersmann brought Aschenauer to Ulm. By the time he arrived at the courthouse and took his seat before the Holocaust perpetrators, he was already the most well-known Nazi defense specialist in West Germany. On account of his stature and experience, he became the ringleader among the other defense attorneys in crafting their trial strategies.

Presiding over the proceedings was Judge Edmund Wetzel. Like Schüle for the prosecution, Wetzel had been specially assigned to this case by superiors in Stuttgart.<sup>9</sup> Born in 1903, Wetzel had no background in the Nazi party and had spent the prewar years as a prosecutor in Ravensburg, prior to serving in the war. He had a longstanding professional

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<sup>8</sup> Hersmann to Helene Elisabeth Prinzessin von Isenburg (16 November 1956), EL 322/II, Bü 6, SL.

<sup>9</sup> Landgerichtspräsident to Staatsanwalt Ulm (4 November 1959), EL 322/II, Bü 21, SL.

relationship with State Attorney General Erich Nellmann, as well as other leading jurists in Baden-Württemberg, such as Richard Schmid and Fritz Bauer. It was Schmid who decided to assign Wetzel to the case.<sup>10</sup> According to a colleague of both men, this decision stemmed from a belief that Wetzel could be trusted to guide the proceedings in the interest of postwar justice.<sup>11</sup> Particularly considering the active role of the judge in German law, who acted not only as an arbitrator in the courtroom but also as an inquisitor, the need for a judge not heavily implicated in the Nazi regime became a prerequisite for an unbiased chance for a conviction. Wetzel filled this need.

Assisting Wetzel were two other judges, Dr. Fink and Dr. Fischer, who would determine the verdict in conjunction with the jurors. Fink in particular influenced the proceedings and provided most of the work in drafting the verdict at the end.<sup>12</sup> Unique among the principals in the case, Fink was the only native of Ulm. He had spent the postwar period in a concerted effort to return to the judiciary of his home town. He received his doctorate in law in 1925 from the University of Tübingen as a twenty-six year old. He joined the Nazi party in 1933 and as a result was purged from his post at the end of the war.<sup>13</sup> Declared a Mitläufer in 1946 by denazification authorities, Fink rejoined the judiciary.<sup>14</sup> That same year he successfully found employment in a lower office in Geislingen, despite his

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<sup>10</sup> Beer, conversation with the author, 1 February 2011.

<sup>11</sup> Beer, "Der Ulmer Einsatzgruppenprozess," 11-13.

<sup>12</sup> Aktenvermerk (Justizministerium Baden-Württemberg, 15 September 1960), EA 4/153, Bü 122, HS; Dienstzeugnis, Hänle (7 March 1961), EA 4/153, Bü 122, HS.

<sup>13</sup> Personalbogen, EA 4/153, Bü 122, HS; Nachweisung zur Berechnung des Besoldungsdienstalters nach dem Landesbesoldungsgesetz (24 February 1958), EA 4/153, Bü 122, HS.

<sup>14</sup> Spruch, Spruckammer Ulm-Stadt (18 January 1947), EA 4/153, Bü 122, HS.

wishes to remain in Ulm.<sup>15</sup> In 1951, Fink finally found his way back to Ulm as a judge.<sup>16</sup> In addition to these three judges, a fourth substitute judge, Dr. Heinrichs, was on hand through the trial in case any of the others fell ill.

Seated next to the judges was the jury. In all, six jurors drawn from peers of the defendants judged the proceedings. At that time, the six jurors as well as the three presiding judges deliberated on the outcome of the trial. A majority of two-thirds, or six, was needed to procure a verdict.<sup>17</sup> In certain respects, the jurors represented a cross-section of postwar society. Four were from Ulm, while the other two came from nearby smaller towns. Among them were a civil engineer, a schoolmaster, a government superintendent, a locksmith, a machinist, and a design draftsman. These positions required various levels of education and suggest an array of backgrounds and life experiences. Where the group lacked diversity was its gendered composition. All six jurors were men. Even the local press noted that “among them were no women” – a curious configuration, particularly since several women were in the jury pool.<sup>18</sup> Possibly this gendered imbalance stemmed from happenstance, as only two of the initial pool of twelve jurors were women, but another possibility is that in their selection some air of paternalism reigned. Female jurors may have been seen as too fragile to handle the grisly details of the case, or as too likely to allow their emotions to cloud judgment. Whatever the prevalent thinking, the result meant that no one involved in the trial’s outcome – from judges and jurors to attorneys on both sides – was a woman.

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<sup>15</sup> Fink to Justizministerium, Stuttgart (26 August 1946), EA 4/153, Bü 122, HS.

<sup>16</sup> Nachweisung zur Berechnung des Besoldungsdienstalters nach dem Landesbesoldungsgesetz (24 February 1958), EA 4/153, Bü 122, HS.

<sup>17</sup> Note, Findbuch, EL48/2 I, SL.

<sup>18</sup> “Auf Suche nach Wahrheit und Gerechtigkeit,” *Schwäbische Donau-Zeitung* (29 April 1958); Geschworene 1958 (Landgericht Ulm), EL 302 I, Bü 305, SL.

From the first day, the courtroom crowded with various members of the press and public, the final two groups involved in the daily trial proceedings. In describing the first day's proceedings, the regional newspaper in Ulm, the *Schwäbische Donau-Zeitung*, noted that "numerous photographers and reporters from Germany and foreign countries" filled the press rows in the gallery.<sup>19</sup> Throughout the proceedings, media continued to report widely on the goings-on in the Ulm courtroom. Because no transcript of the trial itself was taken, these media reports provide an essential record of the day-to-day events. In particular, five regional papers – the *Schwäbische Donau-Zeitung*, the *Ulmer Nachrichten*, the *Neu-Ulmer Zeitung*, the *Stuttgarter Zeitung*, and the *Stuttgarter Nachrichten* – as well as the larger West German *Frankfurter Rundschau* had near-daily reports on the proceedings. Other national outlets, including radio, reported on exceptional days of the trial or provided occasional summaries on the Ulm proceedings. International news was less consistent, but many outlets offered at least passing mention of the trial. Because of the scale and scope of the trial, few news organizations found it possible to ignore the trial altogether.

Finally, ordinary members of the West German public occupied the back rows of the gallery. From the start, however, citizens of Ulm seemed to show little overt interest in the proceedings. Press noted the "relatively low participation of the public" during the first day of the trial.<sup>20</sup> Photos from the first day similarly show a well-attended but not quite capacity gathering in the courtroom. This image was off-set by the eagerness of the media, hoping to snap up pictures of the defendants. From the first day of the trial, there was consequently an ambivalent relationship between the local community and the wider German public. Though

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<sup>19</sup> "Auf Suche nach Wahrheit und Gerechtigkeit," *Schwäbische Donau-Zeitung* (29 April 1958).

<sup>20</sup> "Auf Such nach Wahrheit und Gerechtigkeit," *Schwäbische Donau-Zeitung* (29 April 1958).

recognized as an important and newsworthy moment, few West Germans made the trek to the courthouse to take it in. As a result, the majority of the West German public engaged with the Ulm trial solely through the media.

The press and public had first learned of the “Case against Fischer-Schweder and nine others” at a press conference a year earlier on July 5, 1957. By that point, all ten defendants were in custody and Schüle had just filed the indictments. For two years prior, investigators had taken pains to keep the case out of the press, but now they relished the opportunity to unveil their efforts. They informed the media of the crimes under investigation.<sup>21</sup> This particular unit, Einsatzkommando Tilsit, was unfamiliar to all in attendance. More significantly, Schüle and Nellmann sought to win over public opinion by explaining the purpose of the trial. Only officers from the unit were under investigation, and the press noted that “rank-and-file were not indicted.”<sup>22</sup> This settled concerns many West Germans had about any trials functioning as a second denazification that would re-target those Germans who had filled out the lower ranks in the Nazi state. They explained the timing of the trial as a simple result of fresh allegations: “The prosecutor’s office can only investigate a crime once they have knowledge of it.”<sup>23</sup> This implied the inverse as well: once prosecutors had knowledge of a crime, they had a duty to investigate it. Throughout, the press conference sought to ease any suspicions that this was a politically-motivated prosecution.

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<sup>21</sup> Only five media outlets attended the press conference, predominantly local and regional presses. Also in attendance was one representative of the Israelitische Kultusvereinigung. Anwesenheitsliste bei der Pressekonferenz am 5.7.1957 bei der Staatsanwaltschaft Ulm (Donau), EL 302 I, Bü 305, SL; Berthold Wolf, Ulm, to Warscher (5 July 1957), Israelitische Religionsgemeinschaft, Bd. 294, StS.

<sup>22</sup> “‘Verwaltungsmassenmord’ vor dem Schwurgericht,” *Schwäbische Donau-Zeitung* (6 July 1957).

<sup>23</sup> “‘Verwaltungsmassenmord’ vor dem Schwurgericht,” *Schwäbische Donau-Zeitung* (6 July 1957).

The papers the following day discussed an upcoming “ghastly trial,” “one of the largest in the postwar period,” of “terrible events” of the Nazi era.<sup>24</sup> The investigative efforts alone, they noted, had consumed countless hours and thousands of pages of paperwork. In all, ten men were to be tried for the execution of 5,502 civilians, mostly Jews, in the Lithuanian border regions in 1941. At this time, the prosecutors only released Fischer-Schweder’s name to the press. Despite the unprecedented scale of the investigation, these reports appeared in only a handful of papers. Even in the city paper, which peppered its coverage with lofty claims about the “parallels to the Nuremberg trials” and the likelihood the case would “grab the attention of the entire world,” coverage was relegated to the interior pages of local Ulm news.<sup>25</sup>

In the wake of the press conference, discussion about the “Fischer-Schweder trial,” as the press came to refer to it, abated for nearly a year until April 1958. During the months between the press conference and the start of the trial, the case continued as it had before: with Schüle and the investigators finalizing points and organizing the case largely out of the public eye. In the weeks before the trial began, members of the media were allowed to review the indictments, which prompted several of the local papers to run large summaries and to profile the ten defendants.<sup>26</sup> By the time all parties had arrived in the Olga Street courtroom

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<sup>24</sup> “Grauenhafter Prozeß vor dem Ulm Schwurgericht,” *Ulmer Nachrichten* (6 July 1957); “Massenerschiessungen von Juden sollen gesühnt werden,” *Stuttgarter Nachrichten* (6 July 1957); “‘Verwaltungsmassenmord’ vor dem Schwurgericht,” *Schwäbische Donau-Zeitung* (6 July 1957).

<sup>25</sup> “‘Verwaltungsmassenmord’ vor dem Schwurgericht,” *Schwäbische Donau-Zeitung* (6 July 1957).

<sup>26</sup> “Massenmord vor dem Schwurgericht,” *Ulmer Nachrichten* (25 April 1958); “Grösster politischer Prozess in Ulm,” *Schwäbische Donau-Zeitung* (26 April 1958); “Ehemaliger Polizeidirektor von Memel vor Gericht,” *Stuttgarter Zeitung* (21 April 1958); “Ein Arbeitsprozess wurde zum Mordprozess,” *Stuttgarter Nachrichten* (2 April 1958).



on April 28, 1958, people throughout Baden-Württemberg had had the opportunity to learn of the pending trial, and the press was anxious to see the defendants in person.

On the first day of the trial, following the necessary swearing in of the jurors and the registering of the defendants and their representatives, presiding judge Edmund Wetzel made opening remarks to all present about the nature of the case before them.<sup>27</sup> Although he insisted that what would be taking place in that courtroom was “no show trial or spectacle,” he cautioned that “it will open a chapter from the time of the moral degradation of our fatherland.”<sup>28</sup> Because of the sensitive nature of these crimes and of the unavoidable questions these would raise about the Nazi era and ongoing prosecutions, Wetzel issued a request to all present:

It is a very difficult task to investigate events that lay seventeen years back. Therefore, judges, seek tirelessly after truth and clarity. Prosecutors, as representatives of the most objective office in the world, avoid crass sentimentality [*frei von falschen Pathos seien*]. Defense attorneys, put all grandstanding aside. Defendants, realize that true atonement means standing by your actions. Spectators, express your interest but do not disrespect the dignity of the court. Members of the media, report responsibly and prevent any speculation on the trial’s outcome. If each contributes to its part, then the foundation will be laid for a proper and just verdict.<sup>29</sup>

Wetzel viewed the courtroom primarily as a means of achieving justice, and each constituent group at the trial – defendants, prosecutors, defense attorneys, public, media, and judge and jury – had an essential role to play.

Following Wetzel’s remarks, the defendants one-by-one took the stand to provide a capsule life history. Nine of the defendants took the stand on days two and three, but from the late morning to the end of the first session at five o’clock the court focused on the first

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<sup>27</sup> Protokoll, EL 322/II, Bü 18, SL.

<sup>28</sup> “‘Einsatzkommando Tilsit’ vor Gericht,” *Stuttgarter Zeitung* (29 April 1958).

<sup>29</sup> As summarized in “Auf Suche nach Wahrheit und Gerechtigkeit,” *Schwäbische Donau-Zeitung* (29 April 1958).

defendant: Fischer-Schweder.<sup>30</sup> He had already earned enmity for his labor court lawsuit a few years earlier, and his demeanor on the stand proved immediately off-putting for many in attendance. He spoke, as one observer noted, “as though telling stories at a bar with a bottle of wine.”<sup>31</sup> Throughout his “extensive and wordy” testimony, the Memel police director described himself as “very dependable, industrious, and not stupid.”<sup>32</sup> Others chose a different set of adjectives. The press regarded him as “narcissistic,” and even one of the defense attorneys viewed him as an “arrogant” man who “tolerated no opposition.”<sup>33</sup>

In this introductory phase of the trial, most media coverage focused on the three defendants initially charged with murder: Fischer-Schweder, Böhme, and Hersmann.<sup>34</sup> The press seemed fascinated by Böhme’s postwar reinvention of himself.<sup>35</sup> He attempted to portray himself as a sharp opponent of communism and, through convoluted explanations, an uncommitted Nazi.<sup>36</sup> Interestingly, the media came to appreciate Hersmann’s testimony above all others. One article stated that Hersmann “is perhaps the only one of the accused who believed truly and deeply in fascist ideology,” and as a result, he was the only one “ready to account for the crimes.”<sup>37</sup> Because of his fanaticism, Hersmann saw little reason to

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<sup>30</sup> Protokoll, EL 322/II, Bü 18, SL.

<sup>31</sup> Rolf Nissen, Verlauf des Hauptprozesses gegen Fischer-Schweder und 9 Mitangeklagte, H Nissen, SU.

<sup>32</sup> “Auf Suche nach Wahrheit und Gerechtigkeit,” *Schwäbische Donau-Zeitung* (29 April 1958).

<sup>33</sup> “Auf Suche nach Wahrheit und Gerechtigkeit,” *Schwäbische Donau-Zeitung* (29 April 1958); Rolf Nissen, Verlauf des Hauptprozesses gegen Fischer-Schweder und 9 Mitangeklagte, H Nissen, SU.

<sup>34</sup> Evidence against Lukys provided during the trial led Schüle to charge him with murder only at the trial’s conclusion.

<sup>35</sup> “Weitere Vernehmung der Angeklagten,” *Stuttgarter Nachrichten* (30 April 1958).

<sup>36</sup> “Angeklagter sagt aus: ‘Nur preussische Pflichterfüllung,’” *Ulmer Nachrichten* (30 April 1958); “Der SD war Kämpfer gegen die Korruption,” *Schwäbische Donau-Zeitung* (30 April 1958).

<sup>37</sup> “SS-Führer stritten um Judenerschiessungen,” *Schwäbische Donau-Zeitung* (13 May 1958).

lie about actions he regarded as just, thus he testified relatively openly in comparison to the other defendants who attempted to shield themselves and deflect blame onto superiors.

The other seven defendants, accused of accessory to murder, occupied less space in coverage throughout the proceedings. Longtime police officers such as Kreuzmann, Carsten, Behrendt, Harms, and Sakuth were widely characterized as having “ordinary professional careers.”<sup>38</sup> Schmidt-Hammer received attention in a number of papers because he alone had never joined the Nazi Party. The only other defendant who attracted interest in the early days was Lukys. As a foreigner, he was a jarring presence on the stand, where the press regarded his “barely understandable German” as a “torture for all involved.”<sup>39</sup> Consequently, he attended the trial with a translator throughout.<sup>40</sup> Lukys also complicated notions of Nazi crimes for the public. Portrayed as an opponent of communism, Jews, and Nazism, Lukys became seen as a nihilistic sadist, the press unable to reconcile his Lithuanian ultra-nationalism with the Holocaust. Even one of the other defense attorneys wrote in his notes that Lukys had the “most debased character” of the ten.<sup>41</sup>

On the third day, once all ten defendants had an opportunity to speak, the state’s charges against the defendants were read aloud in court. At nearly thirty pages, the opening resolution (Eröffnungsbeschluss) provided specific information on the crimes alleged against

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<sup>38</sup> “Massenerschiessungen der Nazi in Litauen,” *Stuttgarter Zeitung* (1/2 May 1958); “Der SD war Kämpfer gegen die Korruption,” *Schwäbische Donau-Zeitung* (30 April 1958); “Vorsätzlich und mit Überlegung getötet,” *Schwäbische Donau-Zeitung* (1/2 May 1958).

<sup>39</sup> “Frauen und Kinder galten als ‘unnütze Esser’,” *Schwäbische Donau-Zeitung* (17 May 1958).

<sup>40</sup> Protokoll, EL 322/II, Bü 18, SL.

<sup>41</sup> Verlauf des Hauptprozesses gegen Fischer-Schweder und 9 Mitangeklagte, H Nissen, SU.

each, as well as the nature of the evidence gathered.<sup>42</sup> The heart of the case came down to the claim that these ten defendants had all taken on active leadership roles in Einsatzkommando Tilsit, a unit responsible for the murder of 5,502 mostly Jewish men, women, and children along the Lithuanian border from June 24 to October 15, 1941.<sup>43</sup> Over the next four months, the aim of the state prosecutors would be to provide a wide range of evidence for these crimes and to prove that the defendants had been members of Einsatzkommando Tilsit.

### **Defendants on the Stand**

After the introductory phase, the trial unfolded in two broad stages. First, the defendants themselves took the stand to establish their version of events. This lasted through the middle of May. Second, through July, witnesses from both sides of the aisle and documentary evidence were presented to the court. Although the defendants could and often did retake the stand throughout the proceedings to respond to various points, this trial format seemed to favor the prosecution. Since the defendants were expected to make statements before the full scope of the evidence against them was revealed, this meant that each subsequent witness or piece of documentation – forms of evidence regarded as more reliable than the defendants’ own claims – not only established the defendants’ guilt but eroded their credibility and interpretive authority over the past. In essence, the defendants had only a short window in court to establish their version of events in the minds of the jurors and judge.

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<sup>42</sup> In all, two *Eröffnungsbeschlüsse* were read out (Protokoll, EL 322/II, Bü 18, SL). The first and more major from January 1958, while the second listed supplementary charges against Böhme and Lukys. See, *Eröffnungsbeschluss vom 29. Januar 1958, Landgericht Ulm – Strafkammer (29 January 1958)*, EL 322/II, Bü 16, SL; *Beschluss vom 17. Februar 1958, Landgericht Ulm – Strafkammer (17 February 1958)*, EL 322/II, Bü 16, SL.

<sup>43</sup> “‘Vorsätzlich und mit Überlegung getötet,’” *Schwäbische Donau-Zeitung* (1/2 May 1958).

This format also meant that the presentation of the Holocaust in Lithuania before the public began at the grassroots level. Although the investigators had spent years reconstructing the Nazi chain of command and intended to reproduce the entire complexity of the Third Reich before the court, by placing the defendants on the stand first, the trial immediately transported all spectators to the chaotic circumstances of the German-Lithuanian borderlands on the eve of war with the Soviet Union. The trial thus began *in media res*, with no preliminary context for the crimes or the nature of the Nazi state, but rather beginning with the murky circumstances surrounding the creation of Einsatzkommando Tilsit.

On May 2, the first time defendants testified on the crimes in question, Böhme and Hersmann, as the leaders of Einsatzkommando Tilsit, spoke about how the unit's origins. They described a meeting between them and Einsatzgruppe A leader Dr. Walter Stahlecker on the day prior to the Garsden execution, during which Stahlecker had ordered them to create an Einsatzkommando to execute people accused of civilian resistance against the Wehrmacht. Hersmann, agitated, asked the court, "What could I have done?... As just a small man, I could not go against an order from Hitler."<sup>44</sup> Böhme similarly said the order came as a "horrible blow" to him, but he could not refuse to carry it out.<sup>45</sup>

At the next session, Kreuzmann testified that he also had been privy to the Stahlecker meeting. He claimed, however, that this only established a group responsible for "securing the rear of the army." After further pressure from the prosecution, he admitted that among its duties was to shoot Jews and communists as "potential opponents" of the regime but insisted that these actions constituted military necessity and were not related to, as the *Stuttgarter*

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<sup>44</sup> "Dr. Böhme fühlt sich für die Massenhinrichtungen nicht verantwortlich," *Stuttgarter Zeitung* (3 May 1958).

<sup>45</sup> "...als amoralisch und unmenschlich empfunden!" *Schwäbische Donau-Zeitung* (3 May 1958).

*Zeitung* wrote, “the widely recognized actions against Jews.”<sup>46</sup> Though he played a role in the murder of Jews, Kreuzmann said that they had not been killed as part of the Holocaust. Harms and Carsten, who testified later that day, generally agreed with Kreuzmann’s account. The distinction that Jews were killed as partisans and not as Jews represented a concerted effort on the defendants’ part to discount the prosecution’s assertions that racial motives had played a role in the killings. Murdering Jews for being Jews would have fit this racial bias, thereby meeting the “base motive” criteria for the charge of murder. Thus the defendants claimed to have murdered Jewish civilians “as carriers of communist ideas.”<sup>47</sup>

Since the start of the case, the presiding judge had largely allowed defendants to make their statements as they saw fit, but Fischer-Schweder’s demeanor on the stand during the fifth day of the trial required a reprimand.<sup>48</sup> “Mr. Fischer-Schweder,” Wetzel intoned, “you are not here leading the trial – you stand before the court as a defendant. We are striving for objectivity, and we will not tolerate your interference with these proceedings!”<sup>49</sup> With an attitude described as “uncontrollable” and “arrogant,” Fischer-Schweder had provided “longwinded explanations” for several hours.<sup>50</sup> At a certain point, he began to attack the legitimacy of the court, and Wetzel had to bring him back into line. In his testimony, Fischer-Schweder provided several contradicting explanations for the chain of command he followed as police director in Memel and how, as he claimed, this required him

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<sup>46</sup> “Das Zustandekommen des Tilsit Einsatzkommandos,” *Stuttgarter Zeitung* (7 May 1958).

<sup>47</sup> “200 Zeugen in Ulm,” *Stuttgarter Zeitung* (22 May 1958).

<sup>48</sup> “Angeklagter sagt aus: ‘Nur preussische Pflichterfüllung,’” *Ulmer Nachrichten* (30 April 1958).

<sup>49</sup> “Fischer-Schweder fiel aus der Rolle,” *Schwäbische Donau-Zeitung* (8 May 1958).

<sup>50</sup> “Fischer-Schweder fiel aus der Rolle,” *Schwäbische Donau-Zeitung* (8 May 1958); “Massenerschiessungen als ‘Organisations’-Problem,” *Stuttgarter Zeitung* (8 May 1958).

to assist in the creation of the Einsatzkommando. The prosecutor also asked him to respond to claims about his drunkenness on the job. Initially, Fischer-Schweder bristled at the question, but then laughed it off with an old toast: “First get the job done, then drink and have fun! [*Erst mach’ Dein Sach’, dann trink und lach*].” By turns imperious and flippant, Fischer-Schweder became dubbed the “*enfant terrible*” of the proceedings.<sup>51</sup>

The first several days of testimony had focused on the creation of Einsatzkommando Tilsit; now the court turned to its actions. Starting that afternoon, Böhme retook the stand to give testimony for the next two days about the massacres. Böhme first agreed with the other defendants that “the destruction of Jews had nothing to do with racial hatred,” but rather with military necessity in the interests of deterring partisans.<sup>52</sup> He then described the execution of 201 people in Garsden. Böhme stated that Fischer-Schweder had insisted on the declaration of a “formal execution order” before each group was killed. The victims were led out in groups, and each group had to place the previous group’s bodies in the grave, which was done only because, Böhme claimed, “We wanted to work as quickly as possible.” His statements went on to address the executions in Krottingen, Polangen, Tauroggen, Georgenburg, and Wirballen-Kyrbatai. The group applied the methods used in Garsden in all instances. “I paid little attention to the executive affairs,” Bohme stated, “It ran smoothly, and it was always the same.”<sup>53</sup> Throughout, Böhme portrayed himself as an absent officer

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<sup>51</sup> “Fischer-Schweder fiel aus der Rolle,” *Schwäbische Donau-Zeitung* (8 May 1958).

<sup>52</sup> “Fischer-Schweder fiel aus der Rolle,” *Schwäbische Donau-Zeitung* (8 May 1958); “Massenerschiessungen als 'Organisations'-Problem,” *Stuttgarter Zeitung* (8 May 1958).

<sup>53</sup> “Die Exekutionen 'klappten’ -- 'und es war auch immer dasselbe,’” *Stuttgarter Zeitung* (10 May 1958).

who conducted minimal oversight within his own unit. His overall defense strategy came down to the following remark: “It could be so, but it could also not be so. I can’t recall.”<sup>54</sup>

This defense allowed him to parry the frequent accusations about the murder of Jewish women and children. Since the defendants were attempting to claim that their actions had constituted military necessity, it was clear to all that executing women and children in no way could be justified on military grounds. Thus, their murder became a cornerstone of the prosecutor’s efforts. Böhme had to confront these charges on two accounts. First were claims that Einsatzkommando Tilsit had carried out such murders. On this front, he provided what the press regarded as a “stupefying answer” that Stahlecker had ordered their executions “so that [the Jewish descendants] would not make difficulties later for our grandchildren.”<sup>55</sup> Second were allegations that Böhme ordered Lithuanian auxiliaries to murder women and children, which would have clearly transgressed their mandate from Stahlecker. Here, Böhme insisted that if such actions took place, he had not authorized them. When cross-examined about why he nevertheless reported figures from such executions to authorities in Berlin, Böhme equivocated, “An observer is not a participant.”<sup>56</sup> The press widely disapproved of Böhme’s refusal to accept responsibility, noting that he “distanced himself from his earlier precise statements to provide a new and much more harmless self-depiction.”<sup>57</sup>

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<sup>54</sup> “Für Juden gab es keine ‚Gnadenakte,‘” *Schwäbische Donau-Zeitung* (9 May 1958).

<sup>55</sup> “Fischer-Schweder fiel aus der Rolle,” *Schwäbische Donau-Zeitung* (8 May 1958).

<sup>56</sup> “Keiner will geschossen haben,” *Schwäbische Donau-Zeitung* (10 May 1958).

<sup>57</sup> “Für Juden gab es keine ‚Gnadenakte,‘” *Schwäbische Donau-Zeitung* (9 May 1958); “Die Exekutionen 'klappten' -- 'und es war auch immer dasselbe,“ *Stuttgarter Zeitung* (10 May 1958); “Dr. Böhme fühlt sich für die Massenhinrichtungen nicht verantwortlich,” *Stuttgarter Zeitung* (3 May 1958); “Keiner will geschossen haben,” *Schwäbische Donau-Zeitung* (10 May 1958).



Like Böhme, most of the other defendants during those first days of testimony attempted to deflect blame onto senior officers. Unfortunately for Böhme, in most cases he was this senior officer. Several of the defendants heavily indicted Böhme during their time on the stand. On May 12, Hersmann recounted a meeting that occurred the day after the Garsden execution between him, Böhme, and Karl Jäger, the head of Einsatzkommando 3. From July to November 1941, Jäger's unit murdered 136,000 Lithuanian Jews, and he numbered among the worst perpetrators of the Holocaust.<sup>58</sup> Hersmann described their meeting as "not pleasant." Once Jäger learned of Einsatzkommando Tilsit's orders, he fumed, "The entire region belongs to us!"<sup>59</sup> A jurisdictional debate had emerged over which units had the right to massacre Jews in Lithuania.

When Hersmann recounted this story before the court, Wetzel asked why they had not given Jäger what he wanted. If he and Böhme truly had no interest in organizing and leading an Einsatzkommando, this was their opportunity to pass the duties along to an eager party. Hersmann vaguely responded to Wetzel that handing over the reins to Jäger was "militarily not possible."<sup>60</sup> In all likelihood, Hersmann and Böhme rebuffed Jäger because they also regarded their task as an opportunity to distinguish themselves within the regime.

The trial went from bad to worse for Böhme over the following days of testimony. After the ninth court session, local press coverage ran the headline, "May 13<sup>th</sup> – A Dark Day for Böhme."<sup>61</sup> Harms had spent the day testifying about the fate of Jewish women and

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<sup>58</sup> Jäger had avoided detection after the war. At the time of the trial, he was hiding out in Heidelberg. Soon after the Ulm trial ended, investigators located him and his investigation would be one of the first carried out by the *Zentrale Stelle*.

<sup>59</sup> "SS-Führer stritten um Judenerschiessungen," *Schwäbische Donau-Zeitung* (13 May 1958).

<sup>60</sup> "'Befehlsnotstand' der Ehrgeizigen," *Stuttgarter Nachrichten* (13 May 1958).

<sup>61</sup> "13. Mai - schwarzer Tag für Böhme," *Schwäbische Donau-Zeitung* (14 May 1958).

children held in an improvised camp in Bataikia. Initially, they had planned to simply blow up the entire site with all prisoners inside, but proximity to a train station scuttled the idea. Harms recalled that Böhme then approached him and said, “Tomorrow, the Bataikia camp will be liquidated, and you will lead the action.”<sup>62</sup> Harms objected to the assignment, and only after prolonged conversation and hurling insults at Harms did Böhme release him from the task. This account not only established Böhme as making key decisions about the lives of Jews in Lithuania, but also provided an example of refusing orders with no negative repercussions. Harms concluded his testimony with a further indictment against Böhme when he stated that he had “not only maintained his 25-kilometer stretch but sought out possibilities for enlarging it.”<sup>63</sup> Over the next two days, Carsten and Lukys both testified to similar effect that Böhme had authorized and initiated a great number of shootings that frequently involved women and children.<sup>64</sup>

On the last day of the defendants’ statements, Fischer-Schweder and Böhme once more took the stand. These two came through the first phase of the trial most damaged. Fischer-Schweder, through his arrogant demeanor, emerged as a widely contemptible figure, and when he retook the stand on May 20, he undermined his credibility as a witness. Although the press noted that he started out the day trying to make a “better impression than before,” his actual statements defied belief. He claimed that in Garsden, Krottingen, and Polangen “all those killed were snipers.... Naturally, one of these or another could have been

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<sup>62</sup> “13. Mai - schwarzer Tag für Böhme,” *Schwäbische Donau-Zeitung* (14 May 1958).

<sup>63</sup> “Das Morden war mehr oder weniger Gesetz,” *Stuttgarter Nachrichten* (14 May 1958).

<sup>64</sup> “Gestapo-Leiter Böhme wiederum schwer belastet,” *Stuttgarter Zeitung* (16 May 58); “Lager sollte geprenzt werde,” *Stuttgarter Nachrichten* (17 May 1958).

a Jew.”<sup>65</sup> As a result, he wanted the executions to be carried out in a “dignified” fashion and told Schmidt-Hammer to read the formal death sentence before each group was killed.<sup>66</sup> He also made the “bold statement” that those killed in Krottingen had been convicted by a Lithuanian court, and Einsatzkommando Tilsit merely carried out the death sentence. Irritated, Wetzel stated, “That story might work on someone else, but not here.”<sup>67</sup>

Böhme had suffered the most through this early phase, and he never reestablished his credibility. Despite repeated urgings from the judges and prosecutors, Böhme refused to speak honestly about his role in the crimes. Schüle incredulously asked if he really thought that all 5,000 victims had been “dangerous enemies” of the state. Böhme responded merely, “It is very difficult to know.” On another occasion, one of the judges demanded, “Come on and prod your heart into action. Answer for what happened like a man!”<sup>68</sup> His claims to not know what happened were not only fully unbelievable but insulting to courtroom observers. As the local Ulm paper wrote about his testimony on May 21:

The urgent appeals of the court stand in contrast to [Böhme’s] frigidity, which is truly frightening. Is he only putting on this front for show or is it real? Can Böhme not act in spite of himself, not bear to divulge his deepest feelings and to yield to his human emotions – or does this defendant truly have no feelings, no heart, no remorse, no conscience? That’s the question that remained unanswered at the end of his testimony, because only one person knows the answer: Böhme himself. And Böhme remains silent...<sup>69</sup>

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<sup>65</sup> “Fischer-Schweder: ‘Alle waren Heckenschützen,’ *Schwäbische Donau-Zeitung* (21 May 1958).

<sup>66</sup> “‘Würdige’ Exekutionen,” *Stuttgarter Nachrichten* (21 May 1958).

<sup>67</sup> “Fischer-Schweder: ‘Alle waren Heckenschützen,’ *Schwäbische Donau-Zeitung* (21 May 1958).

<sup>68</sup> “Einsatzkommando durch neue Aussagen belastet,” *Schwäbische Donau-Zeitung* (30 July 1958).

<sup>69</sup> “‘Staatsicherheit’ geht vor Rechtssicherheit,” *Schwäbische Donau-Zeitung* (22 May 1958).

As Wetzel had stated in his opening remarks, if there was to be any sort of reconciliation with the past, the defendants needed to be willing to confront what they had done. Böhme, by refusing to do so, prevented the court and the public from reaching such catharsis.

Even though most defendants proved more willing to acknowledge their role in Einsatzkommando Tilsit, the first four weeks of the trial had created no clear picture of what had happened in summer 1941. There was no way to assemble their many contradicting and partial accounts into any coherent narrative. Whether the victims were targeted as partisans, communists, Jews, or some combination of these remained unresolved. How orders moved through the Nazi chain of command and whether or not one could refuse orders were open questions. In their one opportunity to put forward their own version of events, the defendants had created a muddle of conflicting accounts which collectively undermined each individual's hopes of avoiding a conviction. As the press concluded, "A true depiction of what actually happened will probably only come about once the court begins to interrogate witnesses during the evidentiary proceedings. The statements of the accused themselves are too reticent, imprecise, and uncertain to provide any clear picture of the events."<sup>70</sup> The media looked with hope towards the coming phase of the trial when witnesses would take the stand as offering the first real chance to understand what Einsatzkommando Tilsit had done.

### **The Selective Memories of Ex-Nazis**

The press was not alone in expressing optimism that the next phase of the trial might add historical clarity to a picture blurred by the defendants. Since the start of the trial, several schools had written to Schüle to inquire about bringing students to attend some of the

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<sup>70</sup> "Mit Blumen empfangen – mit Steinen vertreiben," *Schwäbische Donau-Zeitung* (16 May 1958).

proceedings.<sup>71</sup> For those considering careers in law, this was an excellent opportunity to watch justice in action. Although Schüle welcomed the idea, he sought to mediate the students' experiences. Initially, schools expressed interest in attending early sessions with the defendants on the stand. In response to one, Schüle wrote, "[Attendance] is only recommended if witnesses besides the defendants are testifying because currently there is a fully subjective picture of the shootings."<sup>72</sup> To another interested in observing for a day, Schüle cautioned that "attending just one court session can't provide a full picture of the events that are the object of the trial."<sup>73</sup>

Through these subtle arrangements, Schüle attempted to shape public perceptions of the trial. Since the press conference announcing the investigation in July 1957, neither Schüle nor Nellmann had spoken publicly about the trial, but they were clearly aware that its importance went beyond the specific crimes being prosecuted. In a letter written during the trial, Schüle explained his view on the relationship between the trial and the Nazi past, "We as a German people are only deserving of a happier future if we have removed ourselves from the terrible shadow of the past."<sup>74</sup> This trial would serve to educate the public not so much in an effort to deter such crimes in the future, which is an aim of most trials, but rather to allow for a reconciliation between contemporary West Germans and Nazi crimes. West Germans needed to learn about and confront the realities of the Nazi state as a prerequisite for the democratic and judicial stability of the future.

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<sup>71</sup> Wilhelm Gall to Schüle (28 April 1958); EL 322/II, Bü 61, SL; Kultusministerium Baden-Württemberg to Generalstaatsanwalt (24 April 1958), EL 302 I, Bü 305, SL.

<sup>72</sup> Schüle to Pädagogische Institut, Schwäbisch Gmünd (21 May 1958), EL 322/II, Bü 61, SL.

<sup>73</sup> Schüle to Rektorat der Kepler-Mittelschule (21 May 1958), EL 322/II, Bü 61, SL.

<sup>74</sup> Schüle to Maximilian Nadolski (7 August 1958), EL 322/II, Bü 61, SL.

Educating the public also functioned to legitimize the West German state in the arena of global politics. Like other Nazi crimes cases, the Ulm trial became symbolically important for West German efforts to gain acceptance as a democratic state that had shed all semblances of its Nazi past. Prosecuting criminals became one means of demonstrating that commitment. Nellmann proudly reported to the Justice Ministry in Baden-Württemberg to this effect following a meeting with a representative from a Jewish organization. The representative had told Nellmann, “More has been done to repair [*Wiedergutmachung*] Germany’s reputation through the investigation we’re leading than through all the monetary reparation [*Wiedergutmachung*] payments.”<sup>75</sup> Throughout the 1950s, the Adenauer government had emphasized reparations for Nazi victims as its main tool for a public reconciliation with the past. As Nellmann recognized, these payments did nothing to solve the question of justice for the victims. The Ulm trial, even though initiated and prosecuted by Baden-Württemberg officials, became a symbol of all West Germany and its seriousness in addressing the Nazi era.

For the prosecution, these expectations placed significant importance on the witness phase of the trial. The defendants’ statements, as expected, had been rife with internal contradictions and obfuscations. Routinely through their statements, Schüle had taken issue with certain comments only to note that he would return to the issue later.<sup>76</sup> The prosecution used the defendants’ testimony simply to tee up later, more reliable witness statements. Such actions, coupled with the desire to steer observers away from the court during the defendants’

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<sup>75</sup> Nellmann to Justizministerium Baden-Württemberg (25 February 1957), EA 4/412, Bü 1, HS.

<sup>76</sup> “Keiner will geschossen haben,” *Schwäbische Donau-Zeitung* (10 May 1958).

statements, illustrated that they placed all emphasis in securing a conviction on the witness testimony that commenced at the end of May.

The first set of witnesses testified from May 22 to May 30 and took aim at Fischer-Schweder. Several former police chiefs testified that in no way would his superiors have authorized Fischer-Schweder to participate in the executions, thus undermining his claims to have been following orders.<sup>77</sup> Another group of Wehrmacht officers swore that no partisan activity took place during the invasion, suggesting that no “snipers” were in the area as the police director had claimed.<sup>78</sup> These testimonies left Fischer-Schweder “deeply unsettled.”<sup>79</sup> Initially temperamental, the cumulative indictments of these statements against his defense rendered the police director “meek” and “lost in thought” as he weighed his defense options going forward.<sup>80</sup> Although these first witnesses allowed the prosecution to seize the initiative in the case, the next set of witnesses, chiefly police officers who had served with the defendants, had far more mixed results for the prosecution.

The former civil servants, for the most part members of the Memel police, testified about the first three executions conducted by Einsatzkommando Tilsit, the only three in which Fischer-Schweder and Schmidt-Hammer had participated. For these two, the testimony proved particularly damaging. A number of witnesses testified that those shot had been targeted, as one said, “because they were Jews.”<sup>81</sup> Another insisted that he had never

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<sup>77</sup> “Fischer-Schweder handelte eigenmächtig,” *Schwäbische Donau-Zeitung* (24 May 1958).

<sup>78</sup> “Nächtliche Hilfeschreie in Riga,” *Schwäbische Donau-Zeitung* (30 May 1958); “Einsatzkommando Tilsit wird belastet,” *Stuttgarter Nachrichten* (29 May 1958).

<sup>79</sup> “Fischer-Schweder schwer belastet,” *Stuttgarter Zeitung* (29 May 1958).

<sup>80</sup> “Fischer-Schweder handelte eigenmächtig,” *Schwäbische Donau-Zeitung* (24 May 1958).

<sup>81</sup> “Die alte Garde weiss von nichts mehr,” *Schwäbische Donau-Zeitung* (5 June 1958).

heard any allegations of partisan activity.<sup>82</sup> Throughout, Fischer-Schweder endured relentless character attacks. One former employee of his testified, “If I were to say that he was dictatorial, that would be an understatement.”<sup>83</sup> However much the testimony targeted Fischer-Schweder, it was Schmidt-Hammer who took the testimony the hardest. On June 3, after listening to a painful account of the Garsden shootings, Schmidt-Hammer suffered a heart attack in the courtroom and had to be rushed out on a stretcher.<sup>84</sup> Although attorneys considered suspending the case against him, a physician soon declared him able to stand trial, and he returned to court within the week.<sup>85</sup>

Although the testimony of these former civil servants clearly damaged the defendants, the media grew increasingly circumspect of the witnesses’ reliability. Witnesses repeatedly claimed to have no knowledge of certain events or insisted that certain information came to them only secondhand. The *Schwäbische Donau-Zeitung*, which was often editorial in its coverage, declared the Memel police officers’ testimony to be a “scandal” and a “sad affair.”<sup>86</sup> As the paper reported, “It is obvious that they’re lying because these same people who today twist in the wind and claim not to know anything were just a year ago during their first police interrogation capable of making amazingly exact and precise statements to all particulars.”<sup>87</sup> Even when they acknowledged involvement, many professed moral opposition to their orders. As one witness, Hartl, stated about why he did not refuse such actions, “I was

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<sup>82</sup> “...aus rassistischen Gründen erschossen,” *Schwäbische Donau-Zeitung* (7 June 1958).

<sup>83</sup> “Die alte Garde weiss von nichts mehr,” *Schwäbische Donau-Zeitung* (5 June 1958).

<sup>84</sup> “Zwischenfall im Ulmer Prozess,” *Stuttgarter Zeitung* (4 June 1958).

<sup>85</sup> “Erweiternder Bericht,” *Stuttgarter Nachrichten* (7 June 1958).

<sup>86</sup> “Die alte Garde weiss von nichts mehr,” *Schwäbische Donau-Zeitung* (5 June 1958); “...aus rassistischen Gründen erschossen,” *Schwäbische Donau-Zeitung* (7 June 1958).

<sup>87</sup> “Die alte Garde weiss von nichts mehr,” *Schwäbische Donau-Zeitung* (5 June 58).



too cowardly.”<sup>88</sup> Because of the self-serving testimony many offered, their statements had a mixed impact on the trial. In the short run, they were able to land serious blows against Fischer-Schweder and Schmidt-Hammer. But in the long run, by backing away from their own authority and professing ignorance on key points, they undermined the credibility of not only themselves, but subsequent civil servants who would testify.

This pattern of witnesses offering highly selective testimony continued as the prosecution began to call various members of Stapo and SD Tilsit to testify. They offered similar indictments of the defendants, but took pains to distance themselves from any crimes lest they should end up among them. On June 10, the court took action. “Finally,” the local Ulm paper wrote, “someone has been caught in the Ulm courtroom.”<sup>89</sup> That day, Adolf Glowienka, a former SD Tilsit employee, had “astonishingly” testified not even to have known of the shootings. Apparently unbeknownst to him, another witness had testified several days earlier that Glowienka had not only attended but participated in the murder of women and children under Hersmann. Following his highly unbelievable testimony, Wetzel stated, “You have the right to keep your statements to yourself, but you do not have the right to lie to me.”<sup>90</sup> Glowienka was promptly arrested for perjury, the first such incident during the trial but not the last. By arresting Glowienka, a strong message went out to those taking the stand that the court had the capacity and the resolve to uphold the integrity of the proceedings. Those who may have hoped to slip through the cracks as one of nearly two hundred witnesses would now have to rethink their testimonies.

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<sup>88</sup> “Ich war zu feige,” *Stuttgarter Nachrichten* (28 June 1958).

<sup>89</sup> “Einer hat den Bogen überspannt,” *Schwäbische Donau-Zeitung* (11 June 1958).

<sup>90</sup> “Zeugen'-Verhaltung in Ulm,” *Stuttgarter Zeitung* (11 June 1958).

The most sensational incident of the trial involved another such arrest, and this saga began to unfold the day after Glowienka's testimony, when two other Stapo Tilsit members testified. In recounting what they recalled about the shootings, both men heavily implicated their former colleague Artur Gennat, who had worked in Kreuzmann's division at the Jewish affairs desk and was currently a detective in Mainz. They testified that Gennat had carried out Böhme's orders to "liquidate" Jewish women and children and alleged that he beat Polish laborers with a bullwhip during "aggressive interrogations."<sup>91</sup> Such testimony came as a surprise to the prosecution. Gennat was already scheduled to take the stand two days later, but the investigation had earlier found little reason to suspect Gennat of direct involvement in Einsatzkommando Tilsit. Since his first interrogation in December 1956, Gennat had claimed repeatedly to know nothing about any shootings. When detectives told him his claims were "unbelievable," Gennat countered, "If such shootings actually were carried out, which I personally doubt, they could only have been undertaken by members of the border police."<sup>92</sup>

When he testified on June 12 at the Ulm trial, Gennat again insisted that he had played no role in any killings, or even had any knowledge of these actions. Asked to explain why the other witnesses had suggested his deep involvement in the crimes, he asserted that they had him confused with someone else.<sup>93</sup> Given his current employment as a detective, the prosecution did not want to move against him prematurely and agreed to call all three witnesses back to testify on July 4.

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<sup>91</sup> "Zeuge mit geladener Waffe vor Gericht," *Stuttgarter Nachrichten* (5 July 1958).

<sup>92</sup> Statement by Artur Gennat (Alzey, 17 December 1956), EL 322/II, Bü 7, SL.

<sup>93</sup> "Zeuge mit geladener Waffe vor Gericht," *Stuttgarter Nachrichten* (5 July 58).

On the night of July 3, Gennat paid a visit to the other two in an effort to get them to change their statements.<sup>94</sup> He began by offering to host them at his home in Mainz for a few days, an appeal to their camaraderie. When the men refused to perjure themselves, Gennat showed them his badge and his service pistol as a clear threat. The men left Gennat that evening fearing what he might do. When they entered the courtroom the following day, one warned a police officer that Gennat might be armed.<sup>95</sup> He was. Arrested and still called to testify, Gennat again professed his innocence and claimed he carried the weapon only because he was accustomed to doing so as a police officer. Wetzel, in disbelief, said, “You are probably the only witness who has ever appeared before me armed with a pistol.”<sup>96</sup>

On some level, Gennat knew that his efforts were a mark of desperation. Before he left Mainz for his second round of testimony, Gennat prepared a letter for his wife and hid it in a kitchen cabinet with instructions for “what you should do in the event that I should suddenly die.”<sup>97</sup> After his arrest in the Ulm courtroom, Gennat was taken down to the Ulm jail. On the evening of his second night in jail, he prepared another letter. It began by lashing out defiantly at the two men who “lied under oath,” stating that they “have me on their consciences.”<sup>98</sup> He insisted that he had “nothing to do” with the Einsatzkommando Tilsit murders. He ended his letter with a final goodbye to his wife and children, telling them,

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<sup>94</sup> Saup to Generalstaatsanwalt Stuttgart, Justizministerium Baden-Württemberg, and Innenministerium Rheinland-Pfalz (4 July 1958), EL 302 I, Bü 305, SL.

<sup>95</sup> Statement by Adolf Hess (Ulm, 4 July 1958), EL 302 I, Bü 305, SL.

<sup>96</sup> “Kriminalbeamter im ‘Einsatzkommando-Prozess’ festgenommen,” *Schwäbische Donau-Zeitung* (5 July 1958).

<sup>97</sup> Arthur Gennat to wife (6/7 July 1958), EL 322/II, Bü 17, SL.

<sup>98</sup> Abschiedsbrief des Arthur Gennat (undated), EL 322/II, Bü 17, SL.

“With your pictures in my hand, I take leave of you.” Gennat then took what a coroner later declared “multiple deadly doses” of poison and killed himself in his jail cell.<sup>99</sup>

Gennat’s suicide scandalized the trial. The judiciary immediately tried to determine how it had been possible for him to obtain or smuggle the poison in jail, never successfully finding the answer.<sup>100</sup> The press jumped on the incident, which found coverage in all the major West German dailies. A week later, the court learned that another witness, Willi Artschwager, who had earlier testified, had also committed suicide.<sup>101</sup>

These incidents dominated several weeks of the trial’s coverage in the media in part because that period lacked any clear alternative theme for the press to latch onto. From mid-June into early July, the prosecution had been calling a dizzying assortment of witnesses to take the stand. Several more former members of the various police units stationed along the Lithuanian border took the stand, in some instances severely implicating defendants. Other witnesses were less effective. A range of priests and Lithuanian civilians testified, which provided a general sense of the conditions there during the early days of war, but offered little by way of first-hand accounts or precise information that could help the judges and jury determine a verdict. Without a certain direction, the trial left the media searching for a compelling narrative. Headlines during these weeks frequently spoke of massive crimes and horrific events, but these often involved units and areas that had no direct relation to the Einsatzkommando Tilsit murders. The press wanted headlines, and if Schüle’s witnesses could not provide them, then Gennat and other sensational events would have to suffice.

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<sup>99</sup> Prof. Dr. H. Klein, Institut für gerichtliche Medizin der Universität Heidelberg to Staatsanwaltschaft Ulm (9 July 1958), EA 4/412, Bü 1, HS.

<sup>100</sup> Einstellung des Verfahrens, Staatsanwaltschaft Ulm (18 November 1958), EL 302 I, Bü 305, SL.

<sup>101</sup> “Wieder Selbstmord eines Zeugen,” *Schwäbische Donau-Zeitung* (10 July 1958).

## **The Prosecution Builds and Rests**

Though Schüle's prosecution had encountered unexpected setbacks, as many witnesses recanted earlier statements or professed ignorance on key points, he had saved his star witnesses and explosive investigation results for a final two weeks of prosecution. On seven court dates from July 8 to July 18, Schüle marshaled before the court an array of witnesses and sources, each providing a different account of the Holocaust in Eastern Europe and Einsatzkommando Tilsit's role therein. These sessions, though few in number, showcased the fruits of his investigation into the Einsatzkommando crime complex. The case would be won or lost on the strength of these seven days.

On July 8, Erich von dem Bach-Zelewski testified. Bach-Zelewski had been an SS general (SS-Gruppenführer), which made him the highest ranking official to testify during the trial. Able to avoid prosecution at Nuremberg by agreeing to testify against the other defendants, Bach-Zelewski now offered damning statements in the Ulm trial. At the outbreak of war with the Soviet Union, he had been the officer in charge of Silesia, played a pivotal role in the origins of the Auschwitz death camp, and as a result had intimate knowledge of the origins of the Final Solution. He described what one newspaper termed "a kind of apotheosis of Nazi racial politics," when he told the court about October 1941 orders that came from Hitler's desk calling for the murder of Eastern European Jewry.<sup>102</sup> He described an interaction with Himmler in Minsk at that time, when Himmler personally observed the mass executions of thousands of Jews. After, Himmler remarked, "No, that won't do. That's not possible. We must find more humane methods for mass murder." "That," Bach-Zelewski

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<sup>102</sup> "'Musterexekutionen' für Heinrich Himmler," *Schwäbische Donau-Zeitung* (9 July 1958).

informed the court, “was the hour of birth for the gassing of Jews.”<sup>103</sup> The defendants had made pains to state that their actions were not part of the Final Solution, but Bach-Zelewski’s testimony defined these mass executions as a crucial step on the road to Auschwitz.

Two days later, Schüle provided a counterpoint to Bach-Zelewski’s high-level assessment by calling two other key witnesses. First, Josef Warscher, the head of the Stuttgart-based Israelitische Kultusvereinigung, took the stand. Warscher had spearheaded the far-reaching campaign involving agencies in Great Britain, the United States, France, and Israel in an effort to locate Jewish survivors from the Memel area. As he stated in court, “Jews were so thoroughly destroyed in these areas that hardly any survivors remain.”<sup>104</sup> In his testimony, Warscher stood in for all those Jews killed by Einsatzkommando Tilsit. His inability to locate any survivors – and the consequent absence of survivors’ voices during the trial itself – became an indication of how extensively the defendants had carried out their genocidal mission in 1941. The only reason no Jewish survivors testified was because Einsatzkommando Tilsit had ensured that there were none.

Important as Warscher’s testimony was, the shocking statements of Ona Rudaitis immediately overshadowed it later that day. Rudaitis, a sixty-seven year old Lithuanian nurse, had first come to Schüle’s attention in spring 1957 as a result of his extensive combing of refugee camps for Lithuanians from the Memel region.<sup>105</sup> She had lived in Wirballen, one of the many towns that had its Jewish inhabitants killed by Einsatzkommando Tilsit. She described first the arrest of the Jews of Wirballen approximately a week after the war began,

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<sup>103</sup> “Die Geburtsstunde der Gaskammern,” *Stuttgarter Nachrichten* (9 July 1958).

<sup>104</sup> “Endlich kam die Wahrheit an den Tag,” *Schwäbische Donau-Zeitung* (11 July 1958).

<sup>105</sup> Statement by Ona Rudaitis (Wehnen, 11 April 1957), EL 322/II, Bü 11, SL.

and how a German unit had appeared in town shortly thereafter and drove the male Jews off in three trucks to the edge of town. Rudaitis told the court that “you could hear the shots throughout the entire city” as the men were killed.<sup>106</sup> A few weeks later, Rudaitis was returning home early in the morning after a house call outside of town. In the distance was gunfire. Concealing herself behind a cow herd, she soon came across a long grave filled with the bodies of half-naked women and children. Among the victims, she recognized her Jewish neighbor. Retreating to the cover of the herd, Rudaitis hid for over an hour as the killers returned with more Jewish women and children. She testified that these were the same Germans who had earlier shot the Jewish men of Wirballen. She witnessed firsthand as women and children were forced to strip before being led out in groups to the mass grave, where they were immediately shot. The entire execution, she stated, lasted four hours and claimed two to three hundred victims.<sup>107</sup>

The press hailed Rudaitis’ testimony. She was the only civilian to testify throughout the entire trial with an eyewitness account of the executions. Her statements thereby presented an unimpeachable ground-level view of the horrors committed by Einsatzkommando Tilsit. The *Stuttgarter Zeitung* reported that Rudaitis’ testimony “left no one in the courtroom untouched.”<sup>108</sup> The *Schwäbische Donau-Zeitung* ran a photograph of Rudaitis, one of the only photos published from the trial in its pages, under the headline, “Finally the Truth Comes to Light.”<sup>109</sup> All the major national press covered her testimony.<sup>110</sup>

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<sup>106</sup> “Endlich kam die Wahrheit an den Tag,” *Schwäbische Donau-Zeitung* (11 July 1958).

<sup>107</sup> “Die einzige Augenzeugin im Ulmer Prozess,” *Stuttgarter Zeitung* (11 July 1958).

<sup>108</sup> “Die einzige Augenzeugin im Ulmer Prozess,” *Stuttgarter Zeitung* (11 July 1958).

<sup>109</sup> “Endlich kam die Wahrheit an den Tag,” *Schwäbische Donau-Zeitung* (11 July 1958).

Even though she had not been able to identify any of the defendants, her importance as an eyewitness cannot be overstated. The prosecution had already well established the way that these murders were carried out, the numbers killed, and other precise details. But until Rudaitis, they had not succeeded in putting a human face on the atrocities. When Rudaitis, an old woman, recounted seeing her neighbor lying dead in a mass grave and witnessing mothers shot alongside their children, she brought home to the courtroom and to the West German public the unbelievable inhumanity and cruelty that underpinned every moment of Einsatzkommando Tilsit's existence.

The damage to the defendants' case got more severe the following day, when Wilhelm Gerke testified during the entire session. Gerke had been a member of Einsatzkommando Tilsit, but had left West Germany for Sweden in the early 1950s. Even though Schüle had tried desperately to arrange his extradition so that he could join the other defendants in the docket, his effort had come too late, and only in late June was he finally arrested and deported to Ulm.<sup>111</sup> After detectives interrogated him for several weeks, Gerke finally took the stand on July 11. One report from the following day described Gerke's testimony as an "unexpected turn" that, as another news outlet reported, "possibly the prosecution itself didn't expect."<sup>112</sup> The *Schwäbische Donau-Zeitung* opened its coverage, "This was a day of triumph for the prosecution!"<sup>113</sup>

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<sup>110</sup> "Schüsse auf jüdische Frauen und Kinder," *Frankfurter Allgemeine Zeitung* (12 July 1958); "Massenerschießungen auf der Viehweide," *Süddeutsche Zeitung* (12/13 July 1958); "300 jüdische Frauen und Kinder erschossen," *Frankfurter Rundschau* (12 July 1958).

<sup>111</sup> Statement by Wilhelm Gerke (Stuttgart, 20 June 1958), EL 322/II, Bü 21, SL.

<sup>112</sup> "Kinder durch Genickschüsse umgebracht," *Stuttgarter Zeitung* (12 July 1958); "Ein schwarzer Tag für die Gestapo," *Schwäbische Donau-Zeitung* (12 July 1958).

<sup>113</sup> "Ein schwarzer Tag für die Gestapo," *Schwäbische Donau-Zeitung* (12 July 1958).



The cause of this celebration was Gerke's apparent breakdown on the stand. In tears throughout his testimony, Gerke opened by stating, "I don't want to dodge questions. I don't want to save myself, nor do I want to save any of the others...I want to answer all the questions truthfully."<sup>114</sup> Unlike any of the defendants, Gerke admitted to having played an instrumental role in the majority of Einsatzkommando Tilsit executions. His indictments of the defendants, therefore, proved far more credible because he harmed his own case in the process. He recalled with specificity that Kreuzmann had been present at the first murder in Garsden, a charge Kreuzmann had been denying throughout the trial. He described Böhme calling for a house-by-house search for additional Jews in Georgenburg. And, sobbing, he told the court how he and Harms had carried out Böhme's orders to murder Jewish women and children in Heydekrug.

On this exceptional moment during the trial, Gerke as a clear Nazi criminal did what none of the defendants had been willing to do since the end of the war: he told the truth. It meant that he would now face investigation and prosecution for his role in these crimes, but it afforded the courtroom and the media a brief moment of catharsis. Part of this trial was about educating the public on what had transpired in the far reaches of the Nazi state, but a crucial aim for the prosecution and judges throughout was to get the defendants to speak honestly about what had transpired in 1941. Every time that Böhme took the stand and claimed not to remember, every time that Fischer-Schweder insisted that the victims were partisans, every time that Hersmann said he was only following orders – all these incidents robbed the court, the victims' families, and the West German public of a possible moment when the criminal would confront his crime. To refuse to confess to what was so obviously

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<sup>114</sup> "Ein schwarzer Tag für die Gestapo," *Schwäbische Donau-Zeitung* (12 July 1958).

true rendered any such reconciliation impossible. The ecstatic response of the media to Gerke's confession demonstrated how badly the public wanted similar honesty from the defendants and how routinely this had been denied.

The trial resumed after the weekend on July 15, when Schüle began a two-day presentation of historical documentation in court. These records ranged from influential speeches by Nazi leaders to operation reports from various military units. The documents that resonated most widely in the trial were the Ereignismeldungen and the Stahlecker report. The Ereignismeldungen provided detailed numbers of those killed by Einsatzkommando Tilsit in various towns over the course of the summer in 1941. They had surfaced earlier during the trial, at which point the local Ulm paper published a photocopy of one of the reports under the headline "Ledger of Death."<sup>115</sup> Schüle circled back to the records now in order to emphasize how meticulously organized these murders were. The Ereignismeldungen also formed a backdrop to the explosive Stahlecker report. Officially the "Full Report of Einsatzgruppe A through October 15, 1941," this was Stahlecker's summary of all Einsatzgruppe A's actions during the first four months of the war. In all, Stahlecker reported that 136,567 persons were murdered chiefly in the Baltic areas under his control. Of these, 131,432 were Jews, and 80,311 were Lithuanian Jews. Included within the report was also a figure now familiar to anyone following the trial: Einsatzkommando Tilsit had murdered 5,502 people during these four months.

The final phase of the prosecution began on the afternoon of July 17 with the testimony of several expert witnesses. First on the stand was Rabbi Bloch, who was president of the Israelitische Kultusvereinigung. Bloch himself was from western Lithuania and one of

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<sup>115</sup> "Die Buchhaltung des Todes," *Schwäbische Donau-Zeitung* (27 June 1958).

the few survivors of the Holocaust from that area. Since the end of the war, he had worked on a study of the Lithuanian Holocaust, which he described for the court. He stated, “All comparable studies have shown that in no other occupied area was the destruction [of Jews] so extensively and thoroughly carried out as it was in Lithuania.”<sup>116</sup> He discussed how male Jews were killed first during the initial months of war, and by the late summer women and children became targets. This testimony, as well as the previously presented documents, linked the defendants’ actions to the evolution of the Holocaust in Lithuania. What they did mirrored massacres throughout Lithuania occurring at the same time, and in all instances, the targets were primarily Jews.

Finally, the historians Hans-Günther Seraphim and Helmut Krausnick testified on July 18. Seraphim, a professor at the University of Göttingen, was tasked with taking on the defendants’ recurrent claims of the Befehlsnotstand, which posited that not carrying out orders would have risked death or physical harm. Seraphim laid out a systematic critique of this position, as he stated that in his “more than ten years of research,” he had never once found record of any incident when an officer faced physical harm for refusing to participate in an execution.<sup>117</sup> Krausnick testified in the afternoon on the evolution of Jewish policy in the Nazi state. The leader of the Institut für Zeitgeschichte in Munich began his testimony by describing the discriminatory laws passed beginning in 1933. He detailed the escalation of these laws into genocide through a careful analysis of the years 1939-1942.

In the wake of the expert testimony, the trial adjourned for the following week. When it reconvened, several final witnesses who had been unable to make their initial trial date

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<sup>116</sup> “Litauen am schwersten betroffen,” *Schwäbische Donau-Zeitung* (18 July 1958).

<sup>117</sup> “Massenmord als ‘der Elite gemässe Bewahrung...’” *Schwäbische Donau-Zeitung* (18 July 1958).

appeared, but for the prosecution the trial had already reached its apogee. During the two weeks from Bach-Zelewski's testimony to Seraphim and Krausnick's analysis, Schüle had succeeded in framing the criminality of the defendants from as many angles as possible. Bach-Zelewski had provided a high-level account of the Holocaust, Rudaitis gave a ground-level view of its horrors, and Gerke spoke personally to the role the defendants played in these acts. Schüle also worked in historical documentation. If the jury might be reluctant to trust the memories of the witnesses, they now had the defendants' own reports of the murders to consider. Finally, Schüle provided a range of expert opinions that examined the Holocaust in Lithuania, the legal repercussions of following orders, and the evolution of the Final Solution. Throughout the trial, the defendants had tried to seek refuge from certain allegations by making claims about the identity of the victims or the need to follow orders. After these two trial weeks, however, the defendants became suspended in a web with little hope of escape. The jury now knew what had happened, what it had looked like, what the context for these crimes was, and above all what role the perpetrators had played in carrying out the Holocaust in Lithuania.

Moreover, these seven days of testimony showcased Schüle's new approach to the investigation. The first two months of the trial, which had focused almost exclusively on the defendants' statements and those of other civil servants, had resembled the approach taken by the Ulm prosecutors during the first year of the Fischer-Schweder investigation. As the press had concluded, this resulted in an unsatisfying and deeply contradictory version of events. By contrast, in seven days Schüle presented a much smaller group of witnesses and evidence, but each was so powerful and presented such a unique evaluation of the crimes that it erased many doubts from the previous months of trial. In Bach-Zelewski, Schüle demonstrated the

importance of looking at Nazi elite outside the German-Lithuanian border; in Warscher, the role of Jewish voices; in Rudaitis, the value of civilian testimony; in Gerke, the need to look beyond German borders to find important witnesses; in the expert witnesses, the authority of academic research; and in the presentation of documentation, the role of original sources from the Nazi period. These seven days therefore represented not just the climax of the prosecution but the concentrated essence of the crime complex investigation strategy.

Schüle began his closing argument on August 1. His extensive speech lasted until the late afternoon of the following day. At times, Ulm prosecutor Schneider took over so Schüle could rest. At a minimum, the prosecution had to clarify the charges for ten different individuals. Each was being tried for particular incidents, and now the prosecutors had to recapitulate each crime and each defendant's role therein. But Schüle also decided to frame these narrow legal arguments within a nuanced, broad commentary on the nature of the Nazi state and the work left to do for West Germany to truly come to terms with its past. By now, the tenor of many of these statements will be familiar to the reader, but it is important to consider what Schüle hoped to achieve through these words. A private man, Schüle gave few interviews; his closing statements are therefore one of few windows that open onto the mind of this pioneer in Nazi crimes investigations.

The core of Schüle's argument, and the line picked up the most by the media, was his assertion, "We all have a guilty conscience when we think back to the evil of those times... If we're honest with ourselves, we all judge ourselves harshly and have to agree with the witness Hartl: back then, we were all too cowardly."<sup>118</sup> As he explained, this guilty conscience was not because most Germans identified with the Nazi cause, but because they

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<sup>118</sup> "Kein politischer Prozess," *Schwäbische Donau-Zeitung* (2 August 1958).

had allowed fear of the SS and the Hitler dictatorship to cow them into submission. They had failed to act in accordance to their morals. As a member of the SA himself, Schüle likely knew well the horrors inflicted in the name of Nazism. While Schüle acknowledged that Germans should have done more to stop Hitler, he stopped short of admitting the role that Germans played in bringing him to power in the first place. Thus his argument fell back onto a comforting postwar notion of Germans as passive receptors of the dictatorship and not its active creators. Their mistake was doing nothing.

In Schüle's mind, the importance of this postwar moment was to do now what they should have done then. If they had been too cowardly before, now was their chance to make up for those years of indecision and to speak out against the SS and the Gestapo. For twelve years, Germans sat in silence under Hitler, and for the thirteen years after, West Germans pursued policies of silence towards that era. Better to reintegrate, grant amnesty to, and ignore the crimes of many Nazis than to explore seriously how these crimes had happened. Schüle was trying to rouse West Germans from this complacency. Now was an opportunity for West Germans to disavow all crimes done in the name of Nazi Germany and to ensure that the passivity of one era did not cross into the next. He urged the court not to make the same mistake twice, first by allowing these crimes to happen and second by allowing its perpetrators to escape justice. Through a conviction, West Germans could reaffirm their commitment to the principles of democracy and justice. As he stated, "This trial has been accused of being unjust as a political trial. I must once more intone: no one is standing here before the court because he was a Nazi, but nevertheless this trial bears political meaning. It

shows that the only basis for a government is justice. If this foundation is abandoned, then the end result is lies, arbitrariness, and murder.”<sup>119</sup>

During the second day of his closing statement, Schüle recommended sentences for all ten. For four of the defendants – Fischer-Schweder, Böhme, Hersmann, and Lukys – Schüle asked for convictions of murder and demanded life sentences. The first three had been charged with murder since the trial started, while testimony during the trial led Schüle to add the charge of murder to Lukys’ sentence. As Schüle explained, these four had been “masters of life and death,” who had carried out the murders “of their own volition.”<sup>120</sup> The other six defendants were all accused of accessory to murder because some questions about their leadership role in the executions remained unclear. Schüle also reaffirmed that none of these men could claim to have just followed orders. He stated, “Even in the Third Reich, the taking of human life without a court order was a crime, just as it is today.” Moreover, all defendants had been active at the time of the crimes in law enforcement. They knew which orders had to be followed and which contravened the law. In choosing to engage in mass murder, all defendants had knowingly violated the law.

Schüle concluded his arguments with a reflection on the crimes. He asked the jury to think not only on the defendants who committed these acts, but on the thousands of victims who died as a result. Because no survivors had been found to testify, too often during the trial it had been possible to lose sight of the victims. This was not just a trial about what Germans had done; it was a trial about what Jews had been made to suffer. Thus Schüle concluded with the statement, “The victims were people who laughed, cried, loved, and worked, just

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<sup>119</sup> “Kein politischer Prozess,” *Schwäbische Donau-Zeitung* (2 August 1958).

<sup>120</sup> “Staatsanwälte fordern exemplarische Strafen,” *Schwäbische Donau-Zeitung* (4 August 1958).

like you and I – and just like the defendants themselves!...For seventeen years, the sun has not shined for them anymore, and the victims have not even been allowed the peace of a grave. Their graves were later ripped open, the bodies burned, and the ashes strewn in the wind to hide the traces of the atrocities!” When he finished, the press reported, the courtroom “was still like a church...one could hear a pin drop.”<sup>121</sup> The prosecution rested.

### **Defending the Accused**

After an eight-day pause, the trial resumed on August 11 when the defense attorneys began their closing statements. Throughout the proceedings, they had faced a difficult challenge in defending men who had participated in such horrific crimes. Many of the ten attorneys were state-appointed to the case and showed little overt interest in taking on such an unpleasant and daunting task as representing Nazi war criminals. Nevertheless, in the interest of fulfilling a vital duty in the machinery of justice, they took up the cases and attempted to find ways to interrupt or otherwise disrupt the prosecutor’s momentum in establishing the defendants’ guilt. For most of the trial, this consisted of questioning the motives or statements of certain witnesses, trying to prevent others from testifying, and offering several of their own to speak to the ostensible decency of their clients. In mounting the defenses, all ten defendants pled not guilty to the charges, and it was now the challenge of the defense attorneys to make this case in their closing arguments.

The only defense attorney with experience in Nazi crimes prosecutions was the man who had made his career defending Nazis in court: Rudolf Aschenauer. Hersmann’s attorney had left a deep imprint on the trial. Many of the other attorneys deferred to his experience

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<sup>121</sup> “Staatsanwälte fordern exemplarische Strafen,” *Schwäbische Donau-Zeitung* (4 August 1958).



and presumptive expertise in crafting their own strategies. At a certain point during the proceedings, he actually proposed taking the stand himself as an expert witness, citing his experience with and knowledge of the Nuremberg trial records.<sup>122</sup> The court rejected the idea.<sup>123</sup> But when it came time for the closing statements, the other attorneys allowed Aschenauer to speak first, presenting him with an opportunity to establish the framework for all of their statements.

“Once more a trial comes to an end,” Aschenauer began his day-long statement, “a trial with political background that concerns the most terrible and unbelievable acts of the history of the Nazi regime against people whose only mistake was being Jewish.”<sup>124</sup> From the outset, he thereby firmly established the Einsatzkommando Tilsit actions within the context of the Holocaust, a point that many of the defendants had rejected. For Aschenauer, admitting the connection between Tilsit and Auschwitz became the starting point for defending Hersmann. In his discussion of the “phenomenon of the Final Solution,” he first described the cumulative effects of centuries of anti-Semitism on the German population. Multiplied by propaganda, communism, and strident nationalism, this “doctrine” of anti-Semitism culminated in the belief that “Bolshevism was a Jewish invention. Bolshevism supposedly served to implement a Jewish plan for global domination.” Second, Aschenauer detailed that, under Hitler’s dictatorship, “the Führer was always right.” His word carried the force of law, and any action defying Hitler’s orders thereby constituted an illegal action. Throughout, he peppered his speech with references to historical documents and prominent

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<sup>122</sup> Beweis Antrag Schmid, et al (14 June 1958), EL 322/II, Bü 17, SL.

<sup>123</sup> Beschluss vom 20.6.1958 (Landgericht Ulm), EL 322/II, Bü 17, SL.

<sup>124</sup> Rudolf Aschenauer, Plädoyer, EL 322/II, Bü 117, SL.

academics. He depicted the Holocaust as the cresting of an unstoppable wave, a culmination of long-term historical prejudices unleashed by the irrepressible will of a dictator. As Aschenauer stated, “In this context, high court, it is right for you to evaluate how responsible the defendants were and how widely they had freedom of action in these crimes.”<sup>125</sup>

Beneath this grand historical posturing, Aschenauer’s defense rested on the well-worn claim of the *Befehlsnotstand*, as he insisted that Hersmann would have risked his own life had he refused orders. Although the prosecution had devoted extensive efforts to debunk this widespread argument, Aschenauer did not cede the point. He referenced Field Marshal von Leeb’s postwar claims to have been bound by oath to Hitler’s orders and asked, “Does anyone believe that the ‘Führer order’ that Stahlecker communicated to Böhme and Hersmann was any less binding for them as it was for generals and field marshals? They held the rank of major.” Service to the state permitted no deviation from Hitler’s orders, so any action that challenged one’s moral beliefs necessarily created a “dilemma” (*Zwangslage*): act legally or act morally, knowing that the latter course might lead to punishment.<sup>126</sup>

His statements ended in a complicated critique of West German justice and its strict definition of murder. He stated, “There can be no doubt that the crimes that took place on the basis of the so-called ‘Führer execution order’ in a 25-km stretch of the Memel border meet the legal requirements of murder.” These crimes had clearly originated from base, racial motives, but their progenitors were the Nazi elite. Hitler, Himmler, and other elites may have willed these murders for racist motives, but that does not mean Hersmann and the others carried out the orders with the same malice. “There is no dual area of morality,” he stated,

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<sup>125</sup> Rudolf Aschenauer, *Plädoyer*, EL 322/II, Bü 117, SL.

<sup>126</sup> Rudolf Aschenauer, *Plädoyer*, EL 322/II, Bü 117, SL.

“that can distinguish between active participation and knowing acceptance.” If the court was to make a judgment about the defendants’ mental states at the time of the killings, it was engaging in a fool’s errand. These men had carried out horrible actions, but they were not the parties chiefly responsible. “If you convict,” Aschenauer concluded, “remember that before you stands only those who carried out what others, who are again honored and esteemed today, had carried out from their desks. Before you stand only the most easily identifiable perpetrators. What we cannot permit is a dual system of justice and a dual morality!”<sup>127</sup>

Aschenauer’s closing statement rebranded Hersmann and indeed the entire events of the Holocaust. Where Schüle had suggested that the Einsatzkommando Tilsit murders originated from a complex set of high-level planning and on-the-ground improvisational decision making, Aschenauer fell back on standard clichés of the Holocaust that played to West German sensibilities. These events had been organized at the top by Hitler, but they had come into being because of a long-running and deeply-seated anti-Semitism. Such a view took responsibility away not only from Hersmann but from all ordinary Germans who were powerless to stop this wave of history. Again, Aschenauer contrasted himself in this regard from Schüle, who had spoken about the “bad conscience” most Germans felt about their role in the Third Reich. Finally, by depicting Hersmann as just a mid-level officer forced to carry out orders, he suggested an imbalanced judicial system, which prosecuted the implementers of genocide but not its architects. Accepting such a view required a willful dismissal of the preceding months of testimony, which had shown Hersmann and others clearly taking on a decision-making role in the executions. But its strength rested on its portrayal of the Third Reich as a system imposed on Germans as well as other Europeans. Schüle had asked West

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<sup>127</sup> “Kein doppeltes Recht, keine doppelte Moral...” *Schwäbische Donau-Zeitung* (12 August 1958).

Germans to identify with the defendants as perpetrators; Aschenauer asked that they identify with the defendants as victims.

Over the next week, most attorneys followed at least two aspects of Aschenauer's argument. First, they minimized their clients' roles by casting them as inconsequential officers forced to carry out orders. Keller, Sakuth's attorney, stated, "In a press conference led by the prosecutor after the indictments were issued and when the trial was announced, the State Attorney General claimed that...so-called rank-and-file were certainly not indicted. This report is clearly incorrect."<sup>128</sup> Similarly, Heinz Schelbert argued, "The defendant Harms does not feel responsible for the events on the Lithuanian border because he only acted on orders."<sup>129</sup> Fischer-Schweder's and Schmidt-Hammer's attorneys both argued that their clients had acted only on the belief that they were protecting the state from partisans, not recognizing that they were actually being manipulated into committing genocidal acts organized by higher offices.<sup>130</sup> The logic of following orders became a common line of defense for the defendants.

Second, the attorneys raised questions about the legality and advisability of the postwar state in prosecuting these ten men. This second argument became more credible if the jury accepted the first. If these men were really just unwilling accomplices in the Nazi state, then the prosecution of them would appear all the more questionable. This argument also seized on the concept of *nulle crime, sine lege* – no crime without a law. Since these men had carried out actions considered, as they claimed, legal at the time committed, then the

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<sup>128</sup> Keller, Plädoyer, EL 322/II, Bü 118, SL.

<sup>129</sup> Schelbert, Plädoyer, EL 322/II, Bü 120, SL.

<sup>130</sup> Marcushen, Plädoyer, EL 322/II, Bü 115, SL; Nissen, Plädoyer, EL 322/II, Bü 116, SL.

West German court should not retroactively apply its own laws onto that era. Kreuzmann's attorney Claus Joachim von Heydebreck gave this argument contemporary punch when he stated, "In the event of a reunification of East and West in a freely democratic Germany, would we really place the occupants of the Soviet zone back before a court, if they had obeyed the law and followed orders, which we in democratic West Germany deemed criminal?"<sup>131</sup> He and others hoped to strike a note of discomfort by raising murky issues about the legality of these executions within the Nazi dictatorship and thereby the questionable ability of the court to prosecute the men under a different legal code.

Because of the strict definition of murder in West Germany, which emphasized the mental state of the criminal, personality also became central in several of the closing statements. On one end of the spectrum was Fischer-Schweder, who had earned a strikingly negative reputation through the trial. If the jury felt that Fischer-Schweder was a brash egomaniac who did as he pleased in court, then they might have no difficulty believing he had acted similarly along the Lithuanian border. His attorney Marcushen therefore asked the court to overlook his dictatorial demeanor. For nine pages – one-eighth of the entire closing statement – Marcushen defended his client's character. "You could say," Marcushen told the court, "that he's no average person. Just as he is in appearance – big, tall, and powerful – so too is he in personality, always moving, impulsive, explosive, highly energized, and constantly active." But, he cautioned, this should not lead to a "false verdict." Fischer-Schweder's "impulsive and animated disposition" speaks to the fact that he acts "more from

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<sup>131</sup> Heydebreck, Plädoyer, EL 322/II, Bü 119, SL.

emotion than from intellect.” Finally, he told the court, “If he is somewhat arrogant, that doesn’t necessarily mean he is a criminal.”<sup>132</sup>

On the other end of the spectrum, Schmidt-Hammer earned a good reputation throughout the proceedings, and his attorney sought to make the former lieutenant’s overall decency a part of his defense strategy. Next to Aschenauer, Rolf Nissen was likely the most accomplished of the defense attorneys. Though Schmidt-Hammer had few financial resources, his postwar employers were so taken with him that they provided financial assistance for his legal fees.<sup>133</sup> Many of the other attorneys were young and state-appointed, but Nissen was already into his fifties during the trial.<sup>134</sup> His strategy for Schmidt-Hammer sought to distance him from the other nine defendants. “Contrary to all the other defendants,” Nissen stated, “Schmidt-Hammer never joined the Gestapo, SS, SD, or indeed even the Nazi Party or its affiliates.” He continued, “None of the witnesses, none of the other defendants, not even the prosecutor has said even a negative word about Schmidt-Hammer’s personality. To the contrary, everyone has held him in the greatest esteem.”<sup>135</sup>

Additionally, Nissen invoked Schmidt-Hammer’s suffering at the end of the war and his reintegration in the 1950s. “Schmidt-Hammer suffered body and soul in a Yugoslavian POW camp. As a late returnee [*Spätheimkehrer*] he immediately helped dutifully and diligently in the overall reconstruction effort, created a new livelihood for his wife and his two young children, and worked his way up to a respectable position.” All of these factors underpinned Nissen’s conclusion that Schmidt-Hammer differed fundamentally from the

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<sup>132</sup> Marcushen, Plädoyer, EL 322/II, Bü 115, SL.

<sup>133</sup> Dr. G. Kühn, Carl-Zeiss-Stiftung, to Rolf Nissen (5.7.57), EL 322/II, Bü 14, SL.

<sup>134</sup> H Nissen, SU.

<sup>135</sup> Nissen, Plädoyer, EL 322/II, Bü 116, SL.

other defendants and the verdict should reflect this. He said, “The German public will not be able to understand if the verdict does not make a clear distinction between Schmidt-Hammer, who rejected Nazism and only found himself caught up in this fate through a tragic chain of events, and the other defendants.” By separating his client from the other accused, Nissen asked the court and the public to identify with Schmidt-Hammer as an ordinary German swept up by happenstance into a sea of Nazi barbarism.<sup>136</sup>

Just as Schmidt-Hammer’s attorney had done, many emphasized the suffering that their clients had incurred. As part of 1950s West German society, these perpetrators had grown accustomed to leveraging their own misfortunes into postwar advantages, and their attorneys tried to use these victimization narratives to the same effect in Ulm. Harms’ attorney implored the court, “Your honors, as you now make your judgment about the defendant Harms, please consider that this sixty-five year old man, who lost two sons in the war, has already suffered greatly, that a wife and family wait for him, and that his own life expectancy numbers in the months.”<sup>137</sup> Sakuth’s attorney echoed these sentiments: “Should he now also be stamped as a murderer, as a perfect monster, who deliberately opted for the crime? The phrasing of the verdict alone has significance in this regard. By convicting him as a murderer, you will destroy all piety and esteem his children have for their own father. Should that really be the experience of these proceedings for Sakuth? I can’t imagine.”<sup>138</sup>

Such victimization language served two main purposes. It encouraged the jury and the public to empathize with the defendants. Furthermore, it created an equivalency between

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<sup>136</sup> Nissen, Plädoyer, EL 322/II, Bü 116, SL.

<sup>137</sup> Schelbert, Plädoyer, EL 322/II, Bü 120, SL.

<sup>138</sup> Keller, Plädoyer, EL 322/II, Bü 118, SL.

the crimes committed and the punishment already served. The defense attorneys put forward the idea that suffering abounded during and after the war. The defendants may have inflicted some, but so too had they incurred it. Better to close the book on this era than to continue to perpetuate the cycle of suffering. The undercurrent of all these narratives of suffering was thus the lingering question Schüle had raised in his closing statement: is this trial necessary? While he clearly answered in the affirmative, the defense attorneys sowed the courtroom with seeds of doubt, insisting that there was little to be gained and much to be lost by a West Germany eagerly prosecuting its own.

The most direct and remarkable expression of this position came from Kreuzmann's attorney, von Heydebreck. He began his closing statement by claiming the trial raised "not only legal problems, but also psychological, historical, and political questions."<sup>139</sup> After addressing the legal problems mentioned earlier, he moved on to a reflection on the inherent role that human memory and forgetting played in the trial, and how errors of human memory fundamentally undercut the trial's legitimacy. Referencing a mistake from Detective Opferkuch's earlier testimony, von Heydebreck stated:

Even an experienced detective was of the opinion after just seventeen months that he had been present at an interrogation of Böhme, when in reality he learned of the inquisitor judge's interrogation only through an intense reading of the file. How much greater, then, is the danger that the accused and witnesses can no longer distinguish between what they experienced seventeen years ago and what they have since learned of through conversations and through questions put to them during numerous interrogations?

The argument took on a metaphysical dimension when he began to challenge the memory of the court itself. With no audio or written record of the trial, would the jury and judges be able

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<sup>139</sup> Heydebreck, Plädoyer, EL 322/II, Bü 119, SL.



to recall all that had happened in the past four months based solely on their notes? The record would never be complete, and in the absence of precision, no conviction was possible.<sup>140</sup>

The French thinker Ernest Renan famously stated, “Forgetting, I would even go so far as to say historical error, is a crucial factor in the creation of the nation.”<sup>141</sup> Though Heydebreck did not quote the nineteenth-century philosopher, this argument ran through his closing words and indeed just below the surface of many of the defense attorneys’ statements. Forgetting, in Heydebreck’s view, was not only inevitable, but necessary. For West Germany to move forward, it could not continue to linger on and litigate the past. Instead, learn from those mistakes and prevent them in the future. As he concluded, “We can only heal the wounds of the past if we preserve peace and freedom in the world. But for this, we need to keep looking to the future and not continue to look today for more people guilty of the crimes of the past.” A return of memory, he cautioned, would doom the nascent state.<sup>142</sup> Such a view may have been articulated simply as a desperate attempt to avoid his client’s conviction, but it was also closely calibrated to match the fears of many West Germans and indeed the current political philosophy of Chancellor Adenauer.

## **Verdict in Ulm**

The court adjourned on August 18 and returned eleven days later on August 29 for the reading of the verdict. The final judgment came to a length of 503 pages, a momentous

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<sup>140</sup> Heydebreck, Plädoyer, EL 322/II, Bü 119, SL.

<sup>141</sup> Ernest Renan, quoted in Tony Judt, *Postwar: A History of Europe Since 1945* (New York: Penguin, 2006), 803.

<sup>142</sup> Heydebreck, Plädoyer, EL 322/II, Bü 119, SL.

and singular document coming out of West German Nazi crimes trials.<sup>143</sup> Typically, verdicts included only a brief summary of the charges against each defendant, the verdict, and a legal explanation for the verdict. Hersmann's earlier conviction by a Traunstein court in 1950 for the murder of German civilians at the end of the war, for example, produced only a four-page verdict. The length of the judgment alone testified to the unusual contours of this trial.

The size of the judgment reflected its scope. Rather than focusing solely on the ten defendants, the judges who wrote the verdict, chiefly the assistant judge Fink, shared the conviction of the prosecution that any decision could only come out of a consideration of the full scope of the Final Solution in Eastern Europe. Thus, the verdict contained a sweeping history of the Third Reich, detailing how that state arrived at a policy of genocide. Within this broad history, the role of Einsatzkommando Tilsit was singled out. Its origins were explained in great detail. The anatomy of the various state police units – Stapostelle Tilsit, SD Tilsit, and the Memel Schutzpolizei chief among them – provided a clear view of the hierarchy of power along the German-Lithuanian border. Twenty-two distinct massacres were reconstructed on the basis of testimony and documentation presented in court. The first crime, the Garsden shooting, was analyzed in particular detail as the most thoroughly documented and therefore best example of how these crimes unfolded. The twenty-two massacres were then subjected to rigorous legal analysis, looking at issues such as the provenance of orders, the identity of the victims, the purported legality of the shootings, and the role of each defendant in these incidences.

In creating the historical judgment, Fink relied on notes during the trial but more significantly on the indictment Schüle had prepared in June 1957. That 212-page document

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<sup>143</sup> Urteil, EL 322/II, Bü 20, SL.

provided the organizational skeleton of the verdict. Fink was able to revisit sworn affidavits of defendants and witnesses that Schüle had referenced in the indictment in order to properly cite and quote individual statements. Footnotes and hundreds of citations throughout the judgment transformed it from a mere legal explanation for a verdict into a paramount history of the Holocaust in Lithuania. In its breadth, scope, and precision, the judgment in Ulm immediately became one of the foremost historical accounts of these events. Even today, the verdict remains a preeminent source for the history of Einsatzkommando Tilsit.

In the courtroom on August 29, Judge Wetzel read out the verdict. The final version took several additional weeks to finalize, but Judge Wetzel's six-hour reading of the verdict established its core principles and precedents. The press crowded the courtroom that day. Though national media outlets had shown consistent but hardly enthusiastic interest throughout the trial, all were eager to learn its outcome. The largest Nazi crimes trial in West German history was now at its end, and its verdict could have serious repercussions for subsequent investigations. Even a photographer from the Deutsche Film AG, an East German news agency, was on hand to document the verdict. Perhaps in response to the communist presence in the courtroom, Wetzel began with reference to the "clearly emerging parallels" between the Nazi and Soviet states. The former regime, he cautioned, ought to serve as a reminder to the latter of what could happen when states "strive after absolute power."<sup>144</sup>

Before announcing the verdict, Wetzel provided the court and the media with some perspective on his aims during the deliberation and throughout the trial. From the start of the trial, he stated, his goal was to prevent the case from veering off course "because a spectacle and a search for truth never go hand-in-hand." The search for truth, however, was made

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<sup>144</sup> "Sühne für tausendfachen Mord," *Schwäbische Donau-Zeitung* (30 August 1958).

difficult throughout the trial because of the unreliability of both the defendants and those witnesses who were also implicated in the Tilsit crimes. “The experience,” Wetzel declared, “was that untruthfulness had triumphed in the courtroom as never before.” Just as the press had worried through the first months of the trial, the self-serving testimony of many witnesses and the defendants had made the road to a conviction quite difficult. Only through “the course of many court sessions and difficult debates” had the judges and jury been able to seek out the truth and “find and do what’s right.” They had arrived at a verdict by pushing aside emotions and focusing on what had been proven in the court of law.<sup>145</sup>

The key decision that the judges and jury made in their verdict came down to the following: “The court has determined that it was Hitler who gave the verbal orders [for the Final Solution] and that Himmler and Heydrich plotted and carried these out.”<sup>146</sup> Though condemning Hitler and his inner circle for the origins of the Holocaust might not seem a remarkable decision, this conclusion all but guaranteed that none of the defendants would be declared guilty of murder. Unless their actions had demonstrably transgressed these orders, the court had found that only Hitler and his inner circle were guilty of murder, just as Aschenauer had claimed in his closing statement. If the others had simply carried out orders arranged by higher offices, they could be convicted of accessory to murder at worst.

Having arrived at this conclusion, the court decided that all ten defendants were guilty of accessory to murder. The individual verdicts were as follows:

- Hans-Joachim Böhme convicted on 3,907 counts of accessory to murder; sentenced to fifteen years imprisonment and ten years loss of civil rights

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<sup>145</sup> “Sühne für tausendfachen Mord,” *Schwäbische Donau-Zeitung* (30 August 1958).

<sup>146</sup> “Sühne für tausendfachen Mord,” *Schwäbische Donau-Zeitung* (30 August 1958).

- Werner Hersmann convicted on 1,656 counts of accessory to murder; sentenced to fifteen years imprisonment and ten years loss of civil rights
- Bernhard Fischer-Schweder convicted on 526 counts of accessory to murder; sentenced to ten years imprisonment and seven years loss of civil rights
- Pranas Lukys convicted on 315 counts of accessory to murder; sentenced to seven years imprisonment and five years loss of civil rights
- Werner Kreuzmann convicted on 415 counts of accessory to murder; sentenced to five years imprisonment and four years loss of civil rights
- Harm Harms convicted on 526 counts of accessory to murder; sentenced to three years imprisonment and two years loss of civil rights
- Franz Behrendt convicted on 1,127 counts of accessory to murder; sentenced to five years and three months imprisonment and three years loss of civil rights
- Gerhard Carsten convicted on 423 counts of accessory to murder; sentenced to four years imprisonment and three years loss of civil rights
- Edwin Sakuth convicted on 526 counts of accessory to murder; sentenced to three years and six months imprisonment and two years loss of civil rights
- Werner Schmidt-Hammer convicted on 526 counts of accessory to murder; sentenced to three years imprisonment.<sup>147</sup>

This was a complicated verdict that left neither side of the aisle completely satisfied. For the defendants all of whom had pled not guilty, the convictions were of course a disappointment, but the sentences were a victory. None of the four accused of murder – Böhme, Hersmann, Fischer-Schweder, and Lukys – was convicted on those charges. Rather

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<sup>147</sup> Urteil, EL 322/II, Bü 20, SL.

than face the lifetime sentence Schüle had called for, they faced only seven to fifteen years. For the other six defendants, these sentences were far more lenient than what Schüle had requested. Only Schmidt-Hammer was sentenced along Schüle's recommendations, but his was the least severe of all ten sentences. The generous sentences suggested that the defense attorneys had successfully convinced the jury that the members of Einsatzkommando Tilsit were not chiefly responsible for that unit's actions. By ascribing full responsibility to Hitler's inner circle, the court found that these ten had indeed only followed orders.

The particular sentences also exposed holes in the prosecution's case. Although Böhme had been the leader of Einsatzkommando Tilsit for all 5,502 murders listed in the Stahlecker report, he was convicted on only 3,907 counts. Wetzel had expressed doubt throughout the trial about Böhme's claims that many executions were done independently by Lithuanian auxiliaries (though still attributed to Böhme in the documentation), but the jury felt that they did not have enough precise information to convict him of nearly 1,500 additional crimes. For similar reasons, the jury convicted many of the defendants on fewer counts than the prosecution had hoped. The details of the convictions and the basic finding about Hitler's ultimate responsibility thus suggest that the prosecution did not fully accomplish its task during the trial.

But the prosecution had succeeded on the most important point: the trial culminated in ten convictions. After three years of investigation and four months of trial, for the trial to end in acquittals would have devastated the judiciary and likely set back other investigations into Nazi crimes across West Germany. Moreover, during the late 1950s, acquittals remained prevalent. From 1950 to 1957, 46 percent of all Nazi crimes trials in West Germany had

resulted in acquittals.<sup>148</sup> If the court had fully bought into the defense attorneys' argument that the defendants were only following orders, acquittal of all defendants might have been in order. The prosecution had presented enough evidence from varying perspectives on this point, however, that the jury did not let the defendants fully off the hook.

By convicting all ten, the court validated Schüle's novel approach to the investigation. As Wetzel noted, the testimony of the defendants and other members of Einsatzkommando Tilsit could not be relied on during the deliberation. Thus, the verdict could only have resulted from other sources and other witnesses, such as civilians, experts, and historical documentation. Had the trial relied exclusively on the interrogation of former Nazis, which was the investigation strategy during the first year of the Fischer-Schweder case, there would have been no possibility of a conviction. Instead, it was the investigation revolution that Schüle initiated in 1956, which produced new forms of evidence and a more sophisticated structure for understanding the nature of these crimes, that led to a conviction. Though the results may not have been exactly what Schüle had asked for, the verdict was a clear success for the crime complex approach to Nazi crimes investigations.

## **Conclusion**

For four months, the courtroom in Ulm had become a forum for discussion over the nature of Nazi crimes and the responsibility of the West German state to prosecute the perpetrators responsible for the Holocaust. Involved in this debate were the perpetrators, prosecutors, defense attorneys, judges, a variety of witnesses, the media, and the public. Each group had assigned its own values to and expectations of the proceedings, and in the end, the

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<sup>148</sup> Eichmüller, "Zahlenbilanz," 626.

trial left few completely satisfied. For the perpetrators, the case would be measured only by its verdict, and when the court convicted all ten, they could only interpret the outcome as a failure. While they had avoided the worst charges of murder, all now bore the stamp of a Nazi criminal. Whatever successes these perpetrators had enjoyed in the postwar period, whether they had achieved these gains legally or illegally, they had been unable to outrun their pasts and now faced futures marked as felons.

The prosecution and the defense attorneys also evaluated the case foremost on its outcome. Yet, they recognized that this case touched on fundamental questions of justice in postwar society. As Schüle made clear in his closing statements, the importance of this case went beyond the four walls of the courtroom. With perpetrators like those on trial in Ulm still living and thriving in postwar society, Schüle viewed these trials as a necessary way of asserting West Germany's commitment to justice. Murder, he argued, was murder, regardless of when it occurred or under which regime. If West Germany was to stake its claim as a moral successor to the unjust Nazi state, it needed to hold those accountable who had denied justice to others.

While Schüle made his case by appealing to values of justice and equality, the defense attorneys pointed to the unique historical circumstances of the Nazi state and postwar West Germany. Nazi Germany, they argued, had indeed been an immoral world but one that demanded immorality of others. These defendants, as a result, were not craven murderers but the unfortunate result of such a dictatorial system. At the same time, the defense attorneys rallied around the common postwar argument that prosecutions bred social divisions. In the uncertain years after the war with a West German state struggling to its feet, turning its own citizens against themselves could only sow unrest. Already, they argued, the Cold War had



pitted Germans against Germans, and now a fault line was to be drawn between Germans before and after 1945. At the core of Schüle's views on the trial and those of the defense attorneys was thus a debate over the foundational principles of West Germany.

The judges and the jury approached this case recognizing the wider values at work but concerned with the narrow question of truth. Sitting through months of sessions and hundreds of hours of testimony, the judges and jury had to find a way to assemble this wealth of data into a plausible version of events in 1941, and then apply West German criminal law to that historical record. In the process, they came to evaluate the nature of evidence put before them. The many witnesses who were civil servants had largely approached the case less with an interest in truth and more with a desire to avoid implicating themselves in any crimes. As a result, the judges and jury came to reject much of their testimony. Not only had it plainly been self-serving, but their testimonies as a group failed to agree. No clear picture of the past could possibly emerge, they concluded, by relying exclusively on witness statements. Instead, they gravitated towards what they regarded as more empirical sources of information – scholarly accounts and historical documentation. These sources of information became seen as the most reliable avenue available for seeking out the truth behind the Einsatzkommando Tilsit murders.

The media too focused on questions of the truth, but while the judges and jury had to make that truth conform to West Germany law, the media reconciled it with preexisting narratives of Nazi criminality. The press largely approached the trial with two stereotypes of Holocaust perpetrators: either low-level individuals forced to carry out orders, or sadists and Nazi fanatics committed to the genocidal project. The media tried to force the Ulm defendants into these molds. They viewed individuals like Schmidt-Hammer and Harms as

unfortunate and generally unwilling accomplices in Nazi crimes, while portraying Fischer-Schweder and Hersmann as Nazi ideologues and Lukys as a sadistic killer. Nevertheless, the defendants in Ulm did not fit easily into preformed stereotypes of bestial Nazis. Many were career police officers who scarcely resembled the dyed-in-the-wool SS or Nazi radicals often portrayed as perpetrators. But because these dimensions of the trial did not sit comfortably with existing narratives of Nazi crimes, the press tended to pass over inconsistencies and presented an impression of the proceedings that gravitated towards the sensational.

The public focus on what happened in 1941, the frustration that the media directed at the unwillingness of the perpetrators to admit their crimes, and the voluminous account provided in the verdict all reveal the importance of historical truth in assessing the impact of the trial. In this regard, the case pointed to an important aspect of transitional justice. As emerging democracies confront the human rights violations of the preceding state, many value truth over harsh sentences.<sup>149</sup> The Ulm trial in this regard functioned as a public forum that allowed for a debate over the Nazi past in an effort to make sense of what had happened. By attempting to come as close as possible to a full historical understanding of Einsatzkommando Tilsit's crimes, the verdict became a state-approved version of this historical truth. Thus, the verdict represented not only a condemnation of these ten defendants, but an affirmation that the West German state would acknowledge and deal with the crimes of its predecessor.

In the end, there were two groups whose views on the Ulm trial would determine its legacy: the public and West German state officials. With the exception of the several hundred

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<sup>149</sup> The highly-regarded Truth and Reconciliation Commission in South Africa was based on the very premise that admitting the truth about what had happened was more important for establishing a fair judicial system than extensive trials and punishment. See, Boraine, "Truth and Reconciliation Commission," *Retribution and Reparation*, 299-316.

spectators who shuffled in and out of the courtroom during the four month trial, the vast majority of West Germans encountered the Ulm trial through the press. This meant that many developed a skewed perspective on the proceedings, but nonetheless the opinions of the public had the potential to determine the legacy of the trial and its impact on subsequent investigations. Similarly, the West German government, referring to elected and senior officials, had played little direct role in the Ulm trial. That such a massive trial emerged with little higher-up involvement was itself a remarkable development, but the government in time would develop a response to the trial's outcome. After four months in the courtroom, the Ulm trial ended in a verdict. The public and the government would determine the trial's legacy over the following months.

## VII. Legacy: A Central Agency for Nazi Crimes Investigations

*During this trial, the prosecutor's office has received many letters, the tenor of which is often, "Make quick work of these criminals!"... To all those with such understandably righteous indignation, we must respond: Precisely because the defendants had back then trampled on justice and law, we need to show them that no person can or should be convicted without having a legal hearing.*

*– Erwin Schüle, closing statements of the 1958 Ulm Einsatzkommando trial*

The Baden-Württemberg Attorney General Erich Nellmann received two reports on August 19, 1958 from prosecutor Erwin Schüle, who at that point was awaiting the verdict in the Ulm trial.<sup>1</sup> Since the start of his involvement in the case in 1956, Schüle had been gathering data on unprosecuted Nazi crimes uncovered along the way. Much of this information came from interrogations and archival discoveries, but since the trial began in April 1958, he also received letters from various civilians in West Germany who were eager to share with him their knowledge of other Nazi crimes. After making his closing statements, Schüle compiled this data into the two reports that he sent to Nellmann. These revealed the breadth of the Nazi criminal enterprise, exposing swaths of hitherto unprosecuted Holocaust crimes that stretched from the Baltic to the Mediterranean. Once he read over Schüle's work, Nellmann urged the state to take immediate action on these cases, particularly since the statute of limitations for the most serious crimes would end in less than twenty months. To expedite these cases, Schüle and Nellmann proposed the creation of a centralized prosecution agency to launch investigations into unprosecuted Nazi crimes.<sup>2</sup>

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<sup>1</sup> Nellmann to Justizministerium Baden-Württemberg (21 August 1958), EA 4/412, Bü 1, HS.

<sup>2</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

Just over a month later, the state justice ministers from the West German states agreed to create the Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Gewaltverbrechen (Central Office of the State Justice Ministries for the Investigation of Nazi Crimes), the first systematic attempt among the West German states to coordinate investigations into Nazi crimes. Justice Minister Wolfgang Haussmann volunteered his state of Baden-Württemberg to host the agency and offered to devote resources from his own judiciary to staff it from the start. Beginning on December 1, 1958, this agency began its operations, and Schüle became its first president. Over the coming decades, the Zentrale Stelle launched thousands of investigations into Nazi criminals.

One of the most important legacies of the Ulm trial was its impact on the creation of the Zentrale Stelle. To understand the relationship between these events, it is necessary to consider the reactions of both the public and the government to the trial. While gauging public response is always a difficult process, this chapter demonstrates that the trial had a broad but shallow impact on most West Germans.<sup>3</sup> Because of the trial's size and scope, most had the opportunity to learn of the trial through media coverage, yet the trial itself did little to change public opinion on the larger issue of Nazi crimes prosecutions. Instead, most preferred to interpret the trial according to their own preexisting attitudes towards Nazi crimes, the Holocaust, and ongoing prosecutions. Some were hostile to the proceedings,

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<sup>3</sup> In this regard, I agree with most recent scholarship which has downplayed the importance of the Ulm trial in creating a cultural shift in favor of ongoing prosecutions. Yet, I view the response of the public – or rather, the non-response – to the trial as essential for understanding how and why the Zentrale Stelle emerged. More recent approaches have tended to discount the importance of the public, instead focusing on international pressures on the government. For the earliest scholarship, which advanced the cultural shift thesis, see Adalbert Rückerl; see, Rückerl, *Strafverfolgung*. This view sustained currency for nearly two decades; see, for example, Herf, *Divided Memory*, 296-297. For an example of the more recent direction with an emphasis on international relations, see Claudia Fröhlich, “Die Gründung,” *Justiz und Nationalsozialismus*, 213-250.

many supported it, and many others expressed ambivalence. Overall, the trial provoked a surprisingly muted response from West German citizens.

Yet this muted response was itself an important development in the process of coming to terms with the past. It revealed that the passions of the initial postwar year regarding Nazi crimes cases had been tempered by the late 1950s. This moment of relative calm offered an opportunity to shift the tone and tenor of the debate. A vocal minority of West Germans used the Ulm trial to initiate a wider discussion about unprosecuted Nazi crimes.<sup>4</sup> With a looming expiration of the statute of limitations on all but the most serious Nazi crimes in 1960, their concerns found urgency among concerned members of the judiciary. As a result, the relatively muted response of the public created an opening for those in favor of a renewed campaign of Nazi crimes investigations. The absence of a sustained response from the public bred a situation in which government action was dictated not by overwhelming public opinion but rather by which voices were shouting the loudest.

In the wake of the trial, certain individuals – Schüle and Nellmann foremost among them – used this moment of opportunity to claim interpretive authority over the Nazi crimes question in postwar society. They pointed to the statute of limitations problem and to the swaths of unprosecuted Nazi crimes to make their case for a critical reappraisal of the situation through the creation of a centralized investigative agency. They directed these challenges at the justice ministers of the states of West Germany, whom they urged to make a priority of Nazi crimes cases while there was still time. The calls for the *Zentrale Stelle*, for a

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<sup>4</sup> This notion of a vocal minority has become important for recent scholarship that challenges the “myth of silence” regarding the Holocaust in postwar society. See, for example, David Cesarani and Eric J. Sundquist, *After the Holocaust*. In his earlier work on German memory culture, Jeffrey Herf had also drawn attention to the existence of a critical minority tradition in West Germany that became more visible by the late 1950s. See, Herf, *Divided Memory*.

critical judicial response to Nazi crimes, began first in the halls of regional judiciaries before spilling over onto the pages of newspapers or influencing federal policy. Thus, it was at the state level, and not at a federal level or in West German society, that the case in Ulm generated any sustained or serious interest.

Under state officials, the Ulm case drove discussion over the need for a new approach to Nazi crimes and became a blueprint for how to carry out subsequent investigations. While other states were also calling for a more coordinated response to Nazi crimes investigations, it was Baden-Württemberg that determined the form and function of the Zentrale Stelle. Many potential alternatives to the Zentrale Stelle came under consideration of the states. To understand why this option was chosen, why Baden-Württemberg led the effort to create the agency, and why Schüle and the lead Ulm investigators became its core staff, the impact of the Ulm trial is essential. Regional variables, specifically the Ulm trial and the personnel involved, fundamentally affected the terms of the debate over how to address the Nazi crimes issue. The discussions among the various state ministries reveal a clear structural relationship between the Ulm trial and the Zentrale Stelle. The experiences of the trial and the strategies for its investigation determined the form and function of the Zentrale Stelle. In short, the Zentrale Stelle became an enlarged replica of the Ulm investigation.

### **The Public Response**

In the years after 1945, public interest in Nazi crimes trials steadily decreased. Waning interest mirrored the declining number of trials, but it also reflected a mounting opposition to the trials that did occur. According to extensive public opinion polling undertaken by American authorities from 1945-1955, initial enthusiasm for prosecuting the

high level officials during the Nuremberg proceedings gave way over the coming years to a belief that these ongoing trials were not advancing the causes of justice and the best interests of the West German state. By 1950, only 10 percent of those surveyed showed support for confronting the war crimes issue in West Germany, and over half called for the release of those already convicted.<sup>5</sup> As the authors of the study concluded, “By the mid-1950s West Germans had, for the most part, rejected the formal trappings of Nazism...The data also underscore a second and equally important point: West Germany wanted the books closed on the Nazi era.”<sup>6</sup> The rejection of ongoing prosecutions therefore reflected less any residual Nazi sympathies among the public and more a belief that that chapter of Germany’s past needed to be set aside in order to move forward.

How was the Ulm trial received in this cultural climate? As described earlier, aversion to ongoing prosecutions had created postwar conditions favorable to the perpetrators of the Ulm trial and a legal culture reluctant to devote resources to sustained investigations. Yet the very existence of the Ulm trial and the ultimate inability of the perpetrators to avoid prosecution suggests that cracks in postwar attitudes of apathy and victimization had begun to appear. To understand the extent to which West Germans were beginning to reappraise their attitudes towards the Nazi past, it is necessary to consider the response of the public to the trial. The lessons drawn from this case reveal a society divided on the issue of using the courts to address the process of dealing with Nazi era crimes.

In the immediate aftermath of the Ulm trial’s verdict, the local Ulm newspaper, the *Schwäbische Donau-Zeitung*, published an informal poll with comments that revealed a wide

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<sup>5</sup> Anna J. Merritt and Richard L. Meritt, eds., *Public Opinion in Semisovereign Germany: The HICOG Surveys, 1945-1955* (Urbana: University of Illinois Press, 1980), 10-11.

<sup>6</sup> Merritt and Meritt, *Public Opinion*, 12.



range of conflicting attitudes towards the trial and its outcome. Several disagreed with having a trial at all. A businessman who identified himself as a late returnee from the Soviet camps stated, “Thirteen years after the war, it seems impossible to me to precisely measure the magnitude of guilt. So in my view these trials are highly problematic, if not dubious.” One housewife stated, “This trial was neither necessary nor important. I can only regret that we Germans expose ourselves before the world to dirty our own nest.” The majority, however, supported the continued prosecution of Nazi criminals. Some looked at the trial as an obligation of the West German state to deal with the Nazi past. A wife of one of the jurors said, “We were all complicit in the events of those years and should do everything to atone for the past and to get rid of all hate and bitterness.” Others, like one elected official, viewed the case as a simple question of justice: “What’s ten or fifteen years in the life of a person? If people say that too much time has passed since the crimes, they’re utterly wrong.”<sup>7</sup>

The sharpest disagreements among those interviewed stemmed from the verdict. Many found the verdict “too mild.” One businesswoman commented, “Such devils should be shut out of human society.” Similarly, several Holocaust survivors criticized the outcome. One group intended “to gather signatures and protest against this much too generous verdict.” Another Auschwitz survivor demanded death sentences, stating, “There were good and bad Germans, and even among the concentration camp guards and SA officers there were upstanding individuals who secretly gave us food to eat and allowed us to move about. So there’s no excuse for these defendants to have behaved as they did.” But other West Germans felt that the trial had gone too far. A sixty-six year old widow worried, “After so many years it’s difficult to reconstruct the situation back then... I am of the belief that the people were

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<sup>7</sup> “‘Sühne für tausendfachen Mord’ im Urteil des Volkes,” *Schwäbische Donau-Zeitung* (1 September 1958).

compelled to follow orders which came from the top. To refuse to do so was gambling with your life.”<sup>8</sup> As a result, the mild sentencing seemed to satisfy few on either side.

A more significant set of documents are the letters from 110 civilians who followed the trial through the news and felt compelled to write letters to the state.<sup>9</sup> These letters first began to arrive during the summer of 1957, when Schüle and Nellmann held a press conference to announce the case. Between the investigation and the start of the trial, only nine such letters had been received. During the first three months of the trial, through the end of July, the prosecutors received an additional thirty-nine letters. In the month of August, during the period between the closing statements and the reading of the verdict, thirty-five letters arrived. Following the reading of the verdict, the remaining thirty-six came through the mail. The closing statements and the verdict prompted the greatest number of reactions – either in favor of or against.

The geographic range of the letters reveals that the Ulm trial resonated throughout West Germany. Writers from each West German state with the exception of the miniscule Saarland wrote in to discuss the Ulm trial. Of the eighty-seven authors writing from West Germany, the largest group, thirty-three, came from Baden-Württemberg, the state that held the trial. Substantial numbers also arrived from West Berlin, North Rhine-Westphalia, and Bavaria. An additional thirteen letters came from abroad, with nearly half sent from Israel and the United States. No letters from any Eastern bloc member arrived. The range indicates

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<sup>8</sup> “‘Sühne für tausendfachen Mord’ im Urteil des Volkes,” *Schwäbische Donau-Zeitung* (1 September 1958).

<sup>9</sup> Such a sampling allows a wide array of insights into not just what individuals thought about the trial, but also about how widely and deeply the Ulm trial penetrated West German society. In several instances, only the envelope has survived. Since the envelopes themselves contain information on origin and often the sender’s address, certain analysis is viable in these nineteen cases. A number of other letters were sent anonymously or pseudonymously. Despite these variations, the letters provide a remarkable insight into the very personal reactions many experienced when confronted with the Einsatzkommando Tilsit trial.

that people throughout West Germany could and did follow the Ulm proceedings, even if its coverage was uneven. Nevertheless, the case retained regional appeal in southwest Germany and did not achieve anything resembling uniform impact throughout the country. The interest of individuals in the United States and Israel, most of whom were Jewish, showed that among non-Germans, it was mostly Holocaust survivors and the families of victims who expressed the most interest in the West German trial.

An important factor to consider in looking at these letters is the number of letters themselves. On one hand, 110 unsolicited reactions might suggest that the trial had a deep impact on the West German public. For such a number of individuals to be so affected by the trial as to put pen to paper and send off their thoughts to the government indicates that many times more might have shared such reactions and many times that at least knew of the trial. On the other hand, another Nazi crimes trial occurring at the same time as the Ulm trial provoked a far wider response. The much shorter trial of Martin Sommer in Bayreuth left that prosecutor's office deluged in thousands of letters.<sup>10</sup> Although a trial of only one man, the Bayreuth case focused on a stereotypically sinister Nazi. Martin Sommer, "the Hangman of Buchenwald," was accused of horrific crimes, including many counts of murder. The trial enjoyed front-page headlines, while the Ulm trial found lesser coverage within national papers. The disparity between the quantities of letters each prosecutor received can thereby partially be explained through the relative prominence of each trial's coverage in the media.

The disjuncture also suggests, though, that something about the Sommer trial hit home with the public in a way that the Einsatzkommando Tilsit trial did not. This likely underscores a fundamental distinction between many postwar Nazi crimes trials and the one

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<sup>10</sup> "Tausend Briefe an Bayreuther Schwurgericht," *Stuttgarter Zeitung* (3 July 1958).

in Ulm. The case against Martin Sommer lacked any moral ambiguity. He was clearly a sadist whose victims were innocent prisoners, and the most sensational charges against him involved the torture and murder of German priests. His trial therefore conformed perfectly to West German attitudes regarding Nazi crimes and criminals. Because Germans had been among his victims, Sommer could easily be seen as an enemy of the West German state. The public could write letters condemning Sommer because the process allowed them to absolve themselves. The same did not hold for the Ulm trial, where ordinary Germans, many just police officers, were being tried as genocidal killers. As Schüle argued, a West German could not seriously evaluate the trial in Ulm without also confronting his or her own past.

As a result of difficult questions raised through the Einsatzkommando Tilsit trial, the letters sent in to the prosecutor's office revealed a complex set of attitudes towards the proceedings and its wider implications. Schüle summarized these documents in his closing statement as saying, "Make quick work of these criminals!"<sup>11</sup> But the actual letters defy such a simple thesis. Four general categories of response emerge through these letters: support, moderate opposition, extreme opposition, and no stated opinion. Some letters combined elements from categories, for example a mixture of criticism of the trial with qualified support for the verdict. Nearly 50 percent of all letters supported the trial outright, slightly over 35 percent opposed, and 15 percent had no stated opinion.

Perhaps the least thoughtful responses came from those extremely opposed to the trial. Their letters erupted in pro-Nazi, anti-Semitic epithets that often bore the hallmarks of deeply disturbed individuals eager to rail against any postwar authority. One individual sent a series of unsettling collages. In one, he posted an assortment of news clippings and headlines,

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<sup>11</sup>"Kein politischer Prozess," *Schwäbische Donau-Zeitung* (2 August 1958).

defacing the images of Eisenhower and Khrushchev as he invoked an incoherent stream of Cold War invective in opposition to the trial.<sup>12</sup> Another wrote letters so violent and threatening in their language that Schüle asked investigators to look into their author.<sup>13</sup> After a month, Heidelberg officials confirmed that their author had been a senile resident known for his anti-government positions. Recently, he had protested the local post office by defiling its outgoing box.<sup>14</sup>

Not all those who staunchly opposed the trial showed evidence of an unstable mind. Many wrote in anonymously to condemn the court. One blamed the court for the “murder” of Arthur Gennat, who committed suicide in jail after his arrest for perjury in the Ulm trial, and Martin Sommer. He wrote, “Someday history will see Sommer and Gennath [sic] as pioneers in the fight against all non-Germans, and you – you men of Adenauer’s justice – will be the defendants of tomorrow!” He concluded, “Germany awake! We’re taking revenge!”<sup>15</sup> Others shared this admiration for the defendants, whom they saw as champions of Germany during its greatest hours. One wrote directly to the defendant Hersmann himself, stating, “Despite everything, I am still proud today to have belonged to an organization that had men like you as its leaders.”<sup>16</sup> Among these radical responses were therefore a significant number of Germans who had likely been Nazis in the past and carried their sympathies still now. For them, the trial was pure inversion, an attempt to demonize heroes and lionize cowards.

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<sup>12</sup> Hilde Rademacher to Schüle (12 August 1958), EL 322/II, Bü 61, SL.

<sup>13</sup> Karl H. to Schwurgericht Ulm (Heidelberg, 1 September 1958), EL 322/II, Bü 89, SL; Justizministerium Baden-Württemberg to Oberstaatsanwalt bei dem Landgericht Heidelberg (24 October 1958), EA 4/412, Bü 2, HS.

<sup>14</sup> Kriminalkommissariat Heidelberg to Staatsanwaltschaft Heidelberg (3 November 1958), EA 4/412, Bü 2, HS.

<sup>15</sup> Hans-Jürgen Z. to Staatsanwaltschaft Ulm (Hamburg, 7 July 1958), EL 322/II, Bü 61, SL.

<sup>16</sup> Karl-Heinz Wenke to Hersmann (8 June 1958), EL 322/II, Bü 17, SL.

More interesting were those that opposed the trial less stridently, often by interpreting the trial through well-worn dispositions towards Nazi crimes held in postwar Germany. Several responded to Schüle's claims in his closing statement that all Germans have a "bad conscience" regarding the Third Reich. One wrote, "Why should we Germans alone have a bad conscience? Other peoples have done no less terrible things during and after the war."<sup>17</sup> Another echoed this sentiment, calling it a "puzzle" that Germans would prosecute other Germans while no one was doing anything about Soviet crimes.<sup>18</sup> Many affected this knee-jerk victimization attitude towards the trial. Several letters invoked the carpet bombings of German cities and asked why those criminals were not being tried.<sup>19</sup> For many of these authors, prosecutions were a zero sum game, in which either Germans could be tried for their crimes or the Allies for theirs. By continually focusing on Nazis, one worried, "our reputation abroad is severely damaged."<sup>20</sup>

Paralleling this belief that the Ulm trial ignored German victimization was a conviction among many that, although the crimes may have been horrific, the ten Ulm defendants should not be held accountable. One wrote, "The men of the Einsatzkommando received high sentences. The generals who carried out the all-consuming war of Corporal Hitler received high pensions."<sup>21</sup> Many worried that the "poor soldiers" tried at Ulm were

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<sup>17</sup> Anonymous to Schüle (undated, no location), EL 322/II, Bü 61, SL.

<sup>18</sup> Bo Noren to Schüle (Hannover, 28 April 1958), EL 322/II, Bü 61, SL.

<sup>19</sup> Hans Ohneburg to Landgerichtsrat Wetzel (Augsburg, 2 September 1958), EL 322/II, Bü 89, SL; Anonymous to Schüle (8 August 1958, no location), EL 322/II, Bü 61, SL; Hermann Brodt to Schüle (Hamburg-Altona, 21 August 1958), EL 322/II, Bü 61, SL; W. Tschertkewski to Vorsitzenden des Schwurgerichtes Ulm (Hanau, 11 August 1958), EL 322/II, Bü 88, SL.

<sup>20</sup> W. Tschertkewski to Vorsitzenden des Schwurgerichtes Ulm (Hanau, 11 August 1958), EL 322/II, Bü 88, SL.

<sup>21</sup> Franz Denner to Schwurgericht Ulm (1 October 1958, Berlin), EL 322/II, Bü 89, SL.

being unfairly singled out.<sup>22</sup> Although the trial went to great lengths to show that these defendants were not mere “little men” in the Nazi state, many readers continued to argue that they had been forced to carry out the orders.<sup>23</sup> This trial spoke to the belief that most perpetrators had no choice but to comply with orders. These responses conformed to the pervasive belief after 1945 that only Hitler and his elites were responsible. Rather than heeding the testimonies at the trial and the expert testimony that no one risked punishment for refusing to murder civilians, these writers rejected all evidence and clung rigidly to their narrow understanding of Nazi policies of mass murder.

The largest set of responses expressed support for the trial and its outcome. Some authors shared Schüle’s assessment that the trial spoke to a broader indictment of all Germans. One wrote, “It’s correct that we all bear some guilt because we were too cowardly weak and too comfortable.”<sup>24</sup> Another hoped the trial might serve as an antidote to the “great failure of the German ‘quickness to forget.’”<sup>25</sup> Still another characterized the current political climate of amnesty as fostering a “wild west,” where those culpable for Nazi crimes had been left free to reintegrate.<sup>26</sup> For some, the trial did prompt a critical assessment of the Nazi era and the shortcomings of West Germany’s approach to dealing with those crimes. Whether these individuals developed their opinions in response to the trial or simply had these preexisting views confirmed by the proceedings is unclear though.

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<sup>22</sup> Von Gloeden [?] to Staatsanwaltschaft Ulm (3 August 1958, Rheyde), EL 322/II, Bü 61, SL.

<sup>23</sup> Erich Köllreutter to Staatsanwaltschaft Ulm (Metziggen, 18 August 1958), EL 322/II, Bü 61, SL; Michel Deutsch to die Richter und Staatsanwaelte (Zweifelshausen, 2 September 1958), EL 322/II, Bü 89, SL; Gottwald to Seraphim (19 July 1958, Wiesbaden), EL 322/II, Bü 61, SL; Luise Scharf to Herrn Präsident des Landgerichts (Münster, 1 September 1958), EL 322/II, Bü 89, SL.

<sup>24</sup> Martha Günther to Schüle (Bodensee, 3 August 1958), EL 322/II, Bü 61, SL.

<sup>25</sup> Stefan Kellermann to Schüle (Waischenfeld, 4 August 1958), EL 322/II, Bü 61, SL.

<sup>26</sup> Robert Müller, Jr. to Schwurgericht Ulm (Hochneukirch, 29 April 1958), EL 322/II, Bü 88, SL.

Others who supported the trial focused instead on the case as it related to these particular defendants. These respondents fit the mold Schüle described during his closing statements of just wanting to make a quick trial and lock these perpetrators away. One wrote, “I warmly welcome these demonic events of the past finally being brought to the public. There are still many people in Germany who don’t believe that such things could happen!”<sup>27</sup> Indeed, many who supported the trial seemed unaware of the crimes in Eastern Europe and wrote to the prosecutors with questions about the unit and the defendants. These responses revealed an interest in the crimes and the trial, but did not connect the events to any wider culture of complicity during the Third Reich. Instead, they attempted to make the defendants fit into predetermined expectations of Nazi criminality, which emphasized the brutality, inhumanity, and sadism of the perpetrators.

What led certain individuals either to support or to denounce the trial is difficult to determine. Certain factors such as age, education, job, and political affiliation may have played a role, but such information does not present itself through the letters. Of the variables that can be examined, such as when the letters’ date and point of origin, not enough variation emerges to suggest that they played a contributing role in individual’s responses.

The one category that emerges through the letters as a significant factor in one’s response is gender. Many letters were anonymous or provided only a surname, but a set of sixty-nine letters revealed the gender of their author. Fifty-seven of these came from men; only twelve from women. Itself a reflection on the still patriarchal society of West Germany, in which politics – and by extension, law – were seen as the purview of males, the types of responses each group offered revealed an important difference in how they approached the

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<sup>27</sup> Anonymous to Amtsgericht Ulm (Denkingen, 20 June 1958), EL 322/II, Bü 88, SL.



Nazi past. Of the fifty-seven letters from men, twenty-four (42 percent) supported the trial. Of the twelve from women, nine (75 percent) showed support. Despite the small sample size, this suggests that women almost two-to-one supported the trial over men. Such a distinction likely speaks to the experiences each group had with the Nazi state. Many men were presumably veterans of the war, and the trial directly related to experiences they may have encountered. With only men numbering among the defendants, they may have imagined themselves on the docket, thereby leading them to reject the trial. Women, on the other hand, were less encumbered by the crimes, or at least the public perception of the perpetrator skewed predominantly male. Women may have found it easier, as a result, to condemn the perpetrators and celebrate the trial.

In addition to offering support for or opposition to the trial, many letters either provided or requested specific information about the events in question. Thirty-six of the 110 letters raised specific questions about the crimes committed. This interest took two forms. First, there were many who wrote to offer information about certain crimes that might be of interest. One man currently living in a refugee camp informed Schüle that he was preparing a report on the Holocaust in Lithuania.<sup>28</sup> Others sent addresses of people who might have knowledge of the crimes, provided reference to other Lithuanian massacres, or detailed anecdotes from the war in Lithuania. Many others simply had unrelated accounts of their experiences in the Third Reich or of former Nazi criminals still in West Germany.

Second, significant numbers of people requested information. They wanted to know if Einsatzkommando Tilsit had been active in certain areas, if there was a list of victims' names, or if other Tilsit members remained at large. A number of these letters came from

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<sup>28</sup> Joh. Schneiderei to Hauptrichter des Schwurgerichts Ulm (Lager Wehnen, 5 August 1958), EL 322/II, Bü 88, SL.

Jewish survivors actively seeking information on the fate of their loved ones. One woman wrote to Schüle, “Did the members of Einsatzgruppe Tilsit [sic], who supposedly shot several thousand Jews in the summer of 1941, also work in Libau, Latvia? I’m interested in having this question answered because my husband, the Jewish attorney and notary Dr. Ernst Wechselmann, was shot on the beach in Libau in the summer of 1941.”<sup>29</sup> These letters spoke to a fundamental lack of knowledge confronting many West Germans in the late 1950s.

The letters offering and requesting knowledge also demonstrate vividly that many lacked information about Nazi crimes and that they lacked resources for finding this information. The woman whose husband was killed in Libau had ostensibly spent seventeen years trying to understand and find out who had been responsible for his death. A chance trial in Ulm gave her a flicker of hope for getting answers to this question. For her, there was no central resource. Many others like her had information on crimes committed but had nowhere to turn with this information. Schüle, simply by virtue of being the only one investigating these crimes, became the default expert for many. Through this investigation, he gathered information on other unprosecuted crimes. Certain West Germans, although a minority, were eager to discuss and deal with Nazi crimes in a way that had hitherto not taken place. In Schüle, they hoped to have found a prosecutor willing to do so.

The responses offered through the *Schwäbische Donau-Zeitung* poll and the letters to the prosecutor provide a complex snapshot of opinions regarding Nazi crimes prosecutions. Little evidence indicates that people reevaluated their beliefs about the Holocaust and the Nazi period solely as a result of the Ulm trial. Rather than adjust their views in light of that trial, the majority interpreted the trial according to their preconceptions of Nazi criminality.

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<sup>29</sup> Gertrud Wechselmann to Oberlandesgericht Stuttgart (6 June 1957 [date as written, but given details in the letter on Tilsit, most likely from 1958]), EL 322/II, Bd.304, SL.

Many who opposed the trial fell back on well-worn tropes of criminality that the perpetrators had been forced to carry out orders under duress. Yet, to arrive at such an interpretation required a very cursory understanding of the trial and these defendants. The majority of the evidence presented at the trial depicted these men as leaders of the Nazi state in the German-Lithuanian borderlands, not as the low-level functionaries as many civilians suggested. While there were a number of those radically opposed to the trial, the majority with reservations expressed the view that the Nazi period was best left in the past.

The high percentage of those supporting the trial, however, shows that some shift was underway in West German thinking on the Holocaust and Nazi crimes. If postwar notions of victimization had created an illusion of West German solidarity, by the mid-1950s many were coming to realize that this narrative had also been used to provide cover for perpetrators. The perpetrators exposed cracks in the legitimacy of this narrative, which created discursive space for an outcry against the policies of amnesty and reintegration. The responses to the Ulm trial indicated the presence of a critical voice in West German society open to and even encouraging an ongoing judicial response to Holocaust crimes. For Wechselmann, who lost her husband, this was a deeply personal mission, while others voiced their concerns in the language of justice and fairness. If other crimes had been committed, ought not those perpetrators to be tried as well?

The Ulm trial itself likely did little to create and foster this public criticism, but it did point to a latent willingness in West German society to reopen the Nazi crimes question. The many letters that came in revealed that passions remained high at either end of the spectrum, but the relatively few letters in comparison to the Sommer trials reveals that what might be considered a silent majority of West Germans took a neutral position on the case. The muted

response to the case suggested that space existed in West German discourse that allowed for more direct challenges to the postwar status quo regarding Nazi prosecutions. The most important legacy of the Ulm trial – the creation of the Zentrale Stelle – came about when the leadership behind the trial occupied that space to call for a new response to the Nazi past.

### **The Justice Ministry**

Available evidence suggests that the Fischer-Schweder investigation first required state-level involvement with the June 9, 1956 decision Nellmann made to expand the case to all members of Einsatzkommando Tilsit.<sup>30</sup> Until that point, the investigation had been a parochial affair, not of concern to the Baden-Württemberg judiciary. Once the state attorney general and his senior prosecutor Schüle became involved, however, the case transformed into a more pronounced effort of the state. Certain exchanges between chief Ulm prosecutor Saup and Nellmann had found their way to the state judiciary earlier, but there is no indication that the state ministry took an active interest in the Fischer-Schweder case prior to Nellmann's June intervention.<sup>31</sup> His decision required action on the part of the Justice Ministry. Nellmann requested, for example, the Justice Ministry to authorize the "release" of Ulm prosecutor Mettler from his other duties so that he could focus on the Fischer-Schweder case exclusively.<sup>32</sup> While the ministry authorized this request, it also sought information two

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<sup>30</sup> Nellmann to Justizministerium Baden-Württemberg (9 June 1956), EL 302 I, Bü 304, SL.

<sup>31</sup> A June 11, 1956 internal Justice Ministry memo references a report Saup filed with Nellmann earlier in the month, for example, which indicates at least certain offices within the state judiciary were aware of the Fischer-Schweder case, though how far up the state ministry this awareness went remains unclear. At no point prior to Nellmann's June 6 letter, though, did the state ministry directly contact Saup or Mettler regarding the investigation. For the memo and report, see: Justizministerium Baden-Württemberg, Aktenvermerk (11 June 1956), EA 4/412, Bü 1, HS; and Saup to Nellmann (4 June 1956), EL 302 I, Bü 304, SL.

<sup>32</sup> Nellmann to Justizministerium Baden-Württemberg (9 June 1956), EL 302 I, Bü 304, SL.

days later from chief Ulm prosecutor Saup to better understand Nellmann's position.<sup>33</sup> This all suggests that the spur to ministerial engagement stemmed from Nellmann, and not from interest from within the ministry.

This tendency to respond to developments in the Ulm case rather than shape them developed into a pattern through the trial in 1958. The Baden-Württemberg Justice Ministry displayed little interest in taking the reins in determining the shape of the case, though it did provide support for Nellmann and Schüle when needed. Soon after Schüle joined the case, the investigators began to collect information concerning higher-level Nazi officials in order to understand better the chain of command and military structure in the wartime east. This historical approach to the case required familiarization with the relevant war crimes records. As a result, the investigators sought documentation from the trial of Martin Sandberger, former head of Sonderkommando 1a, which operated under the same regional command structure in the Baltic as the Tilsit unit. The Justice Ministry controlled access to some of this documentation, which Nellmann requested and received.<sup>34</sup> Though this was one of the first acts of direct involvement in the Ulm case, the Justice Ministry would go on to serve other important functions.

Perhaps most significantly, the senior ministry officials possessed the political clout that Nellmann and Schüle lacked; therefore it became an important instrument for the investigation. Eventually, the prosecutors exhausted the Sandberger documents and sought an audience with Sandberger himself, who until 1958 was held in the American-controlled

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<sup>33</sup> Schnerr, Ministerialregistrator, Justizministerium Baden-Württemberg to Saup (11 June 1956), EL 322/II, Bü 102, SL.

<sup>34</sup> A series of correspondences; see, for example, Justizministerium Baden-Württemberg, Aktenvermerk (Stuttgart, 18 July 1956), EA 4/412, Bü 1, HS; and Generalstaatsanwalt Stuttgart to Justizministerium Baden-Württemberg (27 July 1956), EA 4/412, Bü 1, HS.

Landsberg prison. Such a meeting with Sandberger required diplomatic dealings with US officials, which the Justice Ministry was able to orchestrate.<sup>35</sup> Other requests for federal assistance also had to go first through the state ministry. When Schüle sought the extradition of Gerke from Sweden, this process had to be initiated through the state officials, who then pressed the issue with the West German Foreign Office.<sup>36</sup> The ministry also assisted in policing the media. Schüle aimed to keep as much information as possible on the targets of the investigation out of the public eye so that no potential suspects might catch wind of the case. The judiciary issued press releases and assisted in managing the public relations of this effort, which served further to deflect attention off Schüle so he could focus on the case at hand.<sup>37</sup> In these ways, the Justice Ministry played an important role in carrying out the wishes of the prosecutors in instances where their interests outstripped their capabilities.

Finally, in addition to requesting the aid of the Justice Ministry, the prosecutors regularly kept the ministry officials abreast of the developments in the case, often at the request of the ministry itself.<sup>38</sup> Each time the case expanded with an additional arrest, Nellmann updated the department with a briefing.<sup>39</sup> Notable developments, such as when the

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<sup>35</sup> Nellmann to Justizministerium Baden-Württemberg (7 September 1956), EL 302 I, Bü 304, SL; Embassy of the United States of America to Justizministerium Baden-Württemberg (9 May 1958), EA 4/412, Bü 1, HS; Justizministerium Baden-Württemberg to Fink (10 June 1958), EL 322/II, Bü 17, SL.

<sup>36</sup> Justizministerium Baden-Württemberg to Untersuchungsrichter Ulm (9 October 1957), EL 302 I, Bü 305, SL.

<sup>37</sup> Schabel to Justizministerium Baden-Württemberg (16 April 1957), EL 302 I, Bü 304, SL; Letter to Justizminister (12 November 1956), EA 4/412, Bü 1, HS; for concerns about press coverage around the Ilges case, see Justizministerium Baden-Württemberg, Aktenvermerk (Stuttgart, 15 April 1957), EA 4/412, Bü 1, HS.

<sup>38</sup> Justizministerium Baden-Württemberg to Staatsanwaltschaft Ulm (20 September 1956), EL 302 I, Bü 304, SL.

<sup>39</sup> See, for example, Generalstaatsanwalt Stuttgart to Justizministerium Baden-Württemberg (25 August 1956), EA 4/412, Bü 1, HS; Nellmann to Justizministerium Baden-Württemberg (31 October 1956), EA 4/412, Bü 1, HS; Nellmann to Justizministerium Baden-Württemberg (9 February 1957), EA 4/412, Bü 1, HS; and Nellmann to Justizministerium Baden-Württemberg (25 February 1957), EL 322/II, Bü 108, SL.

Ilges case split off into a separate prosecution in Cologne and when Mettler left the case, similarly resulted in reports to the judiciary.<sup>40</sup> Sensitive issues encountered during the investigation were also brought to their attention. For example, Nellmann informed officials that “multiple active police officers were involved in the shootings” and asked them to notify the Interior Ministry of these difficulties.<sup>41</sup> These and other scandals, such as the Gennat suicide and the SS doctor overseeing Böhme, were referred to the department.<sup>42</sup> In all, this demonstrates that the Baden-Württemberg Justice Ministry remained well informed of the proceedings of the case, though in no way can it be said that the office dictated the terms and shape of the investigation. Nellmann and Schüle pursued the case as they deemed necessary, only bringing in the state officials to make a request or inform them of a major development.

Since 1953, Wolfgang Haussmann, a classically liberal representative with a long and distinguished political lineage, had been the head of the Justice Ministry in Baden-Württemberg. Few could rival the political acumen of Haussmann, who came from a political dynasty in southwest Germany. His grandfather, Julius Haussmann, had been a revolutionary in the agitations of 1848 and was ultimately imprisoned for his efforts to democratize the German states. Wolfgang’s father, Conrad, was among the founders of the Deutsche Demokratische Partei, the leading German liberal party in the Weimar Republic. Although

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<sup>40</sup> Nellmann to Justizministerium Baden-Württemberg (3 January 1957), EA 4/412, Bü 1, HS; Nellmann to Justizministerium Baden-Württemberg (13 April 1957), EL 302 I, Bü 304, SL; Nellmann to Justizministerium Baden-Württemberg (13 April 1957), EA 4/412, Bü 1, HS; on Mettler, see: Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (Stuttgart, 27 April 1957), EA 4/412, Bü 1, HS.

<sup>41</sup> Nellmann to Justizministerium Baden-Württemberg (3 January 1957), EA 4/412, Bü 1, HS; for response see, Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (28 January 1957), EA 4/412, Bü 1, HS.

<sup>42</sup> On Gennat’s suicide, see: Justizministerium Baden-Württemberg, Report (7 July 1958), EA 4/412, Bü 1, HS; and Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (July 7, 1958), EA 4/412, Bü 1, HS. For Mauch and Böhme affair, see Nellmann to Justizministerium Baden-Württemberg (14 September 1956) EL 302 I, Bü 305, SL.

forced to disband in 1933, the party reformed in 1946 as the Deutsche Volkspartei with Wolfgang Haussmann and future West German president Theodor Heuss among its founders. In 1948, the party became the Freie Demokratische Partei (FDP). From 1946 to 1952, Haussmann was the Württemberg-Baden state chairman (Landesvorsitzender) and from 1952-1964 the state chairman of the party in Baden-Württemberg.

During the 1950s, Haussmann's actions closely aligned with the FDP's "opening to the right," which sought to gain political strength by appealing to the fragmented right in West Germany.<sup>43</sup> In particular, this entailed outreach to some questionable elements of society. One of the most assured strategies for garnering ex-Nazi support was to rally around the cause of the Landsberg prisoners. Under control of the Americans, Landsberg prison in the early 1950s still held a significant number of convicted war criminals, and securing their release became the darling cause of many on the German right. During the early 1950s, Haussmann had been among the most ardent supporters of these amnesty efforts. Most prisoners were released by the mid-1950s, but Martin Sandberger had not been. So at the same time Ulm prosecutors were seeking documentation and access to Martin Sandberger, Haussmann was actively lobbying for his release from prison.<sup>44</sup>

These experiences and attitudes within the judiciary informed and in many ways explained its initial apathy to the reports on unprosecuted crimes that Schüle turned in during the close of Ulm trial. During the previous years, the ministry and Haussmann had demonstrated little active interest in the Nazi crimes issue, instead acting only in response to targeted requests from prosecutors. Haussmann decided to hold off on discussion of these

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<sup>43</sup> Frei, *Adenauer's Germany*, 203-205.

<sup>44</sup> Frei, *Adenauer's Germany*, 226-229.



issues until the upcoming meeting at Bad Harzburg for the Justice Ministers and Senators Conference, an annual meeting for the ministers to discuss the most pressing matters of the year. The Justice Ministry saw little need for proactive engagement on the issue because the prosecutor's concerns would be addressed in due time. Moreover, the Nazi crimes issue did not need a prominent advocate, as the Bavarian Justice Ministry had recently decided to champion the cause.

### **The Bavarian Summer**

The first state-level suggestion for a centralized effort in West Germany to deal with Nazi crimes prosecutions percolated up through the Bavarian judiciary in late July 1958. A few weeks before Schüle and Nellmann made their proposal to the Baden-Württemberg Ministry of Justice for a centralized coordinating agency for Nazi crimes, a set of similar concerns were appearing in the Bavarian Ministry of Justice. The judiciary there circulated a request to the federal and state justice ministries that the Nazi crimes question be addressed at the Bad Harzburg conference.<sup>45</sup> The timing of this letter came on the heels of a busy few months in Bavaria regarding Nazi crimes. Martin Sommer, the “Hangman of Buchenwald,” received a life sentence in a Bayreuth court in July 1958 for horrific and sadistic murders.<sup>46</sup> Although the trial resulted in a lifetime sentence for Sommer, the case had taken eight years to bring to trial due to various fits and starts within the Bavarian judiciary. The press labeled

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<sup>45</sup> Bayerische Staatsministerium der Justiz to Bundesminister der Justiz and Landesjustizverwaltungen, July 26, 1958, EA 4/106, Bü 2, HS.

<sup>46</sup> “The Monster,” *Time*, 4 July 1958, site accessed September 2011, <http://www.time.com/time/magazine/article/0,9171,868574,00.html>.

the whole ordeal a “tragicomedy of justice.”<sup>47</sup> This embarrassment for the state was only compounded by a more substantial scandal that developed out of the Bayreuth proceedings.

During the Sommer trial, allegations surfaced that a former camp doctor remained at large in Bavaria. The *Frankfurter Rundschau* quoted one witness, “The former camp doctor Eisele killed more people in a week than Sommer had in his entire life.”<sup>48</sup> Dr. Hans Eisele, it turned out, had been living in Munich under his own name since 1945 and currently ran a private dentist practice there. While the prosecutors prepared criminal charges, Eisele received advanced warning of his impending arrest, likely from someone within the police. As they went to arrest the dentist, the police found an empty home. The next day, Eisele surfaced across the Mediterranean in the non-extraditing country of Egypt.<sup>49</sup> A dual scandal – first that a brutal doctor could openly resume his career as a dentist after the war and second that he could escape to Egypt with impunity – quickly consumed the Bavarian judiciary. The incident became front page news across West Germany, with the Bavarian judiciary and the federal foreign office receiving the brunt of the public criticisms.<sup>50</sup> The very emergence of this scandal though revealed the shifting sensibilities of the public towards perceived miscarriages of justice in Nazi crimes prosecutions. In contrast, a similar case in 1952, when Franz Rademacher, head of the Jewish desk in the Foreign Office, skipped bail after appealing this verdict in his trial in Nuremberg-Fürth and fled to Syria, failed to prompt any comparable public or media outcry against the Bavarian judiciary.<sup>51</sup>

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<sup>47</sup> “Der Fall Sommer – eine Tragikomödie der Justiz,” *Stuttgarter Zeitung* (9 June 1958).

<sup>48</sup> “Zeuge im Sommer-Prozeß: Schlimmere laufen noch herum,” *Frankfurter Rundschau* (25 June 1958).

<sup>49</sup> “Dr. Eisele bittet um Asylrecht in Aegypten,” *Frankfurter Rundschau* (14 July 1958).

<sup>50</sup> Editorial cartoon, *Stuttgarter Nachrichten* (23 August 1958).

<sup>51</sup> Browning, *German Foreign Office*, 192-4.

The Eisele affair and the attendant media condemnation of the judiciary led officials to seek explanations for how he had avoided detection for so long, how information had leaked, and who had enabled his escape. The Justice Minister of Bavaria concluded that the Eisele affair had not been a one-time lapse or a stain on Bavaria's record of Nazi crimes investigations, but rather a broader indictment of West Germany's attempts to deal with such crimes. In a letter sent on July 22, 1958 to the other state and federal justice ministers, Deputy Director Leopold argued, "The case of the concentration camp doctor Hans Eisele has shown that, despite the extensive efforts carried out by German law enforcement agencies to expose and investigate Nazi crimes, not all persons who have been implicated in serious crimes have been brought to justice."<sup>52</sup> He then cited a recent report that many crimes from Dachau concentration camp remained uninvestigated. The problem, as Leopold saw it, stemmed from insufficient access to war era documents captured by the Allies and now being stored, sorted, and microfilmed outside Germany. To some extent, unavailable sources may have served as a useful scapegoat for Bavaria's problems, but it did point to a real and significant problem: without access to the materials documenting the crimes, it was impossible for German prosecutors to sustain a proactive campaign of investigations.

To solve this problem, Leopold suggested a coordinated effort among the states that would pool their financial resources for the purpose of gathering together war crimes documentation. He suggested that the "most important source of these" were those gathered by the Allies after the war, and that the Federal Ministry of Justice had "already undertaken the necessary steps...for giving access to this material to German prosecuting authorities."

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<sup>52</sup> Bayerische Staatsministerium der Justiz to Bundesminister der Justiz and Landesjustizverwaltungen (26 July 1958), EA 4/106, Bü 2, HS.

Due to the extensive collection of these documents, though, Leopold wrote that the states needed to work together “under a unified plan” to detail and review these records “without overburdening a single state.” A “division of labor” would mutually benefit all the states. By providing collective resources to investigate these records and make copies of materials as needed, the states would be able to address systematically the crimes of the Nazi era. Although Leopold’s plan contained few details about the organization of this document review, he made clear that the prosecution of individuals would “of course remain the responsibility alone of the prosecutor’s office where the crime occurred or its perpetrator lived.”<sup>53</sup> Leopold concluded his letter by asking the other justice ministers to pledge their support for this financial and labor cooperation.

Over the next several weeks, various ministers in the German states responded with varied approval for the proposal. Some, such as Wolfgang Haussmann in Baden-Württemberg, appreciated the call for renewed inquiry into Nazi-era crimes, but suggested that to succeed this effort would require more than a combing of Allied archives.<sup>54</sup> Justice Minister Kielinger of Berlin expressed interest in the proposal, but would “reserve his final judgment” until the states had worked out funding details.<sup>55</sup> Most states went the route of the Hamburg minister, Dr. Biermann-Ratjen, who wrote that he “agreed in principle with the proposal.”<sup>56</sup> While no one outright dismissed the idea, few offered a full endorsement.

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<sup>53</sup> Bayerische Staatsministerium der Justiz to Bundesminister der Justiz and Landesjustizverwaltungen (26 July 1958), EA 4/106, Bü 2, HS.

<sup>54</sup> Justizministerium Baden-Württemberg to Bayerische Staatsministerium der Justiz (19 August 1958), EA 4/106, Bü 2, HS.

<sup>55</sup> Senator für Justiz, Berlin to Bayerische Staatsministerium der Justiz (6 August 1958), EA 4/106, Bü 2, HS.

<sup>56</sup> Landesjustizverwaltung der Senator, Hamburg to Bayerische Staatsministerium der Justiz (9 August 1958), EA 4/106, Bü 2, HS; Hessische Minister der Justiz to Bayerische Staatsministerium der Justiz (14 August 1958), EA 4/106, Bü 2, HS; Justizminister des Landes Nordrhein-Westfalen to Bayerische Staatsministerium

As a result, in early August, Federal Minister of Justice Fritz Schäffer suggested “to add the question at hand to the schedule of the 27<sup>th</sup> Conference of the Justice Ministers.”<sup>57</sup> Leopold agreed with the idea and confirmed Bavaria’s willingness to take the lead on the issue at Bad Harzburg. Yet significant questions about the strength and nature of this proposed coordination remained unaddressed. What financial and personnel commitments were expected from each state? Would the unit assembled for this task serve as a temporary working group or something more formalized and permanent? How would the relationship between this coordinating unit’s preliminary investigations and the states’ subsequent criminal cases be defined? Moreover, how would the issue of jurisdiction be resolved?

### **Lessons from Ulm**

While the justice ministers began to plan for a discussion of the Nazi crimes issue, Erwin Schüle and Erich Nellmann were growing frustrated. Through the experiences of the Ulm trial, these two men came to identify a number of problems hindering Nazi crimes investigations, and they each wrote a series of reports from late July through mid-August 1958 that they sent to the Baden-Württemberg Justice Ministry detailing their experiences. Schüle and Nellmann approached the reports from differing perspectives, but each came to the same conclusion: the West German judiciary needed a centralized prosecution agency to deal with Nazi crimes.

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der Justiz (14 August 1958), EA 4/106, Bü 2, HS; Rheinland-Pfalz Ministerium der Justiz to Bayerische Staatsministerium der Justiz (14 August 1958), EA 4/106, Bü 2, HS.

<sup>57</sup> Bayerische Staatsministerium der Justiz to Niedersächsischen Minister der Justiz (11 August 1958), EA 4/106, Bü 2, HS.

Although their complaints were legion, they fell broadly into two categories: jurisdictional concerns and structural problems inhibiting successful investigations. For Schüle, the jurisdictional problems assumed paramount significance. In the course of investigating the Einsatzkommando Tilsit crimes, the prosecutor had uncovered extensive evidence of additional such crimes. Schüle's database contained many individuals who had never been brought to trial. With all the media attention lavished on the trial, the prosecutors received numerous letters from individuals asking for information on Holocaust crimes in one region or making allegations of criminality against other individuals. Because there was no central organization in West Germany for making such requests or appeals, many saw Schüle and the others involved in the Ulm trial as West Germany's de facto legal experts on the Holocaust. By the end of the trial, Schüle had received information on additional shootings in Lithuania and stretching up the Baltic coast. Additional allegations were made about shootings to the south under Einsatzgruppe B, as well as camp crimes.<sup>58</sup> Few of these had any connection to the state of Baden-Württemberg; either the crime occurred or the criminal lived outside the state's jurisdiction. As Schüle explored the options for dealing with these unprosecuted crimes, he found few viable options.

Schüle attempted first to refer Nazi crimes allegations to the prosecutors with jurisdiction over the cases, but problems quickly emerged. Because most of these crimes occurred outside Germany, jurisdiction became a source of contention. Schüle and Nellmann had previously encountered jurisdictional debates regarding the Ilges case in Cologne, but this subsequent round dwarfed their earlier frustrations. Typically in cases with foreign crime locations, jurisdiction derived from the place of residence of the criminal, but the multiple

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<sup>58</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

perpetrators involved in these crimes complicated this issue. In the Ulm trial, as Nellmann stated, “Of the ten accused, only for one of them did Ulm have regional jurisdiction. The other nine defendants lived scattered across all of West Germany.”<sup>59</sup> As the Ulm trial demonstrated, a more legally and economically effective means of prosecuting Nazi criminals was to prosecute the entire crime complex – one trial of ten men instead of ten trials of one. Other courts did not express such interest. The approach of the crime complex did not appeal to a German judiciary still committed to pursuing the minimum. As a result, Schüle was forced to refer different perpetrators to various courts even though they concerned the same crimes.<sup>60</sup>

The sheer complications of sorting out these Nazi crimes cases were well expressed through the experiences of an investigation in Bielefeld. Beginning in March 1958, the Nordrhein-Westfalen court began an investigation of two individuals used as witnesses in the Ulm case – Sudau and Schmidtke.<sup>61</sup> Both had taken part in other atrocities in Lithuania, and Schüle felt that Gerke and Krumbach, who had seriously implicated themselves in the same crimes through their testimony at Ulm, ought to be added to the Bielefeld case to avoid holding two separate trials. The Bielefeld prosecutors, however, had no intention of expanding their case unless required to do so. A further complicating factor was that Gerke had been extradited from Sweden, so determining the jurisdiction for his case proved a game of hot potato for the German courts.<sup>62</sup> This impasse eventually involved Haussmann who

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<sup>59</sup> Nellmann to Justizministerium Baden-Württemberg (22 July 1958), EA 4/106, Bü 2, HS.

<sup>60</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Ministerialdirektor (Stuttgart, August 27, 1958), EA 4/412, Bü 2, HS.

<sup>61</sup> Untersuchungsrichter Bielefeld to Schüle (25 March 1958), EL 322/II, Bü 88, SL.

<sup>62</sup> Aktenvermerk, Justizministerium Baden-Württemberg (Stuttgart, 16 December 1959), EA 4/412, Bü 2, HS.

wrote his counterpart in Nordrhein-Westfalen to see if he could help sort out the issue.<sup>63</sup> No gentlemen's agreement could break the obstinacy of the Bielefeld court, though, and a full year later in September 1959, the German Supreme Court had to weigh in on the issue, ultimately siding with Bielefeld against a combined trial.<sup>64</sup> The two would later be tried in Ulm to the chagrin of Saup.<sup>65</sup> Regardless of the outcome, both sides recognized that delaying prosecutions for over a year solely as a result of jurisdictional debates did not enhance the image of the judicial system in West Germany.

Schüle shared these concerns with Nellmann in the two reports dated August 19, 1958. In the first, he listed seventeen individuals, including Gerke and Krumbach, who had taken some leadership role in the Einsatzkommando Tilsit murders and who had yet to be tried for these crimes.<sup>66</sup> He wrote, "It is unclear who should carry out the investigations into these accused." He went on to describe that logically many of these should be tried in a single case, but noted the difficulties he had in convincing other prosecutors to take on this view. Even though "the greater part of the newly accused and witnesses live in northern – more precisely northwestern – Germany," these areas had expressed little interest in the cases, and the Ulm court had no interest in a second major trial. In the second letter, Schüle went beyond the Tilsit murders to list "additional executions of Jews and communists by members of Einsatzgruppen."<sup>67</sup> Even though he and his team had only looked into one unit

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<sup>63</sup> Haussmann to Justizminister des Landes Nordrhein-Westfalen, Düsseldorf (5 September 1958), EL 302 I, Bü 304, SL.

<sup>64</sup> Bundesgerichtshof - 2. Strafsenat, "Beschluss" (Karlsruhe, 28 September 1959), EA 4/412, Bü 2, HS.

<sup>65</sup> Justizministerium Baden-Württemberg, "Aktenvermerk" (Stuttgart, 16 December 1959), EA 4/412, Bü 2, HS.

<sup>66</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

<sup>67</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.



operating along a small stretch of the German-Lithuanian border, he had uncovered evidence of at least eighteen sets of crimes involving several hundred thousand victims. Some of these crime descriptions were quite specific, such as shootings at a fort near Kaunas, while others were remarkably vague, such as allegations of 100,000 shot in the Baltic area. Not all concerned mass shootings, as Schüle also uncovered evidence of camp crimes in Poland.

Nellmann was well aware of the jurisdictional challenges confronting Nazi crimes investigations, and he had presented similar complaints a few weeks earlier, on July 22, to the Justice Ministry. He lambasted the strategy of splitting these crime complexes up into discrete cases of one or two perpetrators, arguing that approaching cases in this way significantly undermined the effectiveness of the courts. “A great number of prosecutor’s offices,” he stated, “investigate the same crime complexes without knowledge of each other.”<sup>68</sup> As a result, the offices could not benefit from each other’s insights and they might significantly impede each other’s progress. Nellmann also argued that smaller cases were inefficient. Although a single trial such as that in Ulm was indeed expensive, the attorney general stated that in these crime complex cases the costs of transporting witnesses, often from overseas, “are incurred only once.” The alternatives would be enormous fiscal waste for bringing witnesses to deliver the same testimony to a number of different courts, or these witnesses would not be called at all for financial reasons, and the case would lose important sources of evidence.

On top of jurisdictional problems, Schüle and Nellmann encountered a second set of challenges involving structural impediments to Nazi crimes investigations. They believed that the success of the Ulm trial went beyond the decision to try all ten individuals; it

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<sup>68</sup> Nellmann to Justizministerium Baden-Württemberg (22 July 1958), EA 4/106, Bü 2, HS.

revealed the strengths of the Ulm investigations and the deliberateness of its prosecutorial efforts. Nellmann stated in his July letter to the Justice Ministry with a dose of self-confidence that for many state prosecutors “there’s also a partially unconscious timidity regarding the ‘big case,’ which entails a lot of time and effort, and demands knowledge, decisiveness, and organizational capacity, which not every prosecutor possesses.”<sup>69</sup> Neither Nellmann nor Schüle possessed such timidity, and they succeeded because their investigative team was given the resources to develop an in depth approach to the Ulm trial. As a result, the Ulm investigators developed fluency in an investigative language few others spoke. Through several years of work, they had familiarized themselves with the major documentation centers on Nazi crimes in Germany, developed a network of organizations and experts interested in prosecuting Nazi crimes, and mastered the legal arguments necessary to secure convictions. Such efforts, Schüle and Nellmann knew, proved an aberration in the West German legal system.

In some cases, the inability of other state offices to carry out successful investigations revealed a dark problem within the judicial system of West Germany: the presence of many former Nazis in the police force hindered investigations. The Ulm investigation revealed how Nazis at various levels of the German legal system obstructed the investigation. Nellmann mentioned this serious – and quite potentially scandalous – trend within Nazi crimes cases in his July report: “When it comes to the police, at times former comrades of those who need to be investigated are in the police service. Other times, the accused are today reemployed in the police.”<sup>70</sup> These occurrences significantly impaired the state’s ability to prosecute crimes

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<sup>69</sup> Nellmann to Justizministerium Baden-Württemberg (22 July 1958), EA 4/106, Bü 2, HS.

<sup>70</sup> Nellmann to Justizministerium Baden-Württemberg (22 July 1958), EA 4/106, Bü 2, HS.

effectively. Schüle drew the conclusion that “as a rule, the cooperation of the police has to be turned down since experience has shown that many former Gestapo officers are again employed in the police service.”<sup>71</sup> Any attempt to deal with the Nazi crimes issue would need to address the imbalance of prosecutions by state and the unreliability of local police forces.

In other cases, though, the obstacles to successful investigations stemmed simply from inability and lack of experience. “Not every prosecutor,” Nellmann assured the Justice Ministry, operates “from bad intentions.” Instead, as Schüle stated in his August reports, “No adequate investigation results can be expected from local police offices with their lack of sufficient knowledge.”<sup>72</sup> The kind of information and insight that Schüle and his staff had accumulated over the three year investigation proved atypical for the judiciary. “Not everywhere,” Nellmann reiterated, “knows of the [Berlin] Document Center or of the possibility to draw from the published records of the Trial of the Major War Criminals in the International Military Court and other sources, which need to be known and used to be able to investigate successfully.”<sup>73</sup> This created a dilemma for Schüle and Nellmann. They had developed a staff with a singular set of talents for a particular type of investigation, but the federal structure of the German courts required that these types of cases be deferred to less experienced and often less willing prosecutors and investigators.

A final structural challenge, the looming statute of limitations, concerned Schüle and Nellmann. In his second August report, Schüle wrote, “It should not be overlooked that the carrying out of investigations will need to be accelerated because the statute of limitations

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<sup>71</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

<sup>72</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

<sup>73</sup> Nellmann to Justizministerium Baden-Württemberg (22 July 1958), EA 4/106, Bü 2, HS.

threatens to expire.”<sup>74</sup> The experience of the Ulm trial had demonstrated that strict West German legal definitions of murder elided most involved in Holocaust crimes, as a result “by the middle of 1960 prosecution will no longer be possible.”<sup>75</sup> This meant the state had less than two years to launch investigations into a wide-ranging number of crimes, with undoubtedly more still undiscovered. “For this reason,” Schüle summarized, “the individual crime complexes need to be worked by different prosecutors, unless a central prosecutor’s office is created to pursue such crimes.”<sup>76</sup>

To address all of these jurisdictional and structural shortfalls of the West German judiciary, both Nellmann and Schüle urged the justice ministers to create a central prosecutor’s office for Nazi crimes investigations. A central resource of trained staff, they believed, could slice through the Gordian knot of jurisdictional entanglements, sidestep the problems of untrained investigators or Nazi sympathizers in the police, and dodge the impending statute of limitations by quickly initiating cases. Nellmann proposed the idea of a “special prosecutor’s office” which would coordinate state prosecutions over the next two years.<sup>77</sup> Schüle put forward a similar set of ideas:

Regarding the specialized skill set required for carrying out investigations, I consider it necessary to create a central prosecutor’s office, with prosecutors from all the states as members. Specially selected investigators, who should preferably be chosen from all the states, could be assigned to this central investigative office so that officers from the appropriate jurisdiction are available.<sup>78</sup>

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<sup>74</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

<sup>75</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

<sup>76</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

<sup>77</sup> Nellmann to Justizministerium Baden-Württemberg (22 July 1958), EA 4/106, Bü 2, HS.

<sup>78</sup> Schüle to Generalstaatsanwalt Stuttgart (19 August 1958), EA 4/412, Bü 1, HS.

In content and form, their proposals suggested a far more consequential program of prosecution than what the judiciary in Bavaria had suggested. Leopold's proposal described a central research agency that would spend a short period of time poring over documentation and cataloguing unprosecuted crimes. By contrast, Schüle suggested the creation of a full-blown prosecutor's office, which would not only uncover crimes, but investigate and prosecute them as well.

### **Swallowing Camels, Straining at Gnats**

Despite the combined voice of senior prosecutors within Baden-Württemberg, the Justice Ministry initially did little on the Nazi crimes issue. In response to Nellmann's report from July 22, the Justice Ministry did issue a directive to the various prosecutors in Baden-Württemberg, stating, "It is expected that the prosecutors...take thorough note of these sources of information [recent publications on Nazi crimes]." <sup>79</sup> They had reduced the problems Nellmann raised to a simple matter of prosecutors familiarizing themselves with scholarship on Nazi crimes. Apart from being used to draft a reading list, Nellmann's report had little impact and was interpreted as having regional, not national, significance. The response to the Schüle reports of August 19 was to wait. The ministry had decided that these criminal allegations "are not so important that immediate action is needed. This can be left alone until the discussions at the Justice Minister Conference at the beginning of October. The statute of limitations doesn't threaten before March 1960." <sup>80</sup> Schüle and Nellmann's

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<sup>79</sup> Müller to Staatsanwaltschaften bei den Landgerichten in Baden-Württemberg (1 August 1958), EA 4/106, Bü 2, HS.

<sup>80</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Ministerialdirektor (27 August 1958), EA 4/412, Bü 2, HS.

initial recommendation for a centralized agency did not even merit consideration. Although Nellmann and Schüle had offered significant insights into the problems confronting the West German judiciary, something more would be needed for these ideas to take hold.

Nellmann decided to amplify their voices by appealing to the public. A week after the Justice Ministry tabled the Nazi crimes issue, Nellmann wrote an editorial for the *Stuttgarter Zeitung* titled “Central Investigative Office Must Bring Clarity to Nazi Crimes.”<sup>81</sup> Nellmann sought to force the judiciary into action by making a direct appeal to West Germans’ senses of fairness, justice, and morality.

Subtitled “Lessons from the Ulm Trial,” Nellmann’s article articulated the insufficient attempts to address Nazi crimes, the limitations in the judiciary, and the advantages a central agency could offer. He began his case with a broad appeal:

The prosecution of crimes of the Third Reich, which brought millions of people suffering and death and plunged our country into disgrace and shame, crimes that no economic miracle and no boom in exports can cover up – the prosecution of these crimes proceeds without a system, unplanned, by chance. We should not allow murderers and their accomplices to go free, when we could catch them with a systematic and tactical course of action...

To date prosecutions occur purely by chance. One person has the bad luck to be charged, the other not. Indeed there are thousands of unprosecuted crimes. So if everything really has been done to find the perpetrators, then we need to accept that. The worst and most extensive crimes have been prosecuted, but not all. Those convicted know that many other criminals roam free. For those convicted and those that go free, this inequality is an injustice.<sup>82</sup>

Although he partly touched on the responsibility of Germans to deal with Nazi era crimes, the crux of the argument dealt with the concept of fairness. Prosecuting purely by chance

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<sup>81</sup> Nellmann, “Zentrale Ermittlungsbehörde muss Klarheit über NS-Verbrechen schaffen,” *Stuttgarter Zeitung* (3 September 1958).

<sup>82</sup> Nellmann, “Zentrale Ermittlungsbehörde muss Klarheit über NS-Verbrechen schaffen,” *Stuttgarter Zeitung* (3 September 1958).

devalued the integrity of the judicial system. By using the language of justice and equality, this argument cleverly avoided the issue of whether or not war crimes prosecutions were a good thing. Some people had already been prosecuted, and so the burden fell on the judiciary to prosecute all who were responsible. The alternative of doing nothing was fair to neither those convicted nor those who remained free.

After making this broad moral appeal, Nellmann proceeded to lay out the practical concerns that confront the judiciary in trying these cases. He wrote that currently, if one office finds evidence of another criminal even if those crimes are the same as those being investigated in that office, this case is split off into two, rather than prosecute the two individuals for the same set of crimes. Conversely, “two prosecutor’s offices can investigate different criminals for the same crimes without being aware of the parallel efforts.” When jurisdictional concerns alone determine the prosecution of Nazi crimes, Nellmann warned, the cases run the risk of “fizzling out” (*Verzettelung*). As an alternative, perpetrators could be gathered together in one prosecution for a core set of crimes, as took place in Ulm, which “can result in a historical process that brings to light the murder of Jews in a given area, with more or less all those responsible present.”<sup>83</sup>

Nellmann’s editorial then detailed a plan for a central agency to address these imbalances within the German judiciary. This proposal suggested that the “states of the Federal Republic delegate prosecutors and police officers to a central investigative office created for the prosecution of war crimes, the murder of Jews, and concentration camp crimes. Under the leadership of a senior prosecutor, who himself will most likely report to the federal attorney general, they will investigate these crimes.” Early on, the central office

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<sup>83</sup> Nellmann, “Zentrale Ermittlungsbehörde muss Klarheit über NS-Verbrechen schaffen,” *Stuttgarter Zeitung* (3 September 1958).

will target “large crime complexes (such as specific concentration camps, Einsatzgruppen and Einsatzkommandos, etc.)” The office would then determine which state should prosecute these crimes, “either because that is where the crimes took place or where the majority of the accused live.” By placing personnel experienced in Nazi crimes cases, Nellmann expressed confidence that the agency would work. “These officers are familiar with the documents from the Nuremberg trials, they know the Jewish organizations (to which we have turned with requests for help), they know and have researched the considerable emerging scholarship, they will also work with the Landesämtern für Wiedergutmachung, which must be in possession of considerable materials.” After a few years of intensive work, the agency will “dissolve,” having fulfilled its mandate. He ended his article by reminding the audience of the scale and significance of the problem: “We should not strain at gnats and swallow camels.”<sup>84</sup>

Nellmann’s editorial prompted immediate and varied responses throughout West Germany. He received letters of support from a number of readers.<sup>85</sup> Within the week, the SPD in Bonn formally supported the outlined central office.<sup>86</sup> A number of other editorials appeared in various West German papers offering degrees of support for Nellmann’s proposal, which turned the question into a national issue.<sup>87</sup> Within Baden-Württemberg, the *Stuttgarter Zeitung* ran a number of other pieces expressing support for Nellmann and

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<sup>84</sup> Nellmann, “Zentrale Ermittlungsbehörde muss Klarheit über NS-Verbrechen schaffen,” *Stuttgarter Zeitung* (3 September 1958).

<sup>85</sup> Walter Schiele to Nellmann (14 September 1958), EL 302 I, Bü 304, SL; Paul Nussberger to Nellmann (19 September 1958), EL 302 I, Bü 304, SL; Anschütz to Justizministerium Baden-Württemberg (22 September 1958), EA 4/106, Bü 2, HS.

<sup>86</sup> “SPD begrüsst zentrale Ermittlungsbehörde,” *Stuttgarter Zeitung* (6 September 1958).

<sup>87</sup> Weinke, *Eine Gesellschaft*, 20-23.



criticism of efforts to that point. In a piece on September 11 titled “General Reckoning,” the columnist asked the justice ministers to take action and create a centralized solution to the Nazi crimes issue. With reference to the upcoming conference, he wrote, “No matter what happens, the 3rd of October 1958 will become an important date in postwar history.”<sup>88</sup>

This public pronouncement also stirred a response from an agency to this point not involved in the regional affairs of the Ulm trial: the Federal Justice Ministry. At a national level, the case had made little initial impact. As mentioned earlier, the Baden-Württemberg Justice Ministry worked at times with the West German Foreign Office, for example to arrange the extradition of Gerke from Sweden or to negotiate access to Allied-controlled documents, but these issues did not involve the Federal Justice Ministry. That office seems only to have learned about the case when the trial formally began. In a letter from April 29, 1958, it wrote to the Baden-Württemberg Justice Ministry, having heard “from press reports” about the case against “Gerhard [sic] Fischer-Schweder.”<sup>89</sup> Rather than seek details on the origins of the case or the legal parameters involved, the federal office merely asked “for a report about the outcome of the proceedings and a copy of the verdict in due time.” Clearly, the ministry had no conception of the potential significance of the proceedings in Ulm and had no interest in taking any kind of active role therein, however that might be defined.

With Nellmann’s editorial, though, some federal response on the significance of the trial and the future of Nazi crimes prosecutions was needed. Nellmann and others indicated a preference for federal involvement, arguing that high level action offered the best chance for

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<sup>88</sup> Heinz Schlegel, “Generalabrechnung,” *Stuttgarter Zeitung* (11 September 1958).

<sup>89</sup> Schmatloch to Justizministerium Baden-Württemberg (29 April 1958), EA 4/412, Bü 1, HS.

a substantive overhaul.<sup>90</sup> Under CSU politician Fritz Schäffer, the Federal Ministry of Justice expressed ambivalence towards this idea.<sup>91</sup> In a lengthy internal memo from September 18, Ministerialrat Gossrau wrote, “It is obvious that the initiative of Bavaria as well as the opinion of Baden-Württemberg regarding this issue have come in response to numerous recent press articles.”<sup>92</sup> The Eisele affair, Sommer trial, and Ulm trial had fostered the public impression of random prosecutions, and now those states were scrambling to save face. He admitted that such a coordination would be “useful,” but noted that these discussions also “have a political side.” Any federal involvement would likely entail “parliamentary debate,” and for this reason, Gossrau suggested, “The initiative must lie with the states.” Legally, as well, he expressed concern about the possibility of a federal solution; if the states ceded control to the federal government, “this would require a change to the jurisdictional provisions of the Judiciary Constitutional Law [Gerichtsverfassungsgesetz].” The better solution, he suggested, would be to create an informal “working group” (Arbeitsgemeinschaft) under the oversight of a state attorney general. “In no way,” Gossrau reiterated, should this be the work of the West German attorney general.

Others in the Federal Ministry of Justice were less inclined to join Gossrau in the backseat. On September 22, another memo circulated within the department that criticized his recommendations. The author suggested that although Gossrau’s call for a working group would be “unobjectionable,” it would also be fairly ineffective. “The most extensive intensification and coordination of prosecutions could only be achieved through the

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<sup>90</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (23 September 1958), EA 4/106, Bü 2, HS.

<sup>91</sup> Weinke, *Eine Gesellschaft*, 21.

<sup>92</sup> Vermerk, Bundesminister der Justiz, Bonn (18 September 1958), B 141 / 33770 -- Zentrale Stelle – Allgemeines, BK.

involvement of the Federal Attorney General.” Whether or not this could be “constitutionally justified” was admittedly a concern, but the position nevertheless remained clear that anything less than federal involvement could not be considered the maximum effort in Nazi crimes prosecutions.

Baden-Württemberg Ministry Director Emil Müller received a mixed response from the federal ministry the day prior to the Bad Harzburg conference. His counterpart in the federal judiciary informed Müller that “the Federal Ministry of Justice has concerns about the organization of the central investigative office under the Attorney General. But it would be welcome if such a central investigative office were to be created in a state.”<sup>93</sup> Provoked by Nellmann’s editorial, the ministry set a course that seemed to favor inaction. They would support the states’ efforts, but put forth little of their own.

The Ministry of Justice in Baden-Württemberg exhibited a complicated reaction to Nellmann’s publication. To the public, the ministry projected confidence that it was doing all it could to address the Nazi crimes issue. Officials contacted the editor of the *Stuttgarter Zeitung* the following week to address the Nellmann piece and another article published alongside it, which had criticized the insufficient efforts of the German judicial system.<sup>94</sup> The Justice Ministry responded in defense of its actions and aimed to clarify some points of jurisdiction.<sup>95</sup> The following day, the *Stuttgarter Zeitung* ran another editorial with the additional information, but emphasized that the ministry had “no objections to the creation of

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<sup>93</sup> Justizministerium Baden-Württemberg, Kurzer Inhalt des Gesprächs mit Herrn Ministerialdirektor Schafheutle beim Bundesjustizministerium am 30.9.1958, 10.30 Uhr (30 September 1958), EA 4/106, Bü 2, HS.

<sup>94</sup> "Tagesordnung der Justizminister wieder ohne KZ-Prozesse," *Stuttgarter Zeitung* (3 September 1958).

<sup>95</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Ministerialdirektor (Stuttgart, 10 September 1958), EA 4/412, Bü 2, HS.

a central agency.”<sup>96</sup> Behind the scenes, the article had inspired Minister of Justice Haussmann to take up the Nazi crimes issue. On September 12, he wrote to the other justice ministries, concerned that “the media and public” had been discussing for weeks the Eisele affair, the Ulm case, and now the Nellmann article.<sup>97</sup> He stated that the ministers needed to make it clear to the public that “the states’ attorneys have pursued Nazi criminals in numerous investigations, the most extensive of which was the Ulm trial.” Following the dust-up with the *Stuttgarter Zeitung*, Haussmann concluded that the judiciary had failed to make the full extent of its efforts known to the public, exposing them to unwarranted criticism.

The second and more significant response to the Nellmann publication took place within the West German judicial channels and expressed itself through two Baden-Württemberg reports circulated among the various states. In a nine-page report sent just two days after Nellmann’s piece and relying on extensive quotation from Schüle’s August letters, Haussmann expressed concern about the number of unprosecuted crimes uncovered through the Ulm trial. “The experiences of the prosecutor in the Fischer-Schweder case,” Haussmann wrote, “has renewed the urgent necessity of coordinating all investigations into Nazi crimes of violence.”<sup>98</sup> Only a week earlier, the ministry had felt these issues could be safely tabled until October, but in the wake of Nellmann’s piece the same matter now demanded immediate attention.

The following week, Haussmann circulated his endorsement for a central investigative agency and in the process expressed the first state-supported alternative to the

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<sup>96</sup> Heinz Schlegel, “Generalabrechnung,” *Stuttgarter Zeitung* (11 September 1958).

<sup>97</sup> Justizministerium Baden-Württemberg to Kabinettsmitglieder (12 September 1958), EA 4/106, Bü 2, HS.

<sup>98</sup> Wolfgang Haussmann to Justizminister des Landes Nordrhein-Westfalen, Düsseldorf, Bundesminister der Justiz, and Landesjustizverwaltungen (5 September 1958), EA 4/412, Bü 2, HS.

Bavarian proposal. Although he still believed that “a coordination and intensification of the pursuit of Nazi violent crimes” was needed among the states, Haussmann distanced himself from the Bavarian proposal. He wrote that Leopold’s plan for “joint analysis of Allied legal records...was itself insufficient for the desired intensification and coordination.” Instead, allowing for some disagreement regarding the details of Nellmann’s plan, Haussmann agreed with its broad strokes. He concluded with reference to the seventeen additional crime complexes Schüle had uncovered, noting that this issue needed fuller discussion at the upcoming conference. Consulting documentation made for a good start, but hardly an end point in the pursuit of Nazi criminals. Such a goal required a more extensive effort of cooperation. As a result of his involvement, Haussmann mainstreamed the ideas that Schüle and Nellmann had otherwise been floating in various circles.

In the next few weeks, the Baden-Württemberg Ministry of Justice refined Nellmann’s plan and clarified its new position prior to the Bad Harzburg conference and soon gained an ally in Bavaria. Around the same time that the Nellmann article appeared, the Bavarian plans for unfettered access to Allied documents stalled. On August 22, in response to a federal request filed on behalf of the Bavarian ministry, the U.S. Embassy in Bonn wrote, “Under current rules and regulations, the documents and files from the war crimes cases are not made available for a general examination, and by no means will these files be released from the custody of the U.S. army. Access to the documents can only be made under the supervision of an army representative.”<sup>99</sup> Although a document review remained a

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<sup>99</sup> Quote from US Embassy, Statement (Bonn, 22 August 1958), EA 4/106, Bü 2, HS. The Bundesminister had previously contacted the German Foreign Office to request access to the materials on behalf of the Bavarians; see, Bundesminister der Justiz to Auswärtige Amt, Bonn (22 July 1958), EA 4/106, Bü 2, HS.

technical possibility, the Bavarians maintained that only control over the documents could provide a long-term solution.

In pursuing other options, Bavarian Ministerialdirigent Rösch aimed to clarify the Baden-Württemberg position heading into the conference. Baden-Württemberg Ministerialdirektor Müller explained in a late September conversation that “no final decision” had been made regarding Nellmann’s plan, but that the “idea of a central investigative office had met with approval.”<sup>100</sup> Rösch expressed concerns about “whether the specific states were capable of dedicating the substantial capital that this would require and especially whether they can hand over the number of prosecutors and personnel needed.” Although Rösch raised important questions about the nature of the agency, at no point did he indicate opposition to the basic idea, and this conversation informed his planning for the conference the next week.

On the eve of the Bad Harzburg conference, the two southernmost West German states had committed themselves to lead an effort for the creation of a centralized solution to the Nazi crimes problem. Over the previous few months, Bavaria and Baden-Württemberg had both encountered particular difficulties in their attempts to deal with prosecutions in their own states. The Eisele affair tarnished the image of the Bavarian judiciary and police departments. The Ulm trial had the opposite impact in Baden-Württemberg, which came across as the vanguard state of Nazi investigations. In the former case, an absence of information had led to one criminal’s escape; in the latter, an excess of incriminating information threatened to overburden the state’s prosecutors. In both instances, the states’ justice ministries arrived at the same conclusion: the piecemeal and random pursuit of Nazi

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<sup>100</sup> Justizministerium Baden-Württemberg, Aktenvermerk (26 September 1958), EA 4/106, Bü 2, HS.

criminals hampered their overall abilities to prosecute. The lesson each derived from recent events was that only a cooperative and systematic approach to the issue could provide fair and responsible results.

### **“Is Baden-Württemberg Ready to Take on This Agency?”**

The West German justice ministers and their support staff gathered in Bad Harzburg on the morning of October 1, 1958, to begin their four-day annual conference. Each year, a different state presided over the conference and determined its location. For the twenty-seventh conference, that honor fell to the Lower Saxony Ministry of Justice, which selected Bad Harzburg because “there offers the possibility for conference participants to get to know the beauty of the Harz mountain range, but also the problems affecting the Lower Saxon region on the GDR border.”<sup>101</sup> This town of 25,000 sat near the border with East Germany, and during the morning of the third day of the conference the ministers planned a “trip through the upper Harz mountains and the border region.”<sup>102</sup> Despite its politically sensitive location, Bad Harzburg was best known as a spa town with natural springs, and the ministers intended to enjoy themselves. They planned to spend their evening before the tour of the region in the local casino. The opportunity to package the conference as a personal retreat proved so popular that the organizers scrambled to arrange overflow lodging options.<sup>103</sup>

In between soaks, car rides, and gambling, the ministers intended to discuss the major challenges confronting the judicial system in West Germany. The conference consisted of

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<sup>101</sup> Werner Hofmeister, Niedersächsische Minister der Justiz to Kielinger, Senator für Justiz in Berlin (30 May 1958), 3131-I/A.1, Sonderband 14, SdJB.

<sup>102</sup> Programm für die 27. Justizministerkonferenz vom 1.-3. Oktober 1958 in Bad Harzburg, 3131-I/A.1, Sonderband 14, SdJB.

<sup>103</sup> Niedersächsische Minister der Justiz to Berlin Senator für Justiz (25 September 1958), SdJB.

two concurrent sessions, one with the justice ministers that addressed the most significant matters of the day, and the other with the Referenten that involved more technical judicial issues. The agenda for the main session laid out nine topics for discussion among the ministers. These included proposals to rework the age structure for judges and prosecutors, changes to the Judges Act (Richtergesetz), and questions about compensation for attorneys.<sup>104</sup> Various states had pushed certain of these issues onto the agenda. For example, an official in the Berlin judiciary stated prior to the conference that “the most important points for my office concern...changes to the liability law.”<sup>105</sup> As these topics suggest, most of the discussions involved precise legal questions and bureaucratic points of organization. Something of an anomaly to this pattern was the fourth item on the agenda: “the prosecution of Nazi violent crimes.”<sup>106</sup>

Although buried in the middle of the conference agenda, the discussion of the Nazi crimes issue took over five hours.<sup>107</sup> Bavarian Justice Minister Ankermüller provided a brief introduction, noting that the issue had taken on “urgent meaning” of late and that “the public demanded...newer, more effective methods” of prosecuting these cases.<sup>108</sup> Before turning the issue over to his colleague Bavarian Ministerialdirigent Rösch, Ankermüller urged “the states and federal government to cooperate in the search for the ways and means to come to a solution to this problem.” Rösch, who had clarified his views the week prior with his

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<sup>104</sup> Programm für die 27. Justizministerkonferenz vom 1.-3. Oktober 1958 in Bad Harzburg, SdJB.

<sup>105</sup> Nehlert, Abt. III, Berlin to Herrn Senator ( 26 May 1958), 3131-I/A.1, Sonderband 14 - 27. Justizministerkonferenz, SdJB.

<sup>106</sup> Tagesordnung, Bad Harzburg, 1-4 October 1958, SdJB.

<sup>107</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (Stuttgart, 6 October 1958), EA 4/106, Bü 2, HS.

<sup>108</sup> All quotes from the conference discussion unless otherwise noted come from 27. Justizministerkonferenz, Ergebnis der Beratungen (Bad Harzburg, 1 October 1958), EA 4/106, Bü 2, HS.



counterpart in Baden-Württemberg, then proceeded to offer a thirteen-page analysis of the Nazi crimes crisis. Rösch described the extensive efforts carried out to date, boasting that since 1945 Bavarian courts had handed down sentences amounting to 788 years and 8 months imprisonment for Nazi criminals. Clearly, he argued, the problem was not a lack of effort. Instead, he noted three key problems with Nazi crimes cases: the absence of a systematic approach, the parallel investigations in different states, and the widespread unfamiliarity with scholarship, research institutes, and Allied trial records.

Rösch concluded by presenting three choices for how to address these problems and get the Nazi crimes issue under control. First, the “most extensive” plan derived from “the recommendation of State Attorney General Nellmann” which entailed “the creation of a central investigative office for the entire Federal Republic.” This plan’s strengths lay in its “united leadership and central controls,” but the drawbacks included “very extensive material and personnel needs” and that “the actual capacity to prosecute would lie ultimately with the state prosecutor with jurisdiction.” Second, the West German states could agree to a “distribution of reviewed crime complexes.” So, for example, Hesse could take the lead on investigating forced labor camps in Poland, and another state would address deportations from Greece. This avoided the creation of a new central agency while still maintaining cooperation among the states. Third, the “minimum solution” involved “the creation of a central document collection office” that would organize a “card index” of crimes arranged by perpetrator and crime location. This card index would make it possible “on the one hand to exhaust the available material and on the other to preclude parallel investigations.” Rösch

concluded, “It will be the purpose of this discussion to determine which of these three should be chosen, or whether other options or none should be pursued.”<sup>109</sup>

Following these opening comments, conversation turned first to the federal position on the matter. Baden-Württemberg Minister Haussmann took the opportunity “before these different options are discussed” to press Federal Minister of Justice Fritz Schäffer to formulate his office’s position. Until now, the states were unaware of the internal discussions about this matter within the federal ministry. The federal response had been a clear priority for Haussmann’s office. The week prior, Haussmann wrote to Schäffer in support of the creation of a central investigative office. This agency, Haussmann noted, “could be organized either under the Federal Attorney General or a State Attorney General.”<sup>110</sup> He hoped to “transfer the entire matter to the federal government,” but only Schäffer could determine the outcome.<sup>111</sup> Would a new agency operate on the federal level or only among the states? During the Bad Harzburg meeting, Schäffer expressed little interest in taking an active role in these discussions. According to the minutes, Schäffer “explained that he is thoroughly in favor of a central agency. But this must be achieved through the clear agreement of the states, because otherwise there could be constitutional difficulties.”<sup>112</sup> In two sentences, he punted the pursuit of Nazi criminals back to the states.

Following Schäffer’s abdication of involvement at the start of the meeting, Dr. Ankermüller opened the subject for debate, the state ministers now the only means of

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<sup>109</sup> 27. Justizministerkonferenz, Ergebnis der Beratungen, Bad Harzburg (1 October 1958), EA 4/106, Bü 2, HS.

<sup>110</sup> Haussmann to Bundesminister der Justiz (26 September 1958), B 141 / 33770 -- Zentrale Stelle – Allgemeines, BK.

<sup>111</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (Stuttgart, 6 October 1958), EA 4/106, Bü 2, HS.

<sup>112</sup> 27. Justizministerkonferenz, Ergebnis der Beratungen (Bad Harzburg, 1 October 1958), EA 4/106, Bü 2, HS.

bringing about a change. Schleswig-Holstein Minister Leverenz first took the floor to caution that the issue veered towards a “dangerous area.” He warned his fellow ministers that they should not “be made servants to the press or public opinion.” By creating a central agency, they would be “admitting themselves that not enough has been done.” Instead, they should stand firm in their non-systematic approach and continue to prosecute just those who came to their attention. Rösch’s plan to “study the past without concrete leads” was “not the work of the judiciary, but of historians.” Leverenz passionately advocated for doing nothing, and at least one other minister acknowledged that his concerns were “considerable,” but for the most part the conversation quickly moved beyond his objections in favor of the next speaker.

When Haussmann addressed the conference following Leverenz, the issue seemed to have lost traction. The federal ministry had withdrawn active support and Leverenz had suggested that inaction was the best – and easiest – course of action. As Haussmann later recalled, the matter threatened to “melt in the sand,” if not for the “urgent words” he put before the ministers.<sup>113</sup> Where Rösch had pointed to numerous setbacks stemming from a lack of access to documentation, Haussmann highlighted three structural problems.<sup>114</sup> First, the “altogether worthless” denazification policies had placed a substantial burden on the state judiciaries. Second, using the Ulm trial as evidence, he warned that “active police officers were at times involved in crimes being investigated or have the accused as colleagues or superiors.” Third, prosecutors had to operate under the looming expiration of the statute of limitations for aiding and abetting murder in 1960 and murder in 1965.<sup>115</sup> That gave only two

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<sup>113</sup> Justizministerium Baden-Württemberg, Aktenvermerk, Stuttgart (6 October 1958), EA 4/106, Bü 2, HS.

<sup>114</sup> Haussmann, Rede-Notizen (1 October 1958), EA 4/106, Bü 2, HS.

<sup>115</sup> The Bundestag would later extend this statute of limitations to allow prosecutions to continue, but for the Justice Ministers in 1948, this was unknown.

years to investigate unprecedented crimes in an area stretching “from the North Cape to the Black Sea.” To deal seriously with all these crimes within such a tight time frame would require a centralized agency to coordinate Nazi investigations, the most substantial of Rösch’s three options. Haussmann concluded his speech with a moral call: “The agency will demand much effort, money, organization, and energy. But in the end, the biggest crimes of the century will not go unpunished.”<sup>116</sup>

This provoked a range of responses among the ministers, though most expressed support for Haussmann’s plan. Hamburg Senator Biermann-Ratjen “regarded the initiative of Baden-Württemberg as downright liberating [*geradezu als befreiend*].” Senator Zander of Bremen felt similar to Leverenz that they should not respond simply to “the pressures of the press or public,” but recognized that the pursuit of Nazi criminals “has to happen now.” Minister Ney of the Saarland held out hope that access to Allied archives could resolve the issue, but Federal Minister Schäffer interjected to remind them that “nothing more can be done” because the Allies had closed down this option. Noting that Haussmann’s speech had “left an impression on him,” Justice Minister Dr. Flehinghaus from Nordrhein-Westfalen suggested that the conversation should “be limited not to the question of if, but rather how” to make this agency a reality. Finally, the State Secretary from Hessen asked perhaps the most pertinent question of the day: “Is Baden-Württemberg ready to take on this agency?”<sup>117</sup>

Baden-Württemberg had already produced every nascent plan for a central investigative agency, from Schüle’s early reports to Nellmann’s editorial; now, the state was given the reins in crafting the language and organization for the new office. “The conference

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<sup>116</sup> 27. Justizministerkonferenz, Ergebnis der Beratungen, Bad Harzburg (1 October 1958), EA 4/106, Bü 2, HS.

<sup>117</sup> 27. Justizministerkonferenz, Ergebnis der Beratungen, Bad Harzburg (1 October 1958), EA 4/106, Bü 2, HS.

asked Baden-Württemberg to house this central agency,” Müller later explained, “with the reason that our state had the most experience in these efforts because of the Ulm trial.”<sup>118</sup> Haussmann immediately drafted a resolution for the new agency. In two paragraphs, he wrote that the justice ministers discussed the Nazi crimes issue, agreed on an agency that would focus on crimes “committed by Germans outside Germany” and whose task would be “to utilize all on-hand material, in so far as that has not yet happened, to carry out the needed initial investigations and to coordinate prosecutions.”<sup>119</sup> The organizational details would be determined following the conference.

This draft opened up a new round of discussions over the wording and purpose of the resolution. Dr. Kielinger of Berlin suggested the organization not so much coordinate but “guarantee the coordination” of investigations. Schäffer, who wanted no part in planning the agency, nevertheless wanted some credit and asked that the resolution include the Federal Minister’s support for the effort. Dr. Biermann-Ratjen suggested that the organization make use of all “on-hand and obtainable” documentation. Predictably, this discussion at times devolved into critiques of minutiae. Dr. Kielinger wanted in one instance to change “particularly” to “also.”<sup>120</sup>

At the end of the conference discussion, the ministers finalized a resolution to be distributed to the press. The statement amounted to the founding text of the Zentrale Stelle:

The Justice Ministers and Senators have exhaustively discussed the pursuit of Nazi camp and war crimes at the 27<sup>th</sup> Justice Minister Conference in Bad Harzburg because of the experiences of recent trials. They have analyzed the possibilities for how unpunished crimes, particularly those committed by Germans outside Germany, can

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<sup>118</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (Stuttgart, 6 October 1958), EA 4/106, Bü 2, HS.

<sup>119</sup> 27. Justizministerkonferenz, Ergebnis der Beratungen, Bad Harzburg (1 October 1958), EA 4/106, Bü 2, HS.

<sup>120</sup> 27. Justizministerkonferenz, Ergebnis der Beratungen, Bad Harzburg (1 October 1958), EA 4/106, Bü 2, HS.

be expedited and brought to justice through stronger cooperation among the different offices.

To that end, the Justice Ministers and Senators have agreed to create a central office of the state departments of justice [*Zentrale Stelle der Landesjustizverwaltungen*], whose task will be to utilize the on-hand and obtainable material to carry out the necessary pre-investigations and to ensure the coordination of prosecutions.

To carry out these actions, the state departments of justice will forthwith develop the organizational terms of the agency.

The Federal Minister of Justice, who attended the session, has welcomed the decision of the Justice Ministers and Senators and has promised them all possible support.

Through this agreement, the ministers committed themselves to establishing as soon as possible an agency whose precise parameters had yet to be defined. Each state promised material and financial support to this central agency. The ministers loosely agreed that “the state where the agency will be created will appoint its leader and that each state will send two to three prosecutors.”<sup>121</sup> All consented that the Baden-Württemberg would be home to this organization and that Haussmann would next “make recommendations for the organization of the office.”<sup>122</sup> Meanwhile, the other states would seek respective parliamentary approval of the resolution, following which the agency could begin operation.

Although the ministers had approved this resolution, they had done so over continued objections from Schleswig-Holstein Minister Bernhard Leverenz.<sup>123</sup> He first challenged the investigative target of the *Zentrale Stelle*: “Why should crimes committed by Germans in foreign countries be set apart? It should concern itself at least in equal measure with crimes that were committed by Germans in Germany.” Müller quickly reminded Leverenz that a

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<sup>121</sup> Justizministerium Baden-Württemberg, Notizen aus der Justizminister-Presskonferenz in Bad Harzburg am 4.10.1958 (Stuttgart, 6 October 1958), EA 4/106, Bü 2, HS.

<sup>122</sup> 27. Justizministerkonferenz, Ergebnis der Beratungen (Bad Harzburg, 1 October 1958), EA 4/106, Bü 2, HS.

<sup>123</sup> Incident between Kiel and Wetzel, see: “Kieler Vorwürfe gegen das Ulmer Gericht,” *Stuttgarter Zeitung* (11 September 1958).

core motivation for creating the agency was to sort out the thorny issue of jurisdiction, a problem that did not exist when the crime location lay within German borders. But more than that, Leverenz's view reflected a still pervasive belief in West German society, one which evidently stretched to the highest reaches of political office: that the suffering of Germans at the hands of the Nazis was commensurate with the suffering of other victim groups. The extreme disparity between the number of crimes committed within Germany versus those committed against Jews, communists, and civilians in the east underscores the poor understanding Leverenz must have had of the historical reality of the Nazi criminal empire.

One could critically view Leverenz's objections as defending Nazi crimes; more charitably, Leverenz seems to have represented a dying but still significant brand of postwar politics. The narrative of German victimization during the war permitted strange political contortions, and Leverenz's opposition to the agency reflected the belief that the preservation of German social unity required a tendentious reading of the past. For Leverenz, efforts like denazification and the proposed new office divisively pitted Germans against Germans. "What," he asked, "is meant by 'Nazi crimes of violence'? Where would, for example, verdicts from Wehrmacht courts [*Wehrmachtsgerichte*] and people's courts [*Volksgerichtshofs*] stand on this?" He worried the Zentrale Stelle would set prosecutors down a slippery slope that would end in a new denazification program. These concerns also seemingly dovetailed with Leverenz's own right-leaning political orientation. As an FDP politician, he was part of the opening to the right in the early 1950s, as was Haussmann, and so had many far-right constituents to consider. Even once it became clear that an agency would be created over his objections, Leverenz noted his "concern" that Nellmann would want to run the new organization. Writing an editorial to capture the goodwill of the public

was far too public and abrasive for Leverenz, who preferred the agency keep away from the public spotlight. Leverenz was no mere cipher for Nazi apologetics. Instead, he was frustrated with a judicial system that was moving beyond the fragile social peace constructed in the postwar years. In many ways, what is surprising is not that Leverenz objected to the agency, but that he was the only one to do so.

### **Designing the Zentrale Stelle**

With hindsight, the Bad Harzburg decision looms as a momentous turning point in West German attempts to come to terms with the Holocaust, but at the time, the resolution did little more than promise action down the road. The states had agreed to create an agency, but this agency had no leader, no home, no organization, and only a vaguely defined purpose. Haussmann and the Baden-Württemberg judiciary immediately set about developing these pieces. The day after the conference, Müller and other Ministry of Justice officials began a series of meetings with Nellmann and Schüle to discuss the events. At times, these discussions could be self-congratulatory, as they hailed Schüle's efforts in the Ulm trial and Nellmann's *Stuttgarter Zeitung* article as having "brought the discussion of this issue back in flux." They decided that "the jumping off point for the Zentrale Stelle should be the Ulm trial" and the crime complexes that trial exposed, which Schüle had written about in August.<sup>124</sup> Organizationally, they planned for an agency with five prosecutors and support staff, they addressed the need for reliable detectives "based on the experiences of the Ulm trial," and they "intended that Schüle take on this work along with Schneider [the second

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<sup>124</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (Stuttgart, 6 October 1958), EA 4/106, Bü 2, HS.



prosecutor in the Ulm trial].”<sup>125</sup> For the first time, as well, Schüle was mentioned as a possible leader for the agency.

A month later, the justice ministers gathered once more in Bonn to, among other things, approve the organizational schema Haussmann had circulated in the middle of October. Members of the Baden-Württemberg judiciary had created this draft a week after the Schüle and Nellmann discussions. When the ministers approved this proposal on November 6, they replaced the vagueness of the Bad Harzburg resolution with a concrete plan for the creation of the Zentrale Stelle.

For the first time, the contours of this “Central Office of the State Justice Ministries for the Investigation of Nazi Crimes” came into sharp relief. In the first sentence they emphasized that the agency was created “for temporary duration” to “prepare and coordinate prosecutions.”<sup>126</sup> The organization would be housed in Baden-Württemberg and placed under that state’s nominal control, though it formally remained an interstate agency. The agency’s leader would report directly to the state attorney generals, and the other German prosecutors in turn would notify the Zentrale Stelle of all independently prosecuted Nazi crimes cases. Beginning in April, the agency would be proportionally staffed from the various states. Jurisdictionally, the Zentrale Stelle focused on “those crimes for which there is no jurisdiction over the crime scene in the Federal Republic.” The agency’s primary task was “to gather, sort, and exhaust the obtainable material” on Nazi crimes, organizing this research around “crime complexes” based on “location, time, and perpetrator group.” Once evidence

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<sup>125</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (Stuttgart, 6 October 1958), EA 4/106, Bü 2, HS.

<sup>126</sup> Verwaltungsvereinbarung über die Errichtung einer zentralen Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen (6 November 1958), Q 1/22, Bü 139, HS.

of crimes had been uncovered, the agency would refer these cases to the appropriate prosecutor's office. In instances where jurisdictional debates might arise, the Supreme Court would settle these debates.

In the following weeks, the ministers returned to their state parliaments with this blueprint seeking final approval. The new agency was to begin operations on December 1, but many details had yet to be arranged. For one, the final location took time to determine. Baden-Württemberg officials considered a few cities in the vicinity of Stuttgart, such as Pforzheim and Tübingen, before deciding on Ludwigsburg. The baroque city had a few state-owned buildings that could be quickly transformed to meet the needs of the new office and was "easier to get to than Tübingen."<sup>127</sup> At the end of November, Haussmann also wrote the justice ministers to nominate a leader for the office: Erwin Schüle.<sup>128</sup> The choice perhaps came as little surprise to any of the ministers who were by now well familiar with the prosecutor's achievements in Ulm.

With little fanfare, Schüle and his skeletal staff began operations in December 1958.<sup>129</sup> Officially, not all state parliaments approved the agency until the middle of the month, but the office had been able to begin its operations on December 1.<sup>130</sup> Only four strong, the staff would more than triple over the coming year as the states allocated prosecutors.<sup>131</sup> A few weeks after its creation, at Schüle's behest, a special investigative task

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<sup>127</sup> Justizministerium Baden-Württemberg, Vermerk (30 October 1958), EA 4/106, Bü 2, HS.

<sup>128</sup> Wolfgang Haussmann to Justizminister und Senatoren der Länder and Bundesminister der Justiz (22 November 1958), EA 4/106, Bü 2, HS.

<sup>129</sup> Schüle to Justizministerium Baden-Württemberg (4 December 1958), EA 4/106, Bü 2, HS.

<sup>130</sup> Justizministerium Baden-Württemberg to Schüle (12 December 1958), EA 4/106, Bü 2, HS.

<sup>131</sup> Schüle, Stärke der Zentralen Stelle am 1. Oktober 1959 (1 October 1959), EA 4/106, Bü 4, HS.

force – *Sonderkommission Z* – was assigned to help prepare cases. The Baden-Württemberg state police explained, “The creation of Sonderkommission of the state police force in Stuttgart is necessary on account of the difficulty of the material and the extensive regional contexts of the criminal investigation work. It will include six officers and begin operations soon.”<sup>132</sup> Among these six were the two chief investigators of the Ulm trial: Helmut Opferkuch and Robert Weida. By January, Schneider, who had prosecuted the trial with Schüle, would join the staff as a prosecutor.<sup>133</sup>

In June 1959, Schüle appeared before a meeting of the state justice ministers to report on the first six months of the *Zentrale Stelle*. Despite its small staff and limited access to other states’ resources (not all of the states had yet delegated investigators to assist the *Zentrale Stelle*), Schüle could proudly report that already the agency had initiated 208 cases into new crime complexes.<sup>134</sup> These cases concerned primarily *Einsatzgruppen* and concentration camp crimes. Five major Nazi criminals had already been taken into custody as a result of these investigations. Schüle walked the justice ministers through the methods of these crime complex investigations. He told them that the agency staff began by reading over available scholarship on Nazi crimes, particularly the work of Gerald Reitlinger on the Final Solution. Next they consulted historical documentation, chiefly the International Military Tribunal records from the Nuremberg proceedings. For *Einsatzgruppen* crimes they looked at the *Ereignismeldungen*, the reports on facts and figures from various mass executions in Eastern Europe. For concentration camp crimes, Schüle relied on research committees

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<sup>132</sup> Justizministerium Baden-Württemberg, Vermerk (30 October 1958), EA 4/106, Bü 2, HS.

<sup>133</sup> Schüle, Stärke der Zentralen Stelle am 1. Oktober 1959 (1 October 1959), EA 4/106, Bü 4, HS..

<sup>134</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

studying various camps, such as Auschwitz and Buchenwald. Finally, he relied on a network of organizations – research institutions, archives, Jewish rights organizations – to create an immense field of possible sources of evidence for unprosecuted Nazi crimes.<sup>135</sup>

Schüle also explained to the justice ministers the importance of the Zentrale Stelle and his methods for carrying out these investigations. First, only he and his investigators possessed the knowledge of this material and the global contacts with the various informal partners in these investigations. To relegate these cases to other state prosecutors would diminish the chances of these investigations resulting in trials, let alone convictions. Second, the Zentrale Stelle had become a bastion of investigative integrity with specially trained and trustworthy staff. Schüle cautioned the justice ministers about his negative experiences working with unreliable – and at times hostile – investigators and prosecutors throughout West Germany. He referenced past experiences when targets of investigations had turned out to be currently employed in the West German police. In its short existence, Schüle concluded, the Zentrale Stelle had demonstrated not only the superiority of its investigative methods but also its importance as an incorruptible agency free from the infiltration of reintegrated Nazis.<sup>136</sup>

In Schüle's report on the Zentrale Stelle's first six-months of operation, the line repeatedly blurred between his descriptions of that organization and his experiences in the Ulm trial. This was because the Zentrale Stelle was effectively an enlarged replica of the Ulm investigation. The investigative strategies exactly copied those pioneered in Ulm. The

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<sup>135</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

<sup>136</sup> Mittel und Methoden der Aufklärung von nationalsozialistischen Gewaltverbrechen (18 June 1959), EA 4/106, Bü 1, HS.

reluctance to engage with outside agencies carried over from the negative experiences during the Ulm case. The Zentrale Stelle's staff used the same network developed through the Ulm trial, working with local Jewish cultural offices, academic scholars, documentation centers, emerging archives, and survivor and displaced persons networks. Even in terms of personnel, with the appointment of Opferkuch and Weida to the special investigative unit, the Zentrale Stelle to all appearances had become an organization built for the purpose of harnessing the resources and skills showcased during the Ulm proceedings.

## **Conclusion**

The relationship between the Ulm trial and the creation of the Zentrale Stelle reveals a moment of ambivalence and possibility in postwar West Germany regarding the Nazi crimes issue. The public expressed unease with the Ulm trial over the issue of ongoing prosecutions. Trials like that in Ulm and scandals like the Eisele affair showed that prosecutions were occurring by chance and justice was applied unevenly on Nazi crimes. Society seemed willing either to forgo investigations altogether or to coordinate the efforts and make a sustained attempt to address the issue, but the half-measures of chance investigations and uncoordinated policies among the states made a farce of the postwar state's commitments to justice and equality before the law. For many, what set the Federal Republic apart from Nazi Germany – and even apart from the Democratic Republic in the East – was its commitment to the fair and equitable distribution of justice. The choice seemed to be either to commit the necessary resources to categorically prosecute Nazi crimes or to press ahead and leave these crimes in the past.

As society wavered over which path to go down, individuals like Schüle and Nellmann aimed to push it towards a coordinated approach towards Nazi crimes investigations. Nellmann recognized the uncertainty in society in his editorial, which challenged West Germans to consider the unfairness of prosecuting only some criminals who had the misfortune of being spotted. More than just provoking a social response, though, Nellmann knew that any change needed to come about internally through the judiciary. The federal government had never expressed interest in taking on the Nazi crimes question, and the public could be won over to support ongoing investigations, but it could not be counted on to lead these calls. The only means for prompting this change had to start within the judiciary, and a wider impulse to confront the Nazi past would have to emanate from there. While some in the judiciary were open to these discussions, others expressed concern over the cost, jurisdiction, and oversight of a new agency. To create any such agency, its advocates needed to make this solution an attractive option to the West German judiciaries.

The key moment that transformed the Zentrale Stelle from a cumbersome idea to a viable reality came when Nellmann and Schüle convinced Baden-Württemberg Justice Minister Wolfgang Haussmann of this mission. Because what emerged from the Bad Harzburg resolution and the debate over the Zentrale Stelle was a sense that while many states could recognize the wisdom and efficacy behind such an idea, none wanted to take the initiative in creating it. Baden-Württemberg and Bavaria both lobbied to put the issue on the agenda, but at no other point leading up to the conference did any other states float proposals for how to address these issues. It was the transformative experiences of the Ulm trial and Eisele affair that spurred these states to action, but even so the Bavarian ministry demurred when it came to assuming responsibility for the agency. Similarly, as one Baden-

Württemberg Justice Ministry official wrote, “with a number of the judiciaries initially there was little willingness to show their own initiative in this matter.”<sup>137</sup> In the end, only Haussmann was willing to volunteer his state for the new organization. Thus it fell to Baden-Württemberg to organize, house, support, and staff the Zentrale Stelle.

Seen from this perspective, the decision to create the Zentrale Stelle reflected less an overarching desire to initiate new investigations than a desire to have someone else do this for them. But this need not be interpreted as a cynical action on the part of the judiciary. Investigating crimes that had occurred under a different regime over a decade ago in lands now beyond the Iron Curtain required incredible amounts of time, energy, and resources. The Ulm trial consumed three years of effort, the full-time attention of up to six detectives and two prosecutors, and in the end, though convicted, the perpetrators received extremely light sentences. Few states were willing to make similar commitments for such a dubious outcome, but the Zentrale Stelle offered an elegant solution. By sending off a few personnel, the states were able to free up the rest of their staffs from the pressures of initiating Nazi crimes investigations, and Baden-Württemberg, the one state able and willing to pursue these crimes, now had the resources to do so.

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<sup>137</sup> Justizministerium Baden-Württemberg, Aktenvermerk für Herrn Minister (Stuttgart, 6 October 1958), EA 4/106, Bü 2, HS.

## VIII. Conclusion

*This trial bears political meaning. It shows that the only basis for a government is justice. If this foundation is abandoned, then the end result is lies, arbitrariness, and murder.*

– Erwin Schüle, closing statements of the 1958 Ulm Einsatzkommando trial

Shortly before his trial in Ulm began, Hans-Joachim Böhme received a package in prison from his wife.<sup>1</sup> Included was the recent translation from French of the 1951 historical novel *Memoirs of Hadrian* by Marguerite Yourcenar. Written from the perspective of Hadrian, the novel revolves around the Roman emperor's reflections on his life as he confronts death and meditates more broadly on themes of history, power, and memory. In a postscript, Yourcenar described her interest in Hadrian as a historical figure. She wrote that he occupied a position in Roman history when the power of the old gods over the people had diminished, yet the influence of Christianity had not taken hold. For Yourcenar, these themes resonated with her views on postwar Europe. Dominant ideologies of fascism, nationalism, and imperialism had been cast aside after World War II, and no one yet knew what might take their place.<sup>2</sup>

Whether Böhme agreed with these themes is unknown, but he did embody them in postwar West Germany. While the years after 1945 made it clear that Nazism as the dominant ideology of Germany was no more, the question of what might replace it and how the successor state would deal with Hitler's legacy remained unclear. For a decade after

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<sup>1</sup> Lilo Böhme to Fink (15 March 1958), EL 322 II, Bü 88, SL.

<sup>2</sup> Yourcenar, *Memoirs of Hadrian* (New York: Farrar, Straus and Giroux, 2005).



1945, Böhme and the other nine Ulm defendants attempted to reintegrate into this society. Amidst the chaos and confusion of the postwar years, many adopted new personalities, crafted selective wartime biographies for themselves, or otherwise concealed their pasts as Holocaust perpetrators. But this question of how to come to terms with the Nazi period and the Holocaust remained unsettled. The defendants had reintegrated into a society that had not yet processed the enormity of the crimes committed or the broad spectrum of perpetrators responsible. By the mid-1950s, in the course of an investigation into one perpetrator, all ten found themselves under arrest for their role in crimes of the Holocaust in 1941.

By the time of their trial in Ulm, the ten defendants had become relics of an era that society was eager to leave behind. Their trial hinted at the changes underway in West Germany that would contribute to the emergence of a Holocaust-centered understanding of the Nazi era. Increasingly critical voices called for a more serious process of coming to terms with the past, and the trial of Holocaust perpetrators became evidence of this shift. Although it would not be until well into the 1960s that this reappraisal of the Nazi past would become central to West German identity, already during the Ulm trial it was clear that society was retreating away from the policies of inclusion and amnesty towards former Nazis. The conviction in August 1958 made clear the perpetrators' transition from reintegrated Nazis to social pariahs. Like canaries in the mineshaft, their changing status in postwar society foretold the wider cultural confrontation with the Nazi past in the coming years.

Although the social consequences of their crimes endured, the defendants quickly overcame the legal repercussions. By the end of 1962, only one of the ten remained in prison. Harm Harms was released in May 1959, after serving just two-thirds of his sentence.<sup>3</sup> In

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<sup>3</sup> Beschluss vom 13.2.1959, Landgericht Ulm – Strafkammer (13 February 1959), EL 322 II, Bü 19, SL.

January 1960, Gerhard Carsten saw his sentence cut short as well.<sup>4</sup> By November, three of the remaining defendants were paroled: Franz Behrendt, Werner Kreuzmann, and Edwin Sakuth.<sup>5</sup> In December 1961, despite his high sentence, Werner Hersmann was released on parole, with the court citing the large amount of time he had already spent in prison since the end of the war as justification.<sup>6</sup> Werner Schmidt-Hammer and Pranas Lukys won a retrial on appeal, but their sentences were upheld by the Ulm court on November 3, 1960.<sup>7</sup> Lukys was released on time served, while Schmidt-Hammer began serving a sentence ending in 1962.<sup>8</sup>

Only two of the defendants never again rejoined West German society. One was the former police director of Memel, Bernhard Fischer-Schweder. His improbable life – he had been imprisoned at various times by the Nazi government, the Allied occupiers, and the West German state – ended in a prison hospital on November 28, 1960, due to complications from an operation.<sup>9</sup> More than any other individual, Fischer-Schweder put into motion what became the massive trial in Ulm. He had risen the highest of the ten defendants in postwar society, achieving the high position of camp director in Ulm. This post brought him overexposure, though, and soon questions swirled about his past. As investigators began to dig, they uncovered a far larger web of criminality that involved dozens of unprosecuted

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<sup>4</sup> Beschluss vom 9. Dezember 1959, Landgericht Ulm (9 December 1959), EL 322 II, Bü 21, SL.

<sup>5</sup> Beschluss vom 5.11.1960, Landgericht Ulm (5 November 1960), EL 322 II, Bü 22, SL; Beschluss vom 25.10.1960, Landgericht Ulm (25 October 1960), EL 322 II, Bü 22, SL; Beschluss vom 25.10.1960, Landgericht Ulm (25 October 1960), EL 322 II, Bü 22, SL.

<sup>6</sup> Beschluss vom 10.10.1961, Landgericht Ulm (10 October 1961), EL 322 II, Bü 24, SL.

<sup>7</sup> Urteil, Schwurgericht Ulm (3 November 1960), EL 322 II, Bü 23, SL.

<sup>8</sup> Beschluss vom 7.12.1960, Landgericht Ulm (7 December 1960), EL 322 II, Bü 22, SL; Beschluss vom 6.2.1962, Landgericht Ulm (6 February 1962), EL 322 II, Bü 24, SL.

<sup>9</sup> Aktenvermerk, Justizministerium Baden-Württemberg (Stuttgart, 28 November 1960), EA 4/412, Bü 2, HS.

massacres in Lithuania. By miscalculating his own security in postwar society, Fischer-Schweder triggered the investigation that undid the reintegration strategies of the other nine.

The last defendant in prison was Hans-Joachim Böhme. The leader of Einsatzkommando Tilsit, Böhme received the longest sentence at the Ulm trial, and the court repeatedly denied his requests for parole.<sup>10</sup> The great chameleon of the postwar period, Böhme reinvented himself after 1945. He eschewed his past as a prominent of the Nazi elite to become a lawyer in a savings and loan office. Others had sought out new careers or, as with Fischer-Schweder, sought to capitalize on their previous experience in the civil service, but only Böhme succeeded in completely starting a new life through his embrace of the Stunde Null. As his trial in Ulm indicated, however, by the end of the 1950s, these myths of a clean break from the past, which had been providing postwar cover for the perpetrators attempting to reintegrate, began to break down in West Germany. Throughout the 1960s, Böhme sat in prison, while waves of new investigations into Nazi crimes started.

In early May 1968, Böhme became seriously ill and was transferred to the prison hospital in Hohenasperg, where he had previously spent time recovering from a failed suicide attempt over a decade earlier.<sup>11</sup> All that month, as Böhme lay in a hospital bed, student protests in West Germany reached a fever pitch. Students railed against the perceived hypocrisies of the state and called for a critical confrontation with the Nazi past. They were calling for a cultural reconciliation with the past, in many ways similar to the legal reconciliation with the past that came about through the Zentrale Stelle. As a negative

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<sup>10</sup> Beschluss vom 21. August 1961, Oberlandesgericht Stuttgart, 1. Straf-Senat (21 August 1961), EL 322 II, Bü 24, SL; Beschluss vom 25. Oktober 1966, Oberlandesgericht Stuttgart, 3. Straf-Senat (25 October 1966), EL 322 II, Bü 24, SL.

<sup>11</sup> Mettler to Justizministerium Baden-Württemberg (17 May 1968), EL 322 II, Bü 51, SL.

foundational myth, the protestors believed, the Third Reich and the Holocaust could inspire the Federal Republic's commitment to human rights and justice at home and abroad. On the last day of the month, Böhme – the last Ulm defendant in prison – died.<sup>12</sup>

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A seeming paradox lay at the heart of the Ulm trial's outcome. Although all but Fischer-Schweder and Böhme were back on the streets within four years of the verdict, most in West Germany regarded the verdict as a great success for the prosecution. For an individual such as Hersmann to serve only three years of a conviction for accessory to murder on 1,656 counts suggests that West Germans were evaluating success by some standard other than length of sentence. Indeed, the disparity between the crimes and the punishment, between the low sentences and high regard for the prosecution, underscores the unique circumstances surrounding the prosecution and nature of Nazi crimes cases.

Traditionally, punishment has three aims: retribution, deterrence, and rehabilitation.<sup>13</sup> The sentences handed down in Ulm, and indeed most Nazi crimes verdicts, satisfied none of these aspects. Minimal sentences for crimes of enormous magnitude hardly constituted retribution for the thousands of victims summarily massacred and buried in mass graves. Regarding deterrence, there may have been an initial aim in the immediate postwar trials at preventing a resurgence of Nazism, but by the time of the Ulm trial, the prosecutors never expressed concern over another program of genocide. If they had, it is again dubious that such short sentences would have done anything to deter potential mass murderers. Finally, in terms of rehabilitation, there was no fear of recidivism in regards to these ten perpetrators.

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<sup>12</sup> Sterbeurkunde (Karlsruhe, 7 June 1968), EL 322 II, Bü 24, SL.

<sup>13</sup> Jon Elster, "Retribution," *Retribution and Reparation*, 34-51.

Indeed, part of what had made the Ulm trial so shocking was that these had seemed to be ordinary men, who had proven capable of living as normal, law-abiding citizens during the postwar period. Even the prosecution never attempted to portray them as uncontrollable killers who posed a safety threat to West Germans. To see the Ulm verdict as many West Germans saw it at the time therefore requires some other set of metrics. Although the defendants were tried according to normal criminal law, it is clear that society evaluated the trial by different standards.

The verdict represented three crucial successes: first as a symbol of West German opposition to the Nazi era in general, second as a didactic process of establishing a historical record of the Holocaust in Lithuania, and third as a validation of the new investigation approaches carried out in Ulm in particular. As a symbol, the trial and conviction of ten Holocaust perpetrators became a pivotal instance of transitional justice, as the West German state morally condemned the Nazi state and its adherents. The evidence available at the trial primarily indicated that these men had carried out orders, and the major debate at the trial concerned whether or not one was legally culpable for carrying out state-ordered actions. The conclusion of the judge and jury that these men were indeed responsible was therefore tantamount to a condemnation of the entire hierarchy of the Third Reich. Though Hitler and the elites may have held absolute control, individuals had agency, and their actions, as the verdict made clear, had legal consequences.

The symbolic value of the trial became clear in other responses to the case. Many of the letters written to prosecutor Erwin Schüle from West Germans expressed support not simply for the trial of these ten but for an ongoing judicial process of dealing with the Nazi past. As Schüle indicated in his closing statement, these trials were a means for West

Germany to stake its claim as the moral successor to its immoral Nazi predecessor. By using the very system of justice that the perpetrators had denied to their victims, the trial – simply by virtue of its existence – advanced the causes of the West German state.<sup>14</sup> The symbolic value of the trial as a trial and the conviction as a conviction, regardless of the length of the actual sentences, allowed the West German state to make clear its commitment to justice, equality, and democracy. As a form of transitional justice, the Ulm trial thus became a crucial moment for the successor state to reject its predecessor.

The verdict also played an essential role in establishing what Lawrence Douglas has termed the “didactic legality” of the case.<sup>15</sup> One aim of the trial was to educate the public on the crimes committed under the Nazi state. At the time of the trial, few historical accounts of the Holocaust had surfaced, and the courtroom became an important vehicle for revealing the extent of these crimes. While West Germans were aware of the crimes committed against Jews, most had preconceptions about the way these crimes were carried out and who perpetrated them. The Ulm trial confounded these expectations. The crimes in question were not committed in concentration camps and many of the perpetrators came from ordinary police units. As a result, Einsatzkommando Tilsit revealed whole dimensions of the Holocaust that had been overlooked in the public and in previous trials. The trial pulled back the curtain on the machinery of the Holocaust and showed the involvement of the Nazi state at all levels in carrying out acts of genocide.

The verdict and the massive judgment that accompanied it cemented the didactic value of the trial. The five hundred page judgment detailed the entire apparatus of the Nazi

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<sup>14</sup> David Cohen, “Transitional Justice in Divided Germany after 1945,” *Retribution and Reparation*, 59-88.

<sup>15</sup> Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven: Yale University Press, 2001), 150-182.

state along the Lithuanian border. By committing itself to this record, the court created a state-approved history of the Third Reich and the genocide of Lithuanian Jews. The verdict therefore represented the importance of the trial as a process for discerning the truth of what happened in 1941. Throughout the proceedings, courtroom observers as well as the judges implored the defendants and witnesses to speak truthfully. On one level this was about establishing facts in the case, but on another level it was about allowing their honest testimonies to provide a cathartic moment for the public. The desire to use the courtroom as a forum for coming clean about the past revealed a desire in West Germany to establish a historical record of what happened. In order for there to be reconciliation, there needed first to be truth.<sup>16</sup> Though many of the defendants repeatedly refused to acknowledge their roles in these crimes or professed ignorance, the verdict succeeded in providing that catharsis by creating a historical account of the crimes.

For the investigative team responsible for the case, the verdict also validated the new strategies they pioneered over the span of three years. Although the case failed to progress much during its initial year, by June 1956, when Erwin Schüle joined the case, the investigators began to develop new methods and succeeded in expanding the case to ten defendants. Under Schüle and with the support of Baden-Württemberg Attorney General Erich Nellmann, investigators developed a transnational network of resources that greatly enhanced the power of the otherwise small Ulm prosecutor's office. They worked with Jewish rights organizations in an effort to track down witnesses, they found archives and documentation centers with contemporary records on the crimes, and they contacted

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<sup>16</sup> Heribert Adam, "Divided Memories: How Emerging Democracies Deal with the Crimes of Previous Regimes," *Legal Institutions and Collective Memories*, ed. by Susanne Karstedt (Oxford: Hart Publishing, 2009), 79-100.

historians and scholars to provide context and analysis for the massacres in Lithuania. This approach – the investigation of the crime complex – had been enormously time-consuming and expensive. The resulting conviction of all ten defendants, which came at a moment when nearly half of all Nazi crimes trials ended in acquittals, bore out their efforts.

As a tacit endorsement for the crime complex approach, the verdict also enabled Schüle and Nellmann to press the state to adopt their new strategies and to initiate a new wave of Nazi crimes investigations. In the immediate aftermath of the trial, both men voiced concerns to the state about the volume of unprosecuted Nazi crimes that might expire with the statute of limitations in 1960. When they found little initial reception in the state judiciary, Nellmann decided to raise these issues in the newspapers. By taking advantage of the tools at their disposal, Nellmann and Schüle convinced the state justice ministers to create the Zentrale Stelle for coordinating Nazi crimes. The entire foundation and operating principles of the agency became an exact replica of the crime complex investigation carried out in Ulm. The validation of the Ulm verdict therefore provided a pretense and justification for Nellmann and Schüle to push for additional, more systematic changes within West German judicial attitudes towards Nazi crimes.

With this validation, the careers of the main investigators in Ulm took off. Helmut Opferkuch and Robert Weida, the two detectives who worked the Ulm case from its earliest days, stayed on at the Zentrale Stelle for over a decade. Although initially intended as a temporary agency, the federal decision to extend the statute of limitations on serious Nazi crimes beyond 1960 also extended the agency's mandate, and the two detectives remained. These men had no experience with Nazi crimes cases prior to the Ulm investigation, yet by 1959 they became the handpicked investigators for the new state agency. While at the



Zentrale Stelle, both became outspoken advocates for continuing Nazi crimes prosecutions, giving speeches at schools and to police academies on the importance of this issue.<sup>17</sup> Though they had begun their careers as a banker and a mechanic, respectively, they retired as two of the most successful and accomplished Nazi crimes investigators in West Germany.

More complicated is the story of prosecutor Erwin Schüle, who had been the architect of the crime complex investigation in Ulm and led the Zentrale Stelle during its initial decade. Schüle's career as a Nazi investigator came to an inglorious end in 1966. As the preeminent Nazi prosecutor in West Germany, Schüle had emerged as a ripe target for Cold War attacks. Beginning in 1965, the Soviets began to spread allegations that Schüle had taken part in the murder of Soviet citizens in 1942.<sup>18</sup> The West German government launched an internal investigation, which found no basis for these accusations.<sup>19</sup> Nevertheless, the incident damaged Schüle's public standing, particularly because of the politically sensitive post he held as leader of the Zentrale Stelle. He resigned and returned to the Baden-Württemberg judiciary where he became state attorney general.<sup>20</sup> Despite this end to his tenure at the Zentrale Stelle, he played a paramount role in carrying out not only the Ulm investigation, but hundreds of others that started under his watch at the Zentrale Stelle.

Nellmann retired not long after the Ulm trial. Unlike his senior prosecutor Schüle, Nellmann saw few direct benefits from the trial, though he – perhaps more so than any other

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<sup>17</sup> Robert Weida, "Unbewältigte Vergangenheit," (undated), in author's possession; Helmut Opferkuch, "Die Aufklärung der von Einsatzgruppen begangenen NS-Gewaltverbrechen," speech (Freiburg, 7 October 1960), in author's possession.

<sup>18</sup> Pressemitteilung, Justizministerium Baden-Württemberg (Stuttgart, 6 April 1966), Q 1/22, Bü 154, HS.

<sup>19</sup> Report, Generalstaatsanwalt Stuttgart (31 March 1966), Q 1/22, Bü 154, HS.

<sup>20</sup> Dr. Rebmann, Justizministerium Baden-Württemberg to Bundesminister der Justiz (7 April 1966), Q 1/22, Bü 154, HS.

individual – had a massive impact on its evolution and legacy. As Baden-Württemberg State Attorney General, Nellmann intervened regarding the Ulm trial on two crucial occasions, each radically shifting that case’s trajectory. His first intervention came in June 1956 when he called for an overhaul of what was to that point an investigation of just Fischer-Schweder. His decision to reappraise the case and appoint Schüle to spearhead the new effort transformed this parochial investigation into the seminal Nazi crimes case of the 1950s. His second decision came in the immediate aftermath of the trial, when he penned an editorial on the lessons from Ulm, publicly airing out the inadequacies of current investigation strategies. This publication forced the state justice ministers to take up the issue at their annual conference, which produced the *Zentrale Stelle*. When suggested as a possible candidate for the agency, Nellmann demurred and finished out his service as state attorney general until retirement in 1961.<sup>21</sup> An enigmatic individual, Nellmann fundamentally affected the outcome of the Ulm trial and its legacy.

The story of the 1958 Ulm *Einsatzkommando* trial ultimately concerns individuals, such as Nellmann, Schüle, and the investigators, but also the perpetrators and the defense attorneys, historians and Jewish rights activists, the local Ulm prosecutors and state and federal officials, the press and the public. These various individuals and groups all crossed paths during the course of this momentous legal trial and public confrontation with the Nazi past. Some met during the investigation phase, others in the courtroom, and still others in the halls of state bureaucracy in the trial’s wake. Yet all their personal histories intersected for a moment in time to provoke a debate on the West German past. To understand the Ulm trial is to make sense of this sudden collision of histories and to see how this city along the Danube became, if only for a moment, the center of these debates that continue to resonate today.

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<sup>21</sup> Personalbogen (undated), EA 4/153, Bü 399, HS.

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