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STUART ELENKO, Director, Holocaust Studies Center, Bronx High School of Science, requests message on 45th (writer mistakenly says 40th) anniversary of the infamous "Kristallnacht" in Germany when thousands of Jewish shops/institutions/synagogues were demolished and burned and thousands of Jews were rounded up for deportation to concentration camps and even murdered on the streets.

There are Holocaust Studies Centers in almost every major city in country; so don't know if you'd do message for ~~just one~~ event being commemorated by just one of them.

Phone regret?

ck 10/29

212/295-0200 (Bronx H.S. of Science)

Jack - fit's to
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D.L.

The Bronx H.S. of Science
Holocaust Studies Center

75 West 205th Street
The Bronx, N.Y. 10468

Mr. M. Kopelman, Principal

Mr. S. Elenko, Director

October 7, 1983

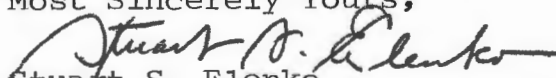
Dear Mr. President:

On behalf of myself and my 100 member student staff, I write to ask if you could please take a moment out from your most hectic schedule to send us a brief message on the upcoming fortieth anniversary of the infamous "Kristallnacht". This event lasting some three days, more so than any other was a clear indication of Hitler's mad plans for the extermination of European Jewry. While tens of thousands of innocent Jewish men, women and children were abused and beaten on the main streets of Germany's cities, an indifferent group of democratic nations and their leaders stood idly by and allowed this to happen. It is my firm belief as well as that of my staff that had you been President during this crucial period, the course of events might very well have turned out much differently. Centers such as ours would have not been necessary. Unfortunately, this is not the case, and as events all too clearly demonstrate without strong and determined action these most tragic events might well happen again if allowed.

It is our strong hope Mr. President that you might please grace our resource with a brief message on this upcoming significant event. I will most certainly provide it with the most appropriate setting to best be viewed by our 3300 students, as well as by our hundreds of visitors from around the world.

With kindest wishes for continued success and my deepest appreciation, I remain,

Most Sincerely Yours,


Stuart S. Elenko

A Case of Nazi "Justice"—The Punishment of Party Members Involved in the Kristallnacht, 1938

by Donald McKale

In one of the frequent "table talk" discussions that he held with confidants and friends at his military headquarters during the war, Adolf Hitler reflected on the meaning of law and justice. "Justice," he said philosophically, "must cooperate closely with the reason of state. The reason of state is the only thing which counts."¹ The Nazi leader thereby epitomized the brutal legal philosophy of his Third Reich and National Socialist German Workers' Party (*Nationalsozialistische Deutsche Arbeiterpartei, NSDAP*).

As a part of this broad legal principle, Nazi justice was aimed above all at the "preservation of the German species" (*Erhaltung Deutscher Art*) from racial contamination and destruction by the inferior Jewry and "foreign races." As with everything else dear to Hitler and the *NSDAP*, this slogan was hammered repeatedly into the minds of Nazi members. In countless addresses to the party during the "years of struggle" before Hitler became Chancellor in January 1933, the Führer emphasized that "justice" must be "identical with life's aim itself, that being the preservation of the [German] people." Later, while "table-talking" during the war, he remarked about the mixing of the Jews and Germans: "If I can accept a divine Commandment, it's this one: 'Thou shalt preserve the species.'"² The same phraseology was used (or modified) by other party leaders to emphasize the separation of the races—Rudolf Hess, Hermann Göring, Hans Frank, and Walter Buch, to mention several.³

To build the *NSDAP* into an organization composed solely of "pure Aryans" and the racial and political elite of Germany, the movement and the Nazi government created a number of institutions. The *SS*, for example, operated its famed Race and Settlement Main Office, and the Reich Ministry of the Interior had a so-called

¹ Gruchman, Lothar, "Hitler über die Justiz: Das Tischgespräche vom 20. August 1942," *Vierteljahrshefte für Zeitgeschichte*, vol. xii (1964), p. 99. The author thanks the Georgia College Faculty Research Committee for providing funds that aided the research for the article.

² See, for example, "Unser Freiheitskampf und Euer Recht," *Völkischer Beobachter* (hereafter *VB*), 28 October 1930; and Trevor-Roper, H.R., ed., *Hitler's Secret Conversations, 1941-44*, trans. by Norman Cameron and R.H. Stevens (New York 1961), p. 157 (the entry for 1-2 December 1941).

³ As examples, see Göring, Hermann, *Reden und Aufsätze*, ed. by Erich Grützbaeh 2nd ed (Munich 1938), p. 137; Hess, Rudolf, "S.A. und Partei," *Nationalsozialistische Monatshefte*, vol. xlvi (1934), p. 3; Frank, Hans, *Neues deutsches Recht*, ii, *Hier spricht das neue Deutschland!* (Munich 1934), p. 8; and Buch, Walter, "Ziel und Aufgaben der Parteigerichtsbarkheit", *Der Parteirichter: Amtliches Mitteilungsblatt des Obersten Parteigerichts der NSDAP*, vol. iii (1934/35), p. 17.

"Council of Experts on Population and Race Policy." A more subtle and inconspicuous body created by Hitler was the *NSDAP's* own Supreme Party Court (*Oberste Parteigericht, OPG*) whose offices were in Munich and whose Chief Justice (or Chairman) was the retired army major, Buch. A longtime Hitler follower from Baden, Buch had been commissioned to head the Supreme Court in November 1927. The Court was legalized as a part of the German Constitution by the "Law for the Securing of the Unity of Party and State" of December 1, 1933.⁴ It was extremely powerful and its jurisdiction extended primarily to party affairs.

In addition to closely examining applications for membership in the *NSDAP* (to exclude Jews, Freemasons, Communists, and other "subversives"), the *OPG* settled differences of opinion among Nazi leaders and investigated and expelled disobedient party members from the movement. If found guilty of committing a serious offense against the "reputation" or "honor" of the party, a member could be expelled by the Court (which meant almost automatic imprisonment) or he could be given a "warning" and be banned from holding a party office.⁵

Following the seizure of power, the Tribunal became especially careful to guard the racial "purity" of the Nazi Party. The Court banned from entering or remaining in the party persons having a trace of "colored or Jewish blood" in their family as far back as January 1800, those having marriage ties to anyone with "elements of colored or Jewish blood," and those with ties to such organizations as Freemason lodges and their "successor groups."⁶ However, the clearest example of the Court's efforts to prevent the racial "pollution" of the party was its response to the famed *Kristallnacht* (night of broken glass) carried out against the Jews on November 9–10, 1938.

During that fateful night, members of the party, *SA*, and *SS* (most of them disguised in civilian clothes) rioted against the Jews. Synagogues went up in flames and Jewish businesses were mercilessly ransacked. But when it was discovered by the Nazi leadership that some members had raped Jewish women—thereby violating the sacred racial "purity" of the *NSDAP*—and that other excesses had occurred, the *OPG* was ordered by Hitler to investigate.

Punishing party members who associated with Jews was hardly new to the Supreme Court. Although Hitler's Deputy Führer, Hess, ordered a stop to the practice in 1935,⁷ the Court's subordinate tribunals (at the district, county, and local party levels) were regularly hearing such cases three years later. In some in-

⁴ "Gesetz zur Sicherung der Einheit von Partei und Staat v. 1 Dezember 1933," *Reichsgesetzblatt*, ed. by Reich Ministry of Interior, vol. i (Berlin 1933), p. 1016.

⁵ "Text der Richtlinien für die Parteigerichte vom 17.2.1934," Haidn, C., and Fischer, L., *Das Recht der NSDAP*, 3rd ed (Munich 1938), pp. 697–733; and Mason, John Brown, "The Judicial System of the Nazi Party," *American Political Science Review*, vol. xxxviii (1944), pp. 96–103.

⁶ *OPG*, "Rundschreiben Nr. 12," 8 January 1934, *Bundesarchiv*, Koblenz (hereafter *BA*), *NS 22* (*Reichsorganisationsleitung der NSDAP*)/*Ordner 877*.

⁷ *Gaugericht* (district party court) Pomerania to all county and local party judges, 17 October 1935, *BA, NS 26* (*NSDAP Hauptarchiv*)/Folder 152.

stances, the investigations drove Germans "expectant of membership" (*Parteianwärter*, or persons accepted into the *NSDAP* on a two year "trial basis" before they received full membership) away from the *NSDAP*,⁸ and in others, the courts showed little sympathy for National Socialists who patronized Jewish businesses or mixed socially with Jewish friends. In fact, by the beginning of 1938, being accused of associating with Jews was the "kiss of death" for party members. Most were expelled for the "offense," and only a few "old fighters" survived a party court proceeding with the milder punishment of a warning.⁹

At the same time, violent attacks on Jews by barbaric *SA* and party men were nothing new to Nazi Germany. Sporadic outbursts and the destruction of Jewish property in Baden and other districts in the summer of 1935 prompted Hitler to command a stop to "single actions against Jews by party members."¹⁰ With his regime barely two years old and the world wondering about his motives and policies, Hitler was still concerned enough about foreign reaction and public opinion to attempt to discourage such "actions."¹¹

However, the massive pogrom of 1938 was ordered by Hitler and his Propaganda Minister, Joseph Goebbels, apparently in retaliation for the shooting on the morning of November 7 of Ernst vom Rath, a third-rate German diplomat in Paris. Rath's assassin was a young Polish-German Jew, Herschel Grünspar, who was quickly labelled by the *NSDAP*'s official news organ, the *Völkischer Beobachter*, as the "criminal tool of international Jewish murderers."¹²

When vom Rath died from his wounds on the afternoon of the ninth, Hitler decided to use the murder as a pretext to move against the Jews and thereby put pressure on English politicians (namely Winston Churchill) to halt their public attacks on his expansionism in Czechoslovakia and eastern Europe. Late that evening, while he was in Munich to celebrate the fifteenth anniversary of his "Beer Hall Putsch," Hitler gave Goebbels an oral command to order a spontaneous anti-Jewish riot by the *SA* and sympathetic party officials.¹³ The Propaganda Minister, whose relationship with his boss had slowly deteriorated since 1933, was anxious to win back the Führer's favor, and he consented. Moreover, he and other vigorously

⁸ See *Kreisgericht* (county court of the party) Bingen (Gau Hessen-Nassau) to the Nieder-Ingelheim *Ortsgruppe* (local group), 8 August 1938; and Eugen Küborth to Glässel (local leader, Nieder-Ingelheim), 7 November 1938, National Archives, Washington, D.C. (hereafter NA), microcopy T-81 (Records of the National Socialist German Labor Party), roll 176/frames 324513, 324523.

⁹ For example, *Kreisgericht Bingen*, "Beschluss," 12 February 1938, NA, T-81, 166/305879-30588/.

¹⁰ "Abschrift: Rundschreiben 8/35," 13 August 1935, by the Reich organization leader, Robert Ley, *BA*, *NS* 26/Folder 152; and the Reich Ministry of Justice to the supreme commander of the *SA*, 24 September 1935, *BA*, *NS* 26/Folder 318.

¹¹ Admitted by Hess, see deputy Gauleiter Kaufmann (Pomerania) to district office leaders and county leaders, 24 February 1936, *BA*, *NS* 26/Folder 152.

¹² "Die jüdische Bluttat in Paris," *VB*, 9 November 1938. See also, Heiber, Helmut, "Der Fall Grünspar," *Vierteljahrshefte für Zeitgeschichte*, vol. v (1957), pp. 134-35.

¹³ Domarus, Max, *Triumph, 1932-38*, vol. i, *Hitler: Reden und Proklamationen, 1932-45* (Munich 1965), pp. 970-73.

antisemitic party men had wanted for some time to play a greater role in the Jewish destruction process being carried out steadily by the *SS* and the government.¹⁴

Minutes before midnight, Goebbels informed a group of party leaders assembled at a "Comrade's Evening" in the *Alten Rathaus* that anti-Jewish demonstrations had begun in the districts of Kurhessen and Magdeburg-Anhalt. Jewish businesses were being destroyed, he said, and synagogues were in flames. He further noted that Hitler had agreed with him not to discourage the demonstrations in the event that they spread "spontaneously" throughout the Reich. The attentive listeners understood Goebbels' words as meaning that the *NSDAP* should not outwardly appear to be the instigator of the riots (e.g., *SA* and *SS* men should wear civilian clothes), but that it was in fact to organize the riots and carry them out.¹⁵

With this in mind, the leaders immediately telephoned or teletyped the order to their *Gau* (district) headquarters. While the Security Police (*Sicherheitspolizei*) was ordered by its chief, Reinhard Heydrich, to stand by as a "supervisor" and to guard against destructive "plundering" of Jewish property (which was insured by Aryan insurance companies),¹⁶ the riots spread with lightning speed. In Berlin, windows in Jewish shops were smashed and three synagogues were destroyed (except for their outer walls) by fire.¹⁷ In Nuremberg, seventy Jewish businesses and 236 houses were badly damaged, and the city's Fire Department helped the disguised *SA* burn down the synagogues. (Despite the criminality, the Franconian Gauleiter, Julius Streicher, told a mass party meeting the following evening that the "demonstrations" in his district were "generally disciplined, clear and far-sighted.")¹⁸ Even in the smaller towns and villages such as Xanten and Geldern (*Gau Westphalia-South*) and "Thalburg" (*Gau Hanover*), the burning and ransacking proceeded through the night.¹⁹

Added to the physical destruction of property, individual *SA* men and groups of *SA* "vigilantes" molested Jewish women and cold-bloodedly murdered Jews in a number of cities. Among other places, Jews were slain in Chemnitz, Munich, Innsbruck, Küstrin, Lünen, and Linz (Hitler's boyhood home). As morning dawned

¹⁴ Concerning Goebbels' motives, see Dietrich, Otto, *Zwölf Jahre mit Hitler* (Cologne n.d.), pp. 55–56; Hilberg, Raul, *The Destruction of the European Jews* (Chicago 1961), pp. 22–23; and Peterson, E.N., *The Limits of Hitler's Power* (Princeton 1969), pp. 57–58.

¹⁵ Hilberg, Raul, *The Destruction of the European Jews* (Chicago 1961), p. 23.

¹⁶ Heydrich to the security service (*Sicherheitsdienst*) and state police offices, "Abschrift des Blitz-Fernschreibens aus München vom 10.11.38 1 Uhr 20," NA, T-988 (*World War II War Crimes Records: Prosecution Exhibits Submitted to the International Military Tribunal*), 214/089501–089504. See also, Buchheim, Hans, Broszat, Martin, Jacobsen, Hans-Adolf, and Krausnick, Helmut, *Konzentrationslager, Kommissarbefehl, Judenverfolgung*, vol. ii, *Anatomie des SS-Staates* (Freiburg 1965), p. 335.

¹⁷ "Empörte Volksseele schaffte sich Luft," *VB*, 11 November 1938.

¹⁸ *Fränkische Tageszeitung* (hereafter *FT*), 11 November 1938; and the Nuremberg police report, "Betreff: Besondere Vorfälle bei der Protestaktion gegen die Juden in Nürnberg," NA, T-81, 57/60275.

¹⁹ *SS-Sturm* (company) Geldern 10/25 to *SS-Sturm* (battalion) III/25, 14 November 1938, in Scheffler, Wolfgang, *Judenverfolgung im Dritten Reich* (Berlin 1964), p. 74; and Allen, William S., *The Nazi Seizure of Power: The Experience of a Single German Town, 1930–1935* (Chicago 1965), p. 273.

on November 10, 177 synagogues in the Reich lay demolished or in burned rubble, streets were full of shattered glass from 7,500 damaged stores, and over 20,000 Jews were being rounded up like cattle by the police for transfer to concentration camps.²⁰

When news of the Kristallnacht reached the rest of the world, the reaction was extremely negative. Foreigners were horrified at the display of barbarism and destruction. English officials and other Western politicians did not stop their criticism of Hitler's aggression in Czechoslovakia. The *NSDAP*, however, acted totally surprised; the *Völkischer Beobachter* noted that the "demonstrations" were a "spontaneous" answer to the "provocations in Paris" and the "cowardly Jewish murder."²¹ Furthermore, in the midst of the pogrom, Goebbels dispatched a circular to the party ordering the action to stop "immediately." A bit later, a command from Hess' office forbade the burning of Jewish businesses; and the order disclaimed any responsibility by the party for the riots.²²

The response of a number of the party's district leaders (*Gauleiters*) to the night of unrestrained criminality was shock and opposition. As soon as they learned what was happening, several—including Karl Kaufmann (Hamburg), Joachim Eggeling (Magdeburg-Anhalt), Albert Forster (Danzig), Adolf Wagner (Munich-Upper Bavaria), and Deputy Gauleiter Paul Wegener (Kurmark)—either refused to obey or issued counter-orders. Göring, the man second in line to Hitler, was likewise angry; he disapproved of the wanton destruction of property because it hurt his efforts (as head of the Reich's "Four Year Plan") to rebuild Germany's economy. Even Heydrich promised a group of district leaders and party court judges on November 20 that severe measures would be taken against the worst offenders.²³

During the last week of November, the Supreme Court received steady reports from its district courts indicating that numerous cases of rape, plundering, and murder by Nazi members were under investigation by the police and state courts. Hess, desiring to insure that the rapists be held accountable for their crime against the *NSDAP*'s racial principles and fearing a public inquiry that might uncover the real culprits in the riots and seriously embarrass the party, suddenly ordered the *OPG* to intervene and bring the party members to trial secretly. Simultaneously, Göring was appointed Hitler's "special commissioner" to cooperate with the Court and the Gestapo in getting the state investigations stopped. Through such moves,

²⁰ The figures, which first became known at the Nuremberg Trials, were given by Heydrich to Göring. See "Stenographische Niederschrift von einem Teil der Besprechung über die Judenfrage unter Vorsitz von Feldmarschall Göring im RLM am 12. November 1938, 11 Uhr.," NA, T-988, 214/089610.

²¹ "Antwort auf die feige jüdische Mordtat," *VB*, 10 November 1938.

²² *FT*, 11 November 1938; and the *OPG*'s report on the pogrom to Göring, "Bericht über die Vorgänge und parteigerichtlichen Verfahren, die im Zusammenhang mit den antisemitischen Kundgebungen vom 9. November 1938 stehen," NA, T-988, 216/090729.

²³ International Military Tribunal, *Trial of the Major War Criminals*, vol. xxi (Nuremberg 1947-49), p. 466.

it was also hoped that the party leaders who had opposed the pogrom would be convinced that the movement was genuinely interested in punishing the guilty.²⁴

The *OPG*, Gestapo, and state police began their joint investigations immediately and in mid-December, the Supreme *SA Leadership* (*Oberste SA-Führung, OSAF*), commanded by Viktor Lutze, was informed by the Court that proceedings were pending against a number of *SA* men. Lutze and his staff were instructed that the *OPG* intended "to establish which instances from the [anti-Jewish] actions could and must be justified and which cases sprang from personal and beastly motives."²⁵ Within a few days, thirty *SA*, *SS*, and party officials had been seized and moved to Munich for trial; their offenses ranged from murdering or raping Jews to plundering Jewish property.

The *OPG* began the trials on December 20, based on evidence produced by the Gestapo. Because of the unique and unusual circumstances of the cases, the Court formed a so-called "Special Senate" (*Sondersenat*), and included in the Senate (in addition to the regular Court judges) were "jurors" (*Schöffen*) who cooperated in the proceedings and the decisions. The jurors were selected carefully; they included ranking officers from the *OSAF* and *SS* and several district leaders who had opposed the riots (namely Kaufmann, Eggeling, Forster, and Wagner).²⁶ Obviously, it was the *Reichsleitung's* (national party leadership) plan to involve the disgruntled Gauleiters so as to soothe their feelings and halt criticism of the party by making them a part of the trials. However, since only one district leader was permitted to participate in each proceeding, the group found itself badly outnumbered when decisions on punishments were made.

During the remainder of December and into January and February 1939, the Senate went through the motions of trying the guilty. The resulting judgments made a shambles of the concept of justice. Naturally, the court dispensed National Socialist justice, and this was far different from Western liberal-democratic justice. The acquittals flowed fast and heavy and, except for three instances, the punishments were negligible. Revealing a hint of the perverted mentality which later produced the Jewish extermination plan, the "Final Solution," the Supreme Court coldly excused the murder of twenty-one Jews as being the result of "unclear or unavoidable commands," hatred of party members for Jews, and revenge for the death of vom Rath.²⁷

The Tribunal issued three basic verdicts: expulsion from the *NSDAP*, warning by the movement, and no punishment. Expulsion, the severest punishment, was ordered for four *SA* men in Niederwerrn, Linz, and Duisburg who either raped or molested Jewish girls. In each instance, the convicted was vigorously condemned for transgressing against the *NSDAP's* racial laws and sent to prison.²⁸ In Linz,

²⁴ "Bericht über die Vorgänge . . .," NA, T-988, 216/090730-090731.

²⁵ *OSAF* (judicial and legal office) to the *SA-Gruppe Kurpfalz* (Mannheim), 17 December 1938, BA, NS 26/Folder 318.

²⁶ "Bericht über die Vorgänge . . .," NA, T-988, 216/090731.

²⁷ *Ibid.*, 090731-090740.

²⁸ *Ibid.*, 090731-090732.

a group of drunken SA men had searched Jewish homes, and two had captured a young maiden, commanded her to disrobe, and molested her shamefully. Although the men were "old fighters" and they begged the Court to punish them mildly, the Tribunal expelled them because they had done "things" that were "not in common with the struggle of the Party against the foreign-blooded Jewry."²⁹

The *OPG* also expelled an unskilled factory worker and SA man from Rheinhausen, Heinrich Frey, for having raped a thirteen-year-old schoolgirl. While visiting nearby Duisburg, Frey posed as a police official, abducted the unsuspecting child, and forced her to accompany him to his home, where the crime was committed. When questioned by the Supreme Court, Frey denied the accusations, but the Court called on a police officer and a physician (who had examined the girl) to testify against him.³⁰ The last rapist expelled and imprisoned was Gustav Gerstner, an SA leader from Niederwerm who had also been charged with plundering and stealing Jewish property.³¹

For the criminals who had savagely murdered Jews, the Court blithely excused the violence and decreed either warnings or pardons. Franz Norgall, an "old fighter" and rowdy SA leader (who had also served prison terms) from Heilsburg (Gau East Prussia), had used the pogrom to go on a personal murder spree. Upon hearing that the town's synagogue was about to be burned, Norgall raced to it to capture a Jew, Seelig, who was a suspected Communist. He forced his way into the darkened temple and heard Seelig and his wife attempting to flee. Without a word of warning, Norgall emptied several shots into the blackness, killing the pair.

As its chief witnesses, the *OPG* called on two of Norgall's political leaders; they testified that the defendant was unaware that people were in the synagogue and that the shootings were clearly "justified." Accordingly, the Court ruled that the "motive" for the murders

can only be Jewish hate and particularly the common dislike in the ranks of the Heilsburg party members and SA men for Seelig, who was a known Communist in the period of struggle and active in confrontations with National Socialists, and who displayed provocative relations following the seizure of power down to the present.³²

Thus, the Court accepted the biased testimony of Norgall's friends, and it did not occur to the judges that it was anything but a "coincidence" that the persons killed were active Nazi opponents. While Norgall was given a warning and banned from holding a party office for three years, the Tribunal praised him as an "old fighter in the period of struggle" who "has asserted himself solely for the movement without regard to his person."³³

²⁹ *OPG*, "In Namen des Führers," 10 January 1939, against Johann Hintersteiner and Friedrich Schmidinger, NA, T-81, 57/59987-59993.

³⁰ *OPG*, "In Namen des Führers," 11 January 1939, *Ibid.*, 59976-59986.

³¹ "Bericht über die Vorgänge . . .," NA, 216/090732.

³² *OPG*, "In Namen des Führers," 20 December 1938, NA, T-81, 57/60002.

³³ *Ibid.*, 60003.

Another warning was given to four Chemnitz SA and SS leaders who went during the night of November 9–10 to the villa of the Jewish family, Fürstenheim. They rapped on the door and then forced their way inside to drag the terrified mother and father out of bed. The father was beaten savagely, thrown down the cellar steps, and then shot to death. Defending themselves later before the OPG, the accused contended that Fürstenheim was shot when he tried to attack them. The Court found it hard to believe, however, that "even a Jew" would challenge "four armed men," and it refused to accept the story. Nevertheless, except for giving them a warning and forbidding them to carry weapons for a year, the Tribunal did nothing to the thugs.³⁴

The OPG tried several other groups of drunken SA and SS vigilantes. However, being more concerned with uncovering sex offenses than murder, the Court operated on the principle that the more vicious and violent the crime, the lesser the punishment decreed. In a wild and totally undisciplined night in Neidenburg (Gau East Prussia), six SA men stabbed and killed two Jews in their beds, and an Aryan was likewise injured. Saying that the murderers had "acted in good conscience" and followed the orders of their district and county leaders, the Tribunal dismissed the charges and gave the accused no punishment.³⁵

Similarly, the Court refused to punish two Innsbruck SS men for stabbing and beating three Jews to death. It was revealed at the trial that the murders were partly the result of a vendetta by the SS men who had longstanding "personal differences" with their victims. It was also discovered that the Innsbruck SS headquarters had been ordered by its Gauleiter, Franz Hofer (Gau Tirol), to conduct a sort of "night of the long knives" against the Jews. According to an SS Brigadier-General, Feil, Hofer had in turn received his orders in a discussion with Goebbels late on the night of November 9. In completely acquitting the killers, the OPG noted that

both of the accused are irreproachable men and have not been punished before. Both have done considerable service for the National Socialist movement . . . Their competent SS Leader said of them that they were ready at any time to make any sacrifice of property and life for the movement.³⁶

Finally, one of the bloodiest uprisings during the Kristallnacht occurred in Lünen (north of Dortmund). Two persons were killed by SA and party leaders, and the leader of the Lünen local group, Fritz Österreich, used the riots as an opportunity to shoot a Jewish shopkeeper, Kniebel. The latter had been "a known Marxist" and "generally hated by the Lünen party comrades." Yet, despite the coincidence that an active Nazi opponent had been eliminated conveniently in the

³⁴ OPG, "In Namen des Führers," 12 January 1939, against Werner Puchta, Werner Görmer, Guido Immerthal, and Kurt Müller, *Ibid.*, 60048–60051.

³⁵ OPG, "In Namen des Führers," 12 January 1939, against Max Ulrich, Emil Schudwitz, Fritz Rückstein, Ernst Kubin, Max Tybussek, and Wilhelm Strysie, *Ibid.*, 60033.

³⁶ OPG, "In Namen des Führers," 9 February 1939, against Hans Aichinger and Walter Kopfgartner, *Ibid.*, 60073.

riots, the *OPG* noted in pardoning Österreich: "The Court has the conviction that Österreich, who also does not give the impression of being a particularly impulsive or violent person, did not intend to kill the Jew before entering Kniebel's home."³⁷

The mass of party trials ended on February 9, 1939, and the *OPG* immediately informed the Reich Ministry of Justice that the Court was requesting Göring and Hitler to halt all state investigations or court proceedings against Nazi members who had just been acquitted by the party. Several days later, Chief Justice Buch and Ludwig Schneider (Buch's assistant who had presided as chairman at most of the trials) sent Göring a ten-page report on the Supreme Court's proceedings, and the request to Hitler was contained in it. Twenty-six of the thirty men tried by the Court were released with warnings or with no punishment, and the report justified the sentences by saying in effect that one could not prosecute the "little man" while Goebbels, the instigator, went unpunished. In addition, the report concluded with a surprising bit of logic and realism:

Also the public knows down to the last man that political actions such as 9 November are organized and executed by the party, whether this is admitted or not. When, in just one night, all synagogues burn down, that must be organized somehow, and it can only be organized by the party.³⁸

As with the trials, the *OPG*'s report remained secret, and its contents only became public at Nuremberg. The Court was ordered into the whole affair for three reasons: to purge party members who had raped Jews or mingled sexually with them, to keep the party murderers away from the state courts (and, therefore, the public), and to satisfy the political leaders in the *NSDAP* who disapproved of the riots. Although the trials and their results remained basically unknown, rumors circulated throughout the party and the proceedings created the impression (amongst the ranking party and government leaders who knew of them) that the movement was making a serious effort to prosecute the worst of the criminals. Thus, while the party in fact punished very few of its members, it was able to save face somewhat by at least holding the trials.

Through its judgments, the *OPG* reconfirmed the Nazi Party's vulgar racism. Many *SA* men—predominantly "old fighters" and drunken thugs that had spent terms in prison—used the Kristallnacht as a pretext or "license" to kill their Jewish enemies. Realizing that they would probably not be held accountable for their actions by the party, they set out to settle old scores. Some who went too far and committed sex crimes were made to pay by the movement, however; the reason for the punishment was that such activity was the worst offense a member could commit against the party (and thereby against the Führer). Moreover, the *OPG*'s attitude toward the deeds of barbarism foreshadowed the type of mentality that was to justify the

³⁷ *OPG*, "Im Namen des Führers," 5 January 1939, also against Heinrich Gutt, *Ibid.*, 60037. See also, *OPG*, "Im Namen des Führers," 6 January 1939, against Heinrich Schmidt and Ernst Meckler, *Ibid.*, 60040–60047.

³⁸ "Bericht über die Vorgänge . . .," NA, T-988, 216/090737–090738.

"Final Solution" during the war. Chief Justice Buch himself exemplified this mentality when he wrote in 1938 in the journal, *Deutsche Justiz* (German Justice): "The Jew is no human being. He is a symbol of decay."³⁹

The only substantially equitable and progressive action that the Supreme Court undertook in connection with the riots was to aid Göring in eventually securing the removal from office of the lecherous Franconian Gauleiter, Streicher. Streicher and Göring had been personal antagonists since the Nuremberg leader had suggested that Göring's daughter had been fathered by artificial insemination. In December 1938, it was Göring who created a special party commission that scrutinized Streicher's private life and particularly his business transactions.⁴⁰

Since the early years of the Nazi Party, Streicher had been known for his elaborate financial dealings and personal vices, and Hitler's toleration of him had angered several politicians in the party leadership, including Göring and Buch.⁴¹ Streicher's last fraudulent transaction (as a party official) was concerned with the Aryanization of Jewish property in Nuremberg and Fürth following the Kristallnacht. Along with his adjutant, Karl Holz, and the district branch of the German Labor Front (*Deutsche Arbeitsfront*), he used extortion and physical force to make Jews sign over to the Gau (and, therefore, local party leaders) their property at less than ten percent of its real value. One Jew after another was called in to sign legal papers transferring his property to the Gau, the city of Nuremberg, or some other purchaser.⁴²

By early December, Göring (who was charged with supervising the Aryanization process) was receiving complaints from Nuremberg court officers and policemen. He quickly decreed that all irregular Aryanizations were invalid and, on December 9, he met in Berlin with police officials and members of the *OPG* to discuss the affair. In addition to appointing a commission to investigate Streicher, he ordered the Supreme Court to inquire into the Aryanization abuses.⁴³ From the Nuremberg police and Gestapo files, the Court discovered that the local population was aware of Streicher's swindle and that the people viewed it as "the worst corruption." The Tribunal's inquiry continued into the following year, and it produced the type of incriminating material that finally forced Hitler to bow to Göring's recommendation that Streicher be dismissed.⁴⁴ The removal came shortly after the beginning of the war. At a time when Germans were asked to deny themselves the barest material

³⁹ Quoted in Bein, Alexander, "Der jüdische Parasit," *Vierteljahrshefte für Zeitgeschichte*, vol. xiii (1965), p. 140.

⁴⁰ Davidson, Eugene, *The Trial of the Germans: An Account of the Twenty-Two Defendants Before the International Military Tribunal at Nuremberg* (New York 1966), pp. 44, 46-7.

⁴¹ As early as 1928, Buch had quarreled bitterly with Streicher when the latter was being investigated by the Supreme Court for defrauding the *NSDAP*. See Buch to Ludwig Käfer (member in Nuremberg), 8 February 1928, *BA, NS 36 (Untersuchungs- u. Schlichtungsausschuss, Reichsleitung)*/Folder 4.

⁴² Hilberg, Raul, *The Destruction of the European Jews* (Chicago 1961), p. 86.

⁴³ *OPG* to the Nuremberg police president (Dr. Martin) 12 December 1938, NA, T-81, 57/60355.

⁴⁴ See the police document, "Betreff: Besondere Vorfälle . . .," *Ibid.*, 60275-60283.

necessities, the *NSDAP* could hardly afford to support a rogue who publicly flaunted his wealth and his shady business ventures.

The story of the Kristallnacht and the immediate aftermath within the Nazi Party revealed that the *NSDAP* possessed a judicial system whose power was at times greater than that of the German state or public judiciary. In this instance, Hitler's repeated claim that the "party controlled the state" was true. Furthermore, the days following the pogrom saw the close cooperation and free exchange of important criminal records between several branches of the German police and the party's Supreme Court. Wherever public law was concerned in the Third Reich, nothing was sacred; the *NSDAP* never hesitated to subvert the law or destroy it when the good of the party was at stake. Similar to other totalitarian political movements, the Nazi Party had little respect for law of any kind except its own.

Finally, the *OPG*'s handling of the members involved in the riots reflected the fanatical commitment that the National Socialists had to antisemitism and the deep penetration of the party's racism into its legal philosophy. On the one hand, the Court ruthlessly condemned anyone who mixed either sexually or socially with Jews; on the other hand, it completely acquitted members who cold-bloodedly murdered Jews.