

**War Crimes and Legal Immunities: The Complicities of Waffen-SS General Karl Wolff in  
Nazi medical experiments**

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[1] There is a considerable amount of academic and popular literature on Nazi medical experimentation within concentration camps, however, the existing research largely focuses on the doctors and the details of their experiments and has neglected two interesting themes. The first neglected theme is the potential legal liabilities and defense strategies of those among the SS leadership, such as SS General Karl Wolff. Wolff facilitated these experiments in a purely administrative capacity, but without his contribution this type of war crime would not have been possible. Secondly, the research has neglected the extent to which Wolff was able to avoid legal accountability for these and other war crimes, as a result of his wartime cooperation with a U.S. intelligence agency and his post-war assistance to interrogators within the Allied Military Intelligence as well as the Nuremberg prosecutors.

[2] The present article, which is the first in a series of related studies, focuses largely on the first theme. This article gives particular attention to Wolff's attempts to avoid prosecution by insisting that the experiments were of a voluntary nature, based on the consent of the research subject, and were, therefore, not criminal acts. Additionally, the article focuses on Wolff's claim that he did not possess the requisite *mens rea* or intent necessary to secure a criminal conviction.

[3] It would be impossible to provide a comprehensive assessment of the complete significance and implications of the immunity issue, without first having clarified the full range of war crimes

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for which Wolff could, in principle, have been prosecuted. These crimes would include his high-level involvement in often fatal medical experimentation performed upon individuals detained in Nazi concentration and death camps.

During World War II, Allen Dulles was head of the Swiss field office, in Berne, of the Office of Strategic Service's (OSS).<sup>1</sup> The OSS is an American wartime intelligence organization.<sup>2</sup> Dulles became director of the CIA in 1953 and held this position through 1961.<sup>3</sup> This article will consider whether Dulles helped to secure legal immunity from war crimes charges for Waffen-SS General Karl Wolff, and senior members of his immediate SS, entourage who participated with Dulles in capitulation negotiations, which were entitled Operation Sunrise.<sup>4</sup> On May 2, following many false starts, protests from Stalin a formal cancellation and subsequent re-activation, Operation Sunrise culminated in the early surrender of approximately one million German and Italian Fascist soldiers in Northern Italy.<sup>5</sup> This occurred a few days before the final surrender by the remainder of German forces.<sup>6</sup>

[4] The criticism of Dulles, which still resonates with political and emotional significance, raises empirical issues regarding the character of Wolff's responsibilities for war crimes.<sup>7</sup> If these

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<sup>1</sup> PETER GROSE, GENTLEMAN SPY: THE LIFE OF ALLEN DULLES, 149 (1994)

<sup>2</sup> *Id.* at 146-47, 153-70.

<sup>3</sup> *Id.* at 325, 334.

<sup>4</sup> See BRADLEY F. SMITH & ELENA AGAROSSO, OPERATION SUNRISE: THE SECRET SURRENDER (1979).

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.*

<sup>7</sup> MARK AARONS & JOHN LOFTUS, THE SECRET WAR AGAINST THE JEWS: HOW WESTERN ESPIONAGE BETRAYED THE JEWISH PEOPLE 71-80 (1994).

potential liabilities can be firmly established, our analysis raises moral and political questions with respect to the nature of the post-war Allied response to such criminality.<sup>8</sup> Did the Allied response to Wolff represent a catastrophe for justice when considered in the light of historical and institutional empirical realities?<sup>9</sup> Is Neal Ascherson right when he claims that, “By selling his armies to the Americans in 1945, Karl Wolff bought immunity, apart from a brief confinement. . . . this old man' s hale, sunny leisure dishonoured both the dead and the living.”<sup>10</sup>

[5] The case of Karl Wolff is particularly interesting and, given the intervention of a former-Director of the CIA, potentially controversial. The complexity and contradictory character of Wolff's personality, which impressed Dulles, is matched by the ambiguous role he played within the Nazi regime, as both Himmler's Chief of Staff (a senior SS administrator: 1936-43),<sup>11</sup> Highest Police and SS Leader in Nazi-Occupied Northern Italy (1943-45),<sup>12</sup> and General within the Waffen SS (1944-45).<sup>13</sup>

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<sup>8</sup> See S.J. Res. 133, 107th Cong. (2001), available at <http://www.fas.org/sgp/congress/2001/s071201.html> (last visited Feb. 18, 2004).

<sup>9</sup> GITTA SERENY, ALBERT SPEER: HIS BATTLE WITH TRUTH 353 (1995).

<sup>10</sup> Neal Ascherson, *The Cold Ashes of Auschwitz Demand Reflection Not Revenge*, THE INDEP., May 5, 1991 (Eng.).

<sup>11</sup> H. Mazal, *Extracts From Testimony of Defense Witness SS General Karl Wolff*, 5 TRIAL OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNAL, UNDER CONTROL COUNCIL NO. 10 769, United States Government Printing Office, at <http://www.mazal.org> (last visited Feb. 15, 2004). This website is a comprehensive resource for Nuremberg documents. The site is organized according to the United States Government Printing Office volumes and page numbers.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

[6] As already noted, the implications of any such immunity deal depend, quite clearly, upon first answering the question of the extent to which Wolff could, in the absence of Dulles's interventions, have faced prosecution within the Nuremberg process as a major war criminal. Furthermore, if we can succeed in clarifying this potential liability, including any possible legal defenses that Wolff could have offered, then we will be better placed to analyze the significance and implications of his alleged legal immunity.<sup>14</sup>

[7] One of the grounds on which Wolff could, and perhaps should, have been prosecuted during the Nuremberg trials process was one of the two most senior SS leaders who survived the war.<sup>15</sup> In principle, the leading figures of the SS could have been tried for those aspects of the organization's involvement in atrocities that fell within their specific responsibilities. Wolff's responsibilities as Himmler's Chief of Staff and Principal Waffen SS Liaison office with Hitler's headquarters were potentially extensive. For the purposes of this study, however, we will be focusing on the period from 1942 through 1943, when Wolff was involved in, among other things, illegal and often fatal medical experiments on human subjects.<sup>16</sup> If it could be established that he was fully aware of the

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<sup>14</sup> This allegation, which was once confined to secret internal intelligence and diplomatic correspondence, is now increasingly being made by a variety of writers. See AARONS & LOFTUS, *supra* note 7, at 72-73. These allegations are not confined to predictable liberal and socialist critics of United States' intelligence. For example, the controversial revisionist historian, David Irving, claims: "[i]t is quite evident from the CCS files on Operation Crossword, the Dulles/Wolff negotiations, that SS Obergruppenführer Karl Wolff was promised immunity from prosecution in return for surrendering Italy to the Allies in April 1945." DAVID IRVING, NUREMBERG: THE LAST BATTLE 23 (1996), available at <http://www.fpp.co.uk/book/Nuremberg/NUREMBERG.pdf>.

<sup>15</sup> ROBERT CONOT, JUSTICE AT NUREMBERG 518 (1983). This followed the suicide of both Hitler and Himmler. Conot notes that: "Wolff, once ticketed as Heydrich's successor [to head the repressive RSHA section of the SS] was one of the leading perpetrators [who] walked off scot free." *Id.* The senior SS leader who survived the war was Ernst Kaltenbrunner, who was convicted and executed in November 1946. *Id.* at 506.

<sup>16</sup> *Id.* at 284-99.

true nature and effect of the experiments, then his case would certainly have merited a successful prosecution in the ‘Doctors’ Trial,”<sup>17</sup> held as the first of the ‘Subsequent Proceedings’ at Nuremberg that opened in late 1946.<sup>18</sup> We need, at the outset, to bear in mind that approximately ninety fatalities occurred in low-pressure experiments whilst up to an additional one hundred fifty persons died in later freezing experiments, involving subjecting individuals to extremely low temperatures in the open air and in water.<sup>19</sup>

[8] It is necessary, at this point, to analyze Wolff’ s involvement and role in medical experimentation in a broader context. The atrocities committed under the guise of experimentation for the purposes of medical science received specific attention in the doctors’ trial. The defendants were twenty-three German doctors who had either been involved in the “euthanasia programme,” that led to the mass extermination of patients in mental asylums,<sup>20</sup> or in the medical experiments

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<sup>17</sup> The Doctors Trial is also often referred to as the ‘Medical Case.’

<sup>18</sup> The trial began on December 9, 1946. See Mazal, *supra* note 11 (for the official trial record). See Douglas A. Linder, *The Nuremberg Trials: The Doctors Trial*, FAMOUS WORLD TRIALS: NUREMBERG TRIALS 1945-1949, at <http://www.law.umkc.edu/faculty/projects/ftrials/nuremberg/NurembergDoctorTrial.html#Indictments> (2003) (for additional extracts from the Doctors’ Trial).

<sup>19</sup> CONOT, *supra* note 15, at 207. The details are discussed in full below.

<sup>20</sup> Linder, *supra* note 18. Original American intelligence data contained within a report forming part of an OSS-derived Nuremberg document 1696 PS, richly illustrates the Nazi’ s practices of coercive, or involuntary, forms of “euthanasia” carried out upon mentally ill adults and children within a particular mental institution in Bavaria. The report was written by Public Health and Public Relations Officers of the Military Government Detachment F1F3 and was held as an intelligence report by the OSS European Theatre of Operations. *Id.*

upon concentration camp inmates.<sup>21</sup> Sixteen of the doctors were found guilty of war crimes and crimes against humanity.<sup>22</sup>

[9] One particular aspect of the indictment needs to be highlighted due to its significance to Wolff's attempted defense strategy. Specifically, this is the Nazi doctors' complete failure to obtain consent from the uninformed participants in their medical experiments. This article addresses consent in the context of Wolff's defense strategy, utilized after being confronted with evidence of his administrative involvement in certain of the medical experiments. Close attention was paid to the question of consent in this trial. This has had an obvious impact upon legal and professional codes of practice relating to medical experimentation on human beings, as it was the most prominent trial of an individual involving medical experimentation upon human beings in legal history.<sup>23</sup> The Nuremberg Code begins by stating that, "The voluntary consent of the human

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> The prosecution's focus upon consent is apparent from the very start of the Doctors' Trial. In his opening statement, Brigadier General Telford Taylor commented:

Whatever book or treatise on medical ethics we may examine, and whatever expert on forensic medicine we may question, will say that it is a fundamental and inescapable obligation of every physician under any known system of law not to perform a dangerous experiment without the subject's consent. If the tyranny that was Nazi Germany, no one could give such a consent to the medical agents of the State; everyone lived in fear and acted under duress. I fervently hope that none of us here in the courtroom will have to suffer in silence while it is said on the part of these defendants that the wretched and helpless people whom they froze and drowned and burned and poisoned were volunteers.

Mazal, *supra* note 11, Vol. 1, at 70, <http://www.mazal.org/archive/nmt/01/NMT01-T070.htm>.

subject is absolutely essential,”<sup>24</sup> and has since been supplemented by The Declaration of Helsinki, which demands the freely-given, informed consent of the subject of any biomedical research.<sup>25</sup> In guidance provided to doctors in the United Kingdom regarding the necessity of seeking the informed consent of research subjects, the General Medical Council states that the investigator:

[M]ust take particular care to be sure that anyone you [the investigator] ask to consider taking part in research is given the fullest possible information, presented in terms and a form that they can understand. . . . You [the investigator] must not put pressure on anyone to take part in research.<sup>26</sup>

The guidance also emphasises the need for the investigator to obtain the approval of a Research Ethics Committee in order to proceed with the research. Amongst other things, the investigator needs to satisfy the Research Ethics Committee that the full informed consent of any participants in proposed research will be obtained and is required to attach a copy of their proposed consent form

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<sup>24</sup> *Id.* at Vol. 2, 181-182, <http://www.mazal.org/archive/nmt/02/NMT02-T0181.htm>.

<sup>25</sup> See The World Medical Association, *World Medical Association Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects*, at <http://www.wma.net/e/policy/b3.htm> (June 10, 2002) (for a discussion of the World Medical Association’s Helsinki Declaration of 1964 and its subsequent revisions). See also The Amsterdam Declaration, at <http://www.hjem.get2net.dk/DetAabneAkademi/amsterdam.htm> (for the World Health Organization’s Declaration on the Promotion of Patients’ Rights in Europe as an example of the significance attached to the use of consent). See also Convention for the Protection of Human Rights and Dignity of the Human Being With Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, April 4, 1997, Council of Europe, no. 164, chapter 2, at [http://www.giodo.gov.pl/Docs/Foreign\\_Docs/Konwencje/Kon\\_bioet\\_wyjasn040497.htm](http://www.giodo.gov.pl/Docs/Foreign_Docs/Konwencje/Kon_bioet_wyjasn040497.htm).

<sup>26</sup> Gen. Med. Council, *Seeking Patients’ Consent: The Ethical Considerations*, ¶ 36 (1998), <http://www.gmc-uk.org/index.htm> (last modified Jan. 17, 2003). In its subsequently written guidance upon research involving patients, the General Medical Council states “Seeking consent is fundamental to research involving people. . . . Participants’ consent is legally valid and professionally acceptable only where participants are competent to give consent, have been properly informed, and have agreed without coercion.” *Id.* at ¶ 15 & 16. See Gen. Med. Council, *Research: The Role and Responsibilities of Doctors* (2002), <http://www.gmc-uk.org/index.htm>.

to their application.<sup>27</sup> A similar focus upon the issue of consent is apparent in the existing literature about medical experimentation involving human beings.<sup>28</sup>

[10] Whilst there is a vast amount of literature available on the Doctors' Trial and the role played by the defendants in the experiments conducted, to date, there has been no real analysis of Wolff's involvement, such as that undertaken in this article. Moreover, because only three of the defendants on trial were not doctors, subsequent literature on this trial has focused upon the experiments themselves and the prominent professional defendants, such as Karl Brandt.<sup>29</sup> The existing literature on Nazi medical experiments does not focus on the significance of the internal administration within high levels of the SS who planned, initiated and authorized these crimes. Hence, the existing literature fails to take into account the fact that, without the distinctive contribution of Wolff and other senior administrators within the SS and other branches of the Nazi state system, these experiments would never have taken place. This article's investigation and analysis of the liabilities that could have stemmed from Wolff's administrative and organizational involvement in the experiments should, therefore, go some way to redress this imbalance.

[11] Although it is tempting, for present purposes, to focus immediately upon documentary trial evidence, this would ignore the human dimension. One of the reasons that make Wolff a

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<sup>27</sup> See Standard NHS Research Ethics Committee Application Form, § 3, Question B 15, <http://www.corec.org.uk/standardform.htm> (last visited Dec. 15, 2003).

<sup>28</sup> See JONATHAN MORENO, *UNDUE RISK: SECRET STATE EXPERIMENTS ON HUMANS* (2000) (for an example); ALLEN HORNBLUM, *ACRES OF SKIN: HUMAN EXPERIMENTS AT HOLMESBURG PRISON: A TRUE STORY OF ABUSE AND EXPLOITATION IN THE NAME OF MEDICAL SCIENCE* (1998); CHILDREN AS RESEARCH SUBJECTS: SCIENCE, ETHICS, AND LAW (Michael Grodin & Leonard Glantz eds., 1994).

<sup>29</sup> Recent examples include: *THE NAZI DOCTORS AND THE NUREMBERG CODE: HUMAN RIGHTS IN HUMAN EXPERIMENTATION* (George Annas & Michael Grodin eds., 1992); ROBERT JAY LIFTON, *THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE* (1986). See also JAY

particularly interesting case study is that his biography and orientation do not conform to traditional stereotypes of sadistic and brutal Nazi war criminals, a fact that he was able to exploit in order to ultimately secure de facto immunity. Before addressing the details of Wolff's administrative role with respect to medical experimentation, it is necessary to appreciate some biographical and institutional background material that will help place his war criminality in a broader context.

### **Wolff's Biographical and Institutional background**

[12] An appreciation of the background context to Wolff's actions is important because, unlike Eichmann or Kaltenbrunner, his defenders could argue that the overwhelming majority of the tasks performed by Wolff, since joining the Nazi party and during World War Two, were unlike the categories of specific war crimes. Furthermore, with respect to the small number of episodes that could be interpreted as complicit in war criminality, it could be argued that these were thrust upon him by Himmler, and certainly did not stem from any personal desire or intent to cause the types of harm associated with war crimes. On the other hand, Wolff's critics could reply that his seniority and liaison role with Hitler's military headquarters put him in a unique position to fully appreciate the institutional criminality of both the SS and the Nazi movement, as a whole, and if he chose to withdraw from it without suffering sanctions. Thus, he must be held as a major war criminal because he voluntarily remained in post and continued to knowingly serve the overall interests of Himmler's organization, in the most senior position, almost to the end. It is precisely this complexity, as to his personality and institutional role within the SS that requires a clear appreciation of his biographical and the institutional contexts before judgement can be made as to whether he was the center of a conspiracy that allowed a major war criminal to evade justice.

[13] Karl Wolff was born in Darmstadt, Germany, in 1900.<sup>30</sup> He was the son of a wealthy businessman and minor judge, in a local court (Landgerichtsrat).<sup>31</sup> In 1917, after finishing his education at the local grammar school, Wolff joined the Army as a volunteer within the officer cadet corps of the Guard Infantry Regiment.<sup>32</sup> By September 1918, Wolff secured a promotion to lieutenant and had distinguished himself in battle sufficiently to be awarded the prestigious Iron Cross medal.<sup>33</sup> Until the summer of 1920, when he was dismissed as part of the general reduction of the German army, he continued to serve as an officer on active duty in the Hessian Reichswehr Regiment.<sup>34</sup> Soon after his demobilization, Wolff joined the Freikorps, a rightwing militia that later proved to be a fertile source of Nazi party members.<sup>35</sup> During the 1920's, Wolff worked for a public relations company, before deciding to risk self-employment in this field.<sup>36</sup> In 1923, and again in 1939, Wolff unsuccessfully attempted to complete his academic studies in law.<sup>37</sup> Wolff's court testimony, in the Oswald Pohl trial, provides many biographical details about Wolff.<sup>38</sup> This testimony clarifies that Wolff's appointment as Himmler's adjutant, within the SS main office and

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<sup>30</sup> See Karl Wolff, United States National Archives, RG 319 Personal Files, Box 472, File XG008288.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Karl Wolff, United States National Archives, RG 319 Personal Files, Box 472 XG008288.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Mazal, *supra* note 11, Vol.5, at 769, <http://www.mazal.org/archive/nmt/05/NMT05-T0769.htm>.

headquarters, served as a springboard for a series of rapid upwards movements within the SS hierarchy:

In October 1931, I joined the Allgemeine SS, that is the first SS Standarte in Munich, and that was in an unpaid position as an honorary member. When we took over the power in Bavaria I was assigned as Adjutant to General Ritter von Epp, who was Bavarian prime minister and Reichsstatthalter at that time. In May 1933, the then Reich Leader SS Himmler, called me as an adjutant in a full time position. That is, in other words, I became reactivated, because already during the First World War I had been an active professional officer. From 1933 to 1936 I was being assigned as adjutant and chief adjutant to the Reich Leader SS. From 1936 to 1939, in other words, up until the beginning of the war, I became the chief of his personal staff, and at the outbreak of the war I was assigned to the Fuehrer, Adolf Hitler, as liaison officer for the Waffen SS in his headquarters, where I was active until 18 February 1943. Then I became sick, and that prevailed for approximately 6 months, and on 9 September 1943, as Highest SS and Police Leader, I was sent to Italy. I kept that function until the end of the war, that is May 1945. In addition to that I was assigned to the ex-Duce Mussolini by the Fuehrer as a special expert for police matters.

From 26 July 1944, and until the end of the war I received the additional function of the military commander of Italy with the title Plenipotentiary General for the Armed Forces in Italy.

A week prior to the beginning of the French campaign I was appointed as first general, with the rank of a major general of the Waffen SS.<sup>39</sup>

From 1936 to 1943, Wolff also served, as a representative of the Nazi party, in the German Parliament, the ‘Great German Reichstag.’<sup>40</sup>

[14] The actions of Wolff that could have attracted the attention of war crimes investigators were essentially administrative and occurred whilst he held the post of Himmler’s Chief of Personal

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<sup>39</sup> *Id.*

<sup>40</sup> Herweg Weber, *Der ‘ersternannte’ General der Waffen-SS*, FRANKFURTER ALLGEMEINE ZEITUNG 7-8 (1964).

Staff. This position involved a complex range of responsibilities, in that the Personal Staff office exercised functions that spread into the jurisdiction of other branches of the SS.<sup>41</sup> The breadth of his position allowed Wolff to exert considerable direct and indirect forms of influence over the other branches.<sup>42</sup> The personnel staff department had been created in 1936 to consolidate and extend the functions and responsibilities exercised by Chef-Adjutantur, the post of Senior Adjutant that Wolff had held since 1934.<sup>43</sup> One author, Robert Koehl, claims that:

Perhaps due to Himmler's split personality, which encouraged the bureaucratisation of the SS-Hauptamt [HQ] but then sought to circumvent his own bureaucracy, the new and powerful [office] . . . began in 1936 to collect and create responsibilities growing out of the adjutants' duties. Formerly known as the *Chef-Adjutantur*, it had been headed since 1934 by Karl Wolff, a shrewd "operator" who succeeded as Himmler's first adjutant where two or three previous men had failed because he was cleverer, more flexible and

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<sup>41</sup> Heinrich Himmler as Reich Leader SS (RFSS) and Chief of the German Police administered the SS and police through central offices (Hauptämter). In 1943-44 there were 12 central offices: Personal Staff of the Reich Leader SS, headed by Karl Wolff; SS Central Office (SS Hauptamt), headed by Gottlob Berger, for Waffen SS reinforcements; Central Office for Operations (Führungshauptamt), headed by Hans Jüttner, to administer the General SS and command the Waffen SS; Central Office for Race and Settlement (Rasse- und Siedlungshauptamt, or RuSHA), headed by Richard Hildebrandt, to watch over the racial purity of the SS; Central Office SS Court Hauptamt SS-Gericht), headed by Franz Breithaupt, to administer military justice in the SS and police; Central Office for Personnel (Personalhauptamt), headed by Maximilian von Herff; Central Office for Reich Security (Reichssicherheitshauptamt, or RSHA), headed by Reinhard Heydrich and later Ernst Kaltenbrunner; Central Office of the Order Police (Hauptamt Ordnungspolizei), headed by Kurt Daluege; Central Office for Economy and Administration (Wirtschaftsverwaltungshauptamt, or WVHA), headed by Oswald Pohl; Heißmeyer Office, headed by August Heißmeyer, for political education; Ethnic German Aid Office (Volksdeutsche Mittelstelle, or VOMI), headed by Werner Lorenz, to organize aid for ethnic Germans; and Central Office of the Reich Commissar for the Strengthening of German Ethnicity (Reichskommissar für die Festigung des deutschen Volkstums), headed by Ulrich Greifelt, for the resettlement of ethnic Germans. Gerhard Mauz, *Himmler Nante Ihn 'Mein Wolffchen,'* 30 DER SPIEGEL 34 (1964).

<sup>42</sup> See Nuremberg Document NO-739: United States National Archives T-175/roll 97/frame2618342 (for the basic order creating the Personal Staff, November 9, 1936).

<sup>43</sup> See *Brief Biography of Karl Wolff*, PRO, WO 204/12804 1 (undated).

imaginative, and willing to take Himmler's abuse. His reward was to remain in Himmler's close confidence and to manage all aspects of his relationships with SS, Party, and state agencies and personnel – a role for which the SS-Hauptamt [overall HQ] seemed to have been originally designed. . . . By November 1936 when Himmler erected it into the equivalent of a Main Office . . . the personal staff had basically three functions: (1) liaison (2) financial, and (3) cultural<sup>44</sup>

Koehl also notes that Wolff's department became increasingly important, because it was approached by powerful individuals seeking contact with Himmler.<sup>45</sup> Additionally this office was often used to bypass the restrictions imposed by having to use official channels.<sup>46</sup> Even junior members of this department were closely involved in promotion decisions within the SS, despite the fact that these were supposed to fall under the remit of the Personnel Office.<sup>47</sup> Koehl notes that the economic function of the personnel office expanded considerably with the acquisition and administration of various enterprises.<sup>48</sup> However, by 1943, with Wolff preoccupied with the role of liaison with Hitler's headquarters, the position of Chief of Staff became less influential.<sup>49</sup> This was particularly the case with respect to the coordination of different branches of the SS, a function that fell to Wolff's deputy Dr Rudolf Brandt and departmental adjutants.<sup>50</sup>

[15] Koehl's overall assessment was that Wolff's role from 1934 -1943 was that of someone who had essentially:

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<sup>44</sup> ROBERT KOEHL, *THE BLACK CORPS* 113 (1983).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 114.

<sup>47</sup> *Id.*

<sup>48</sup> *Brief Biography, supra* note 43, at 2.

<sup>49</sup> KOEHL, *supra* note 44, at 119.

<sup>50</sup> *Id.* at 119-120.

[M]anaged the SS . . . through communications or the interruption of communications. . . . Himmler . . . relied on the personal staff to sift and winnow SS problems for him. Thus matters that should have gone to the personnel Office, the SS Main Office or even the Race and Settlement Main Office found their way to Karl Wolff, who became a sort of ‘SS post office’ – routing and rerouting inquiries and suggestions, complaints and gossip. Wolff posed as the ‘friend of all,’ and indeed he was not malicious, though certainly self-aggrandising and dishonest. By wartime, persons outside the SS knew of his critical role and also knew that Himmler consulted Wolff frequently . . . . Of course, he humoured Himmler and went to great trouble helping him carry out many of his fantastic schemes and whims.<sup>51</sup>

Koehl points out that Wolff’s department extended into the jurisdiction of many other branches, which is relevant to his claim that, in the post-war years, Wolff’s powers were strictly insulated from the activities and atrocities committed by the SS in the concentration and death camp systems.<sup>52</sup> Koehl believes Wolff was also insulated from the repressive role played by Heydrich and Kaltenbrunner’s Security Police, and Eichmann’s notorious sub -section that administered the Jewish genocide.<sup>53</sup>

[16] Wolff’s defense testimony in the Pohl case<sup>54</sup> (the second trial of the Nuremberg Subsequent Proceedings, or NMT) provides an interesting, albeit one-sided, account of the nature of his role as Himmler’s Chief of Staff. This account clarifies a number of points that are ambiguous in many of the other post-war accounts of Wolff’s various roles within the senior ranks of the SS, including his relationship with Dr Brandt. Wolff testified in a very strategic manner. He attempted to

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<sup>51</sup> *Id.* at 234-35.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Mazal, *supra* note 11, Vol. 5, at 772-73, <http://www.mazal.org/archive/nmt/05/NMT05-T0772.htm>.

distinguish the remit of his own administrative role, which included specific responsibilities, with respect to concentration camps, where lower-ranking officials reported directly to Himmler, in an effort to separate himself from active participation in the crimes. Wolff also made such sharp distinctions to confirm his claim that, on questions relating to other concentration camp atrocities, his own desk was effectively bypassed:

Q. General, you were chief of the Personal Staff of Reich Leader SS Himmler. Will you tell us the nature of that staff and the nature of your duties?

A. The Personal Staff of the Reich Leader SS had the task of assisting the Reich Leader in carrying out his numerous tasks and relieving him on some of the workload. This working staff was subdivided mainly into his personal adjutant' s office, which dealt with all visitors and all appointments for him. Then there were his personal experts such as Dr. Rudolf Brandt, who is known to the prosecutor from the Medical trial and to the Tribunal too, who dealt with all his correspondence. Then there was the police adjutant' s office dealing with security, police, and order questions directly with the Reich Leader. Then there was the Reich correspondence department which took care of files; and then there was the financial administration which disposed of funds which he received, either from the Party or from the state; and finally he had a main department dealing with guests and invitations he sent out, as well as decorations, and there was the personnel department. In addition to that there were a number of officers attached to his personal staff which from the organization point of view could not be placed in any other main department, or which were particularly close to the Reich Leader SS, and whom he wanted in his vicinity. . . .

Q. This was a main office in the Reich Leadership SS, was it not?

A. Yes, quite.<sup>55</sup>

[17] Wolff then proceeded to give a clear and, in one sense, unintentionally self-incriminating account of the implications of his major promotion in 1936 from Chief Adjutant to Himmler to the

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<sup>55</sup> *Id.*

senior position of Chief of Himmler's Personal Staff.<sup>56</sup> This clarity is interesting because with it, Wolff may have unintentionally incriminated himself. In the post-war years, Wolff consistently attempted to minimize his executive responsibilities with respect to atrocities, and so it is useful to highlight the extent to which his position within the SS hierarchy allowed him to exercise independent executive decision-making.<sup>57</sup> As Himmler's Chief Adjutant, Wolff's position lacked any significant executive functions, and hence potential legal accountability with respect to command responsibilities.<sup>58</sup> By contrast, his elevation to Chief of Staff in 1936 gave Wolff senior executive responsibilities within the SS akin to those of a Department Chief, which outranked the Higher SS and Police Leaders in the Reich:

Q. During what period of time were you chief of the Personal Staff of Himmler?

A. It was in the summer of 1936 that I became the chief of the Hauptamt [Main Office] and chief of the Personal Staff. Before that I was only chief adjutant, and in my position as chief adjutant I had no disciplinary and command authority of my own, but only the task of transmitting the wishes and orders from my chief to other agencies. *The promotion to the level of the highest responsibilities in the SS, that of department chief, which was even higher than the Higher SS and Police Leaders in the Reich, meant that I had authority to give orders of my own [emphasis added].*

Q. Excuse me, until what date did you hold this position as chief of the Personal Staff ?

A. Until 13 February 1943. In practice entirely and as a main task only to the outbreak of the war, 1 September 1939, because with the outbreak of the war I joined the Fuehrer' s Headquarters as liaison officer and I could only handle that as a sideline.

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<sup>56</sup> Mazal, *supra* note 11, Vol. 5, at 773, <http://www.mazal.org/archive/nmt/05/NMT05-T0772.htm>.

<sup>57</sup> *See Office of Chief of Counsel (OCC), Summary of Interrogation of Wolf [sic.]*, 53.105 DONOVAN COLLECTION AT CORNELL LAW SCHOOL 2 (Sept. 5, 1945).

<sup>58</sup> Mazal, *supra* note 11, Vol. 5, at 773, <http://www.mazal.org/archive/nmt/05/NMT05-T0773.htm>.

Q. You received mail during the year 1942 at the Reich Leader SS Personal Staff, did you not? You received mail addressed to you in care of the personal staff of Himmler?

A. I received such matters in the headquarters and such mail addressed to me as had been ordered by the Reich Leader to be dealt with. Other matters bypassed me.<sup>59</sup>

[18] This extract from Wolff's trial testimony makes it clear that he sought to emphasize the largely formal nature of his role as Chief of Personal Staff from 1939, when he was further promoted to Principal Liaison Officer with Hitler's headquarters. Wolff's insistence had the strategic benefit of distancing himself from the threat of future accountability for war crimes, which of course intensified with the outbreak of World War Two.

[19] The surviving documentary record provides limited evidence supporting Wolff's claim that he was little more than a vehicle for Himmler's personal interests in medical experimentation.

Consider, for example, the tone and content of following letter from Himmler to Milch<sup>60</sup> on 13 November 1942:

Dear Comrade Milch:

You will recall that through General Wolff I particularly recommended for your consideration the work of a certain SS Fuehrer Dr. Rascher, who is a medical officer of the air force reserve [Arzt des Beurlaubtenstandes der Luftwaffe].

These researches which deal with the behavior of the human organism at great heights, as well as with manifestations caused by

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<sup>59</sup> *Id.*

<sup>60</sup> During the period when the experiments were taking place, Milch was Inspector General of the Air Forces, State Secretary in the Air Ministry, and Generalluftzeugmeister. As Inspector General, Milch was in charge of the office which authorised research and medical experiments conducted in behalf of the Air Forces. General Hippke, physician in charge of the Luftwaffe Medical Department, was directly subordinate to the defendant. Milch had charge of the development of technical experiments for the Luftwaffe.

prolonged cooling of the human body in cold water and similar problems which are of vital importance to the air force in particular, can be performed by us with particular efficiency because I personally assumed the responsibility for supplying asocial individuals and criminals, who deserve only to die [todeswuerdig], from concentration camps for these experiments.

Unfortunately, you had no time recently when Dr. Rascher wanted to report on the experiments at the Ministry of Aviation. I had put great hopes in that report, because I believed that in this way the difficulties, based mainly on religious objections to Dr. Rascher's experiments — for which I assumed responsibility — could be eliminated.

The difficulties are still the same now as before. In these Christian medical circles the standpoint is being taken that it goes without saying that a young German aviator should be allowed to risk his life but that the life of a criminal — who is not drafted into military service — is too sacred for this purpose and one should not stain oneself with this guilt; at the same time it is interesting to note that credit is taken for the results of the experiments while excluding the scientist who performed them.

I personally have inspected the experiments, and have — I can say this without exaggeration — participated in every phase of this scientific work in a helpful and inspiring manner. . . .

I beg you to release Dr. Rascher, Stabsarzt of the reserve, from the air force and to transfer him to the Waffen SS. I would then assume the sole responsibility for having these experiments made in this field and would put the results, of which we in the SS need only a part for the frost injuries in the East, entirely at the disposal of the air force. However, in this connection I suggest that with the liaison between you and Wolff, a "non-Christian" doctor should be entrusted who ought to be not only a fully qualified scientist but also a man not prone to intellectual theft and who could be informed of the results. This doctor should also have good contacts with the administrative authorities so that the results would really obtain a hearing.

I believe that this solution — to transfer Dr. Rascher to the SS, so that he could carry out the experiments under my responsibility and on my orders — is the best way. The experiments should not be stopped; we owe that to our men. . . . In order to save both of us this trouble, I suggest again that Dr. Rascher should be transferred to the Waffen SS as quickly as possible.

I would be grateful if you ordered the low-pressure chamber being put at our disposal again, together with the differential pumps [Stufenaggregatpumpen], as the experiments should be extended to even greater altitudes.<sup>61</sup>

By means of this letter, Himmler is clearly telling Milch that these experiments were his personal project, which he continued to monitor closely, and indicated that, whilst Wolff was involved in facilitating a number of the administrative arrangements, he was hardly central to decision-making in this area.

[20] On the other hand, it is necessary to highlight a number of facts that directly contradict Wolff's self-serving tactical claims. His appointment to Principal Liaison officer meant that Wolff now held one of the most sensitive posts within the Nazi regime, located at the interface between Himmler and Hitler.<sup>62</sup> In this role, Wolff inevitably became privy to, if not an active or full participant within, a proportion of the highest-level discussions of the Nazi party leadership, including the policies and practices of the notorious SS.<sup>63</sup> His major task was to act as Himmler's "eyes and ears" within the Führer HQ. Von Lang notes that:

His responsibilities there were not suited to make him popular; he either served as a decorative ornament of the court, or he was busy with top secret matters that became known to the Germans only after the war.<sup>64</sup>

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<sup>61</sup> Mazal, *supra* note 11, Vol. 2, at 629-630, <http://www.mazal.org/archive/nmt/02/NMT02-T0629.htm>.

<sup>62</sup> *Brief Biography*, *supra* note 43.

<sup>63</sup> *Id.*

<sup>64</sup> JOCHEN VON LANG & CLAUS SIBYLL, *DER ADJUTANT KARL WOLFF: DER MANN ZWISCHEN HITLER UND HIMMLER* 8 (1989).

Von Lang indicates that the Army Generals did not welcome the involvement of the SS at Hitler's headquarters.<sup>65</sup> This meant that, as Himmler's "eyes and ears" within Hitler's headquarters, Wolff had to seek additional information from various lower ranking adjutants to Hitler.<sup>66</sup>

[21] Wolff's various statements, cited above, fail to explain that after Reinhard Heydrich left Germany to become Governor of the Nazi occupied Czechoslovakia,<sup>67</sup> Wolff was acting as Himmler's deputy<sup>68</sup>. Within the overall SS hierarchy, Wolff's position was at least on par with that of his rival Ernst Kaltenbrunner, who, following Heydrich's assassination, headed the internal secret police divisions of the SS, including the Gestapo.<sup>69</sup> Within the SS, both men were subordinate only to Himmler, who considered them to be his worthy successors.<sup>70</sup> Kaltenbrunner

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<sup>65</sup> *Id.* at 166-67.

<sup>66</sup> von Lang states that, with respect to the summer of 1941: "At 12 o'clock activity officially started in the camp with a discussion of the general situation, on which occasion the events of the past twenty hours were considered. When the weather was good, Wolff was seen promenading in the streets and on the sidewalks. Because of his high military rank, he was able to start conversations with most men that crossed his way, above all Hitler's adjutants. He usually asked for the latest news. As he was not generally admitted to Hitler's discussions of the general situation, he had to resort to the casual conversations in order to gather information. Among the younger men he soon acquired the disrespectful nickname 'General-what's -the-news.' In the afternoon conferences at 4 p.m. the Wehrmacht also preferred not to admit outsiders. But they were usually missing in the evening talks that lasted until long after midnight, and that usually were characterized by Hitler being the sole speaker. On these occasions, Wolff was a welcome guest to his Führer – maybe because he was silent. As far as these talks were recorded, Wolff was never mentioned." *Id.* at 167.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> von Lang claims that:

Karl Wolff, in contrast, thought himself capable indeed to solve with excellence tasks of a highly political nature. According to him, Himmler one day had told him that in case of his [Himmler's] sudden

headed the overtly repressive aspects of the SS, including the secret police/Gestapo and concentration camp systems.<sup>71</sup> In this capacity, he ordered the torture and execution of captured OSS personnel, including the Dawes Mission.<sup>72</sup> By contrast, Wolff's function was as Himmler's administrative trouble-shooter and coordinator, vital tasks that took place behind the scenes. As Wolff's biographer states:

In Hitler's Reich, he was one of the unknown persons that act from the background. Back then, his name and function were only known to the higher leading echelon of the party and the state. He naturally desired to be in the limelight, but that's where the 'state actors' with a higher rank jostled for the best spot. He did wear a uniform laden with gongs, but that was all too common in those days. After all, he did not act in public, he acted through conversations, orders, writings.<sup>73</sup>

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death, he had suggested two men to the Führer – namely, Heydrich and Wolff – as two possible successors. 'One of those two,' Hitler supposedly had told Himmler in return, 'will have to do it. Please do have both of them well prepared.' The only possible meaning of this order is that the Reichsführer SS was to inform both Wolff and Heydrich about all the activities and tasks he performed. Himmler thought that it would depend on the situation which one of the two would be the chosen person: for difficult times, Heydrich would be preferred, for tranquil times Wolff. Lina Heydrich has a different point of view. When she had realized, she recounted, that her husband had: 'the most appalling of all professions' (although she did not make clear whether she was referring to the high-ranking policemen or the mass murderer), he supposedly told her, 'I have to do it. Any other person would abuse the apparatus.' Mrs. Lina added afterwards, 'Mr. Wolff surely would have abused it.'

*Id.* at 66.

<sup>71</sup> *Summary of Interrogation of Kaltenbrunner*, Nuremberg, 16 September 1946, no. 137, page 4, RG 238, M-1029, Roll 82, Frame 348-351.

<sup>72</sup> SAINT to Chief OSS, Caserta, United States National Archives, RG 141A, Box 12, Folder 89 (undated, but from the approximately 1945).

<sup>73</sup> *Id.* at 7.

[22] Wolff's post-war defensive strategy also involved attempts to distance himself from Himmler, who he rightly identified as the prime mover behind the authorization of medical experiments and concentration camp atrocities.<sup>74</sup> This tactic required Wolff to claim that, at the relevant time, he had become an outcast from Himmler's inner circle of confidants and policy-makers. In September 1943, Himmler's reassignment of Wolff to the post of 'Obergruppenfuehrer' in Nazi-occupied Northern Italy resulted from a dispute over Wolff's divorce and proposed remarriage to Countess Bernsdorff, the mother of his child.<sup>75</sup> Wolff had bypassed Himmler, who had twice rejected his request of remarriage as setting a bad example, and instead obtained permission to remarry directly from Hitler himself, effectively outflanking the SS chain of command.<sup>76</sup>

[23] Once again, it is necessary to recognize that there is evidence that contradicts Wolff's claims of being an outsider. For example, according to Kaltenbrunner's interrogation report, even

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<sup>74</sup> From 1936 Wolff had started a relationship with Ingeborg Gräfin von Berns, the widow of Landrath Heinrich Graf von Berns, who had died in 1934. RICHARD BREITMAN, *HIMMLER: THE ARCHITECT OF GENOCIDE* 80 (1992). On 23 December 1937, their child Widukind Thorsun was born. Wolff divorced his first wife on 6 March 1943 and, three days later, married Ingeborg. The fact that Wolff had 'bypassed' Himmler by gaining permission to remarry from Hitler himself apparently infuriated Himmler. *Id.* This was, at least, in part due to the fact that Himmler believed the SS leadership should avoid such 'scandals' in their private lives. *Id.* Wolff may have stressed this because it was well-known that from the mid-1930's he was one of Himmler's closest colleagues. *Id.* Wolff accompanied Himmler on many of his early tours of newly occupied European territories. *Id.* Furthermore, Wolff must have been aware that captured SS documentation would have included his correspondence with Himmler, which indicated that Wolff felt personally close to Himmler as an individual and as to his entire Nazi philosophy. *Id.* John Toland quotes one such affectionate letter, from 1939, in which Wolff tells Himmler he personifies all that is 'good, beautiful and manly and all for which it seems worthwhile striving. All we are today we owe to you and the Fuehrer.' JOHN TOLAND, *THE LAST 100 DAYS* 30 (1996).

<sup>75</sup> After suffering two rebuffs, Wolff in effect went behind Himmler's back by successfully petitioning Hitler for permission to remarry. *See* VON LANG, *supra* note 64, at 196.

<sup>76</sup> *Id.*

after Wolff's banishment to Italy, he 'had been very influential in the matter of SS appointments', whilst, 'his relations with Himmler eventually improved due largely to the efforts of Prof. Gebhard.'<sup>77</sup> Experts on Himmler's wartime activities and policies, such as Richard Breitman, suggest that there is little documentary evidence that Wolff had, in any sense, become a permanent outcast from Himmler's inner circle of confidants.<sup>78</sup> Indeed, Himmler's appointment book for 1942 makes clear that Himmler liked to eat and travel with him.<sup>79</sup> In short, whilst we can understand why Wolff sought to exaggerate his personal distance from Himmler's inner circle of advisors; it is extremely doubtful whether Wolff had become a permanent outcast this circle.<sup>80</sup>

[24] Following Himmler's suicide, the Nuremberg prosecutors certainly had ample grounds for prosecuting both Wolff and Kaltenbrunner as major war criminals for the leadership role they exercised within the SS. Von Lang notes a self-contradictory aspect of Wolff's responses to allegations that he was in any sense implicated in war crimes:

As with other contemporaries of Wolff, the depiction of his personality varies, being distorted by the favour or hatred of the describing party. He contributed to that himself. Whenever the responsibility for the crimes of the Third Reich were discussed, he insisted not to have known anything, not to have participated, or at least to have been a powerless opponent. However, motivated by ambition, in his speeches, interviews, essays, and also during Allied

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<sup>77</sup> Kaltenbrunner, Immediate Interrogation Report (June 28, 1945) is available in the Donovan Collection (Rare Books Room, Cornell University Law School, Ithaca, NY) Vol.18, Annex 9: 'Remarks on SS Personalities' pt. 25, p.34.

<sup>78</sup> I am grateful for this information and insight from Professor Richard Breitman, personal communication, April 9 2003.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

interrogations, he presented himself as one of the most important leaders of the SS and even the Nazi-power-machine.<sup>81</sup>

[25] Having clarified Wolff's senior institutional position within SS hierarchy, where he had both indirect influence and independent executive authority, it is now possible to address the specific details of how responsibilities for medical experimentation fit within his administrative role as Himmler's Chief of Staff in Berlin.

### **Wolff's Potential Liabilities for SS Medical Experiments Committed as Himmler's Head of Staff**

[26] The Nuremberg International Military Tribunal (IMT, 1945-46) and Subsequent Proceedings (NMT, 1946-49) have clearly established that those members of the Nazi regime who played a decisive role in, for example, the organization of concentration and extermination camps, slave labour and medical experiments on human beings, can be successfully prosecuted and punished as war criminals.<sup>82</sup> The Nuremberg Charter was the primary legislation for the first and second round of Nuremberg trials and defined a number of offences:

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

**(a) CRIMES AGAINST PEACE:** namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

**(b) WAR CRIMES:** namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

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<sup>81</sup> VON LANG, *supra* note 64, at 11-12.

<sup>82</sup> *See* CONOT, *supra* note 15, at 9-26.

(c) **CRIMES AGAINST HUMANITY:** namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.<sup>83</sup>

[27] The Nuremberg Charter also made it clear that the offenses could be committed not only by those who personally killed or ill-treated individuals, but also by those senior officials who were implicated in the planning, organization and administration of policies, even if they never left their desks:

Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan.<sup>84</sup>

The primary legislation for these trials thus gave a broad interpretation to the responsibilities of those who were indirectly involved in war crimes. This is even clearer from Article 2(2)

2. Any person without regard to nationality or the capacity in which he acted is deemed to have committed a crime as defined in paragraph 1 of this Article, if he (a) was a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein or (d) was connected with plans or enterprises involving its commission or (e) was a member of any organization or group connected with the commission of any such crime or (f) with reference to paragraph 1 (a), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, co-belligerents or satellites or held high position in the financial, industrial or economic life of any such country.<sup>85</sup>

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<sup>83</sup> I.M.T. CONST. art. VI, available at <http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm> (last visited Jan. 15, 2004).

<sup>84</sup> *Id.*

<sup>85</sup> Article two of Control Council No.10, is the primary legislation for the NMT which reaffirmed the crimes of the original charter.

The first count is of little relevance to our analysis. With respect to Wolff's involvement with medical experiments, as Chief of Himmler's Personal Staff, it is arguable that he could have been prosecuted on the second count with respect to the ill-treatment of the civilian population and also with respect to "extermination," under count three (especially if the experiments were linked to Wolff's administrative role in the deportation of Jews to Treblinka and other death camps). It is certain that Wolff's administrative involvement in the medical experiments, involving concentration camp inmates, represented a "crime against humanity" under the Nuremberg Charter.<sup>86</sup> Indeed, this seems even more plausible given the allegation that the defendants in the Doctors' Trial at Nuremberg had:

[U]nlawfully, wilfully, and knowingly committed war crimes [and crimes against humanity] . . . in that they were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the commission of war crimes and crimes against humanity.<sup>87</sup>

[28] Furthermore, count two of the bill of indictment against Nuremberg defendant, Erhard Milch, charged him with "War crimes, involving murder, subjecting involuntary victims to low - pressure and freezing experiments, resulting in torture and death."<sup>88</sup> The third count referred to: "Crimes against humanity, involving murder and the same unlawful acts specified in counts one and two against German nationals and nationals of other countries."<sup>89</sup>

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<sup>86</sup> Mazal, *supra* note 11, Vol. 1, at 10, <http://www.mazal.org/archive/nmt/01/NMT01-T010.htm>. The trial itself was held at the Palace of Justice in Nuremberg, Germany and began on December 9, 1946.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Mazal, *supra* note 11, Vol. 2, at 861, <http://www.mazal.org/archive/nmt/02/NMT02-T0861.htm>.

[29] According to the indictment at the doctors' trial, the medical experiments undertaken by Nazi doctors included high-altitude experiments, freezing experiments, malaria experiments, lost (mustard) gas experiments, bone, muscle and nerve regeneration and bone transplantation experiments, sea-water experiments, epidemic Jaundice experiments, sterilisation experiments, spotted fever experiments and experiments with poison and incendiary bomb experiments.<sup>90</sup> By way of example, it is stated in the indictment that:

[T]he defendants Blome and Rudolf Brandt unlawfully, wilfully, and knowingly committed war crimes . . . in that they were principals in, accessories to, ordered, abetted, took a consenting part in, and were connected with plans and enterprises involving the murder and mistreatment of tens of thousands of Polish nationals who were civilians and members of the armed forces of a nation then at war with the German Reich and who were in the custody of the German Reich in exercise of belligerent control. These people were alleged to be infected with incurable tuberculosis. On the ground of insuring the health and welfare of Germans in Poland, many tubercular Poles were ruthlessly exterminated while others were isolated in death camps with inadequate medical facilities.<sup>91</sup>

Despite the wide scope of the indictment, the specific trial relating to medical experiments conducted at concentration camps primarily involved the medical professionals who had played a role in the actual physical implementation of the experiments.<sup>92</sup> A limited number of the defendants, however, were selected for prosecution as a result of their administrative and organizational role in instigating and initiating human medical experimentation.<sup>93</sup> We shall see that

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<sup>90</sup> See Mazal, *supra* note 11, Vol. 1, at 11-14, <http://www.mazal.org/archive/nmt/01/NMT01-T011.htm>.

<sup>91</sup> *Id.* at 15.

<sup>92</sup> See CONOT, *supra* note 15, at 284-299.

<sup>93</sup> The following defendants in Case I (the Doctors' Trial) testified as witnesses for defendant Milch: Hans Wolfgang Romberg, Wolfram Sievers, Hermann Bechker-Freyseng, Georg August Weltz and Rudolf Brandt. Mazal, *supra* note 11, Vol. 2, at 889-90,

this sub-category is particularly relevant to any fair assessment of Wolff's case. For example, Viktor Brack, a Colonel and senior official in the SS and the Chief Administrative Officer in the Chancellery of the Fuehrer, was responsible for conceiving ideas for experiments with Himmler, such as the sterilization experiments conducted on women and children in the Ravensbruck concentration camp. According to Telford Taylor' s opening statement:

Himmler' s administrative assistants, Sievers and Rudolf Brandt, passed on the Himmler orders, gave a push here and a shove there, and kept the machinery oiled. Blome and Brack assisted from the side of the civilian and party authorities.<sup>94</sup>

We will now proceed to analyze whether the executive decision-making role Wolff played in relation to medical experimentation similar to the role taken by those defendants who exercised lower-level administrative role in the program. Wolff's potential liabilities for SS medical experiments depend, in part, on the criminal nature of the executive functions, exercised by Himmler's immediate subordinates, including the scope they possessed for taking independent action.<sup>95</sup>

[30] Wolff was directly implicated in the administration of a number of gruesome and illegal medical experiments carried out at Dachau concentration camp.<sup>96</sup> The judges in the Doctors' Trial

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<http://www.mazal.org/archive/nmt/02/NMT02-T0889.htm>. In addition, six other defense witnesses testified regarding the medical experiments: Erich Hippke, Walter Neff, Dr. Leo Alexander, Siegfried Ruff, Karl Wolff and Gerhard Engel. *Id.*

<sup>94</sup> *Id.* at 69, <http://www.mazal.org/archive/nmt/02/NMT02-T069.htm>.

<sup>95</sup> See Donald Cameron Watt, *The Fantasy Life of Hitler' s Hitman* THE SUNDAY TIMES (June 24, 1990) (reviewing PETER PADFIELD, REICHSFUHRER, SS (1991)).

<sup>96</sup> Other relevant documentation includes Nuremberg documents 343-PS and 1617-PS published, in part, in 3 *Nazi Conspiracy and Aggression* 266 (1946) and 2 *Nazi Conspiracy and Aggression* 173, 237 (1946) [hereinafter NCA]. These experiments were performed by Holzloehner, Finke, and Rascher, all of whom were officers in the Medical Service of the Luftwaffe. *Id.* at Vol.1, 146-7. More pertinent evidence appeared during subsequent trials at Nuremberg regarding Wolff's

found that the high-altitude experiments on human subjects using a special pressure chamber began in March and lasted until June 1942.<sup>97</sup> The judges also found that cold-water or freezing experiments were conducted during the period from the middle of August until October 1942 and that a number of dry-cold experiments lasted from February through April 1943.<sup>98</sup>

[31] In 1940, Siegmund Rascher, staff doctor of the Luftwaffe reserve, succeeded in obtaining a transfer to the Institute of Aviation in Munich, where he began investigating how pilots flying at high altitudes could often remain conscious despite the depleted levels of oxygen in their bodies, a problem that was of special relevance to fighter aircrafts.<sup>99</sup> Rascher's experiments made use of a low-pressure chamber, capable of reproducing the air pressure at different altitudes.<sup>100</sup> It is not surprising that, Rascher's investigations were hampered by the lack of human subjects willing to accept the health risks of being locked in a depressurised chamber.<sup>101</sup> In mid-May 1941, Rascher asked Himmler whether the SS could supply him with "two or three professional criminals" to be used as subjects for the experiments.<sup>102</sup> Himmler personally granted Rascher permission to carry out experiments in Dachau concentration camp and authorized him to pardon research subjects who

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knowledge and administrative involvement in Nazi 'experiments'. See Mazal, *supra* note 11, Vol. 1, at 41-43, 199, <http://www.mazal.org/archive/nmt/01/NMT01-T041.htm>.

<sup>97</sup> *Id.* at 41-43.

<sup>98</sup> Mazal, *supra* note 11, Vol. 2, at 854, <http://www.mazal.org/archive/nmt/02/NMT02-T0854.htm>.

<sup>99</sup> VON LANG, *supra* note 64, at 186.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

survived them.<sup>103</sup> In one of the chambers at Dachau, victims struggled to breath, cried, collapsed, and then, at Rascher's discretion, were either revived in time or, in a "terminal experiment", were allowed to die through embolism of the brain.<sup>104</sup> By the end of March 1942, Rascher had overseen approximately one hundred fifty experiments of this kind, at least half of which proved fatal.<sup>105</sup>

[32] Hilberg notes that there were ordinary experiments where the subjects had genuinely consent and extraordinary types of experiments.<sup>106</sup> The latter types of experiment often lead to fatalities. Nevertheless, both types "were the product of a single administrative structure" in which Wolff played a limited but still significant part. As Hilberg notes:

An experiment was initiated when someone conceived of the possibility of using inmates to try out a serum, to test a hypothesis, or to solve some other problem. For instance, the chief of the Air Force Medical Service was interested in altitude experiments and the revival of half-frozen pilots shot down over the Atlantic.<sup>107</sup>

Hilberg cites the altitude and freezing experiments, in which Wolff played an important administrative role, as typical examples to introduce and illustrate one aspect of this topic.<sup>108</sup> In his role as Chief of Personal Staff, Wolff become personally involved in the administrative aspects of these experiments on a limited number of occasions, largely through the actions of Dr. Rascher.<sup>109</sup>

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<sup>103</sup> See Mazal, *supra* note 11, Vol. 1, at 195-96, <http://www.mazal.org/archive/nmt/01/NMT01-T0195.htm> (for a discussion of Nuremberg document 1971 B-PS, Pros. Ex 51).

<sup>104</sup> CONOT, *supra* note 15, at 286-88.

<sup>105</sup> VON LANG, *supra* note 64, at 186.

<sup>106</sup> RAUL HILBERG, THE DESTRUCTION OF THE EUROPEAN JEWS, 1003 (3d ed. 2003).

<sup>107</sup> *Id.*

<sup>108</sup> Mazal, *supra* note 11, Vol. 1, at 99, <http://www.mazal.org/archive/nmt/01/NMT01-T099.htm>.

<sup>109</sup> CONOT, *supra* note 15, at 287.

The Nuremberg prosecutors cited a letter of 20 May 1942 from Air Field Marshall Milch to Wolff which is relevant as evidence of the different types of experimentation, as well as with respect to the light it casts upon the administrative hierarchy, a factor relevant to the attribution of legal responsibilities for executive decision-making.<sup>110</sup> The letter makes clear that Dr. Rascher, the doctor in charge of conducting the experiments at Dachau, was directly subordinate to neither Wolff nor Milch but rather to a Luftwaffe Captain Weltz:

In reference to your telegram of 19 May our medical inspector reports to me that the altitude experiments carried out by the SS and Air Force at Dachau have been finished. Any continuation of these experiments seems essentially unreasonable. However, the carrying out of experiments of some other kind, in regard to perils at high sea, would be important. These have been prepared in immediate agreement with the proper offices; Major (M. C.) Weltz will be charged with the execution and Captain (M. C.) Rascher will be made available until further orders in addition to his duties within the Medical Corps of the Air Corps.<sup>111</sup>

Weltz, it appears, had created difficulties for his subordinate Dr Rascher.<sup>112</sup> Through Wolff's liaison with Milch (Weltz's superior), Rascher sought Himmler's aid by having these experiments reassigned to the jurisdiction of the SS.<sup>113</sup> In other words, Rascher sought to outflank internal Luftwaffe difficulties by using Wolff to "go over the head" of his immediate Luftwaffe superiors:

SS Untersturmfuehrer Stabsarzt Dr. Rascher reported in Munich on 29 April 1942 about the result of the conference with Oberstabsarzt Dr. Weltz. Weltz requested that Dr. Rascher be withdrawn if by Friday, 1 May 1942 he (Weltz) were not taken into consultation regarding the experiments. The Reich Leader SS was informed

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<sup>110</sup> Nuremberg document 343-A-PS, Pros. Ex. 62.

<sup>111</sup> *Id.*

<sup>112</sup> Nuremberg document NO-1359, Pros. Ex. 493, <http://www.mazal.org/archive/nmt/01/NMT01-T099.htm> (last visited Jan. 15, 2004).

<sup>113</sup> *Id.*

accordingly. He ordered SS Obergruppenfuehrer Wolff on 30 April 1942 to send a telegram to Field Marshal Milch requesting that Dr. Rascher be ordered to the German Aviation Research Institute [DeutscheVersuchsanstalt fuer Luftfahrt], Dachau Branch, and there to be at the disposal of the Reich Leader SS.<sup>114</sup>

Thus, at the operational level, Rascher, and to a lesser extent Wertz, were directly responsible for the directing and carrying out the numerous murders that resulted during the high-altitude experiments in Dachau.

[33] The low-pressure chamber was permanently removed from Dachau earlier than intended, and against Rascher's and Himmler's wishes.<sup>115</sup> This prompted complaints from the SS leadership.<sup>116</sup> Initially, Wolff telegraphed Milch, on 12 May 1942, to request that the chamber remain.<sup>117</sup> This was answered in the negative in Milch's letter of 20 May 1942.<sup>118</sup> Himmler then made further interventions, which prompted Milch to order that this chamber was to remain for an additional two months in Dachau.<sup>119</sup> In early June, Milch authorized this retention.<sup>120</sup> Wolff

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<sup>114</sup> *Id.*

<sup>115</sup> Nuremberg document: 343-A-PS, Pros. Ex. 62.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Nuremberg document: NO-261, Pros. Ex. 63, <http://www.mazal.org/archive/nmt/01/NMT01-T196.htm> (last visited Jan. 15, 2004).

<sup>120</sup> NCA, *supra* note 96, Vol. 3.

passed this information on to Rascher, through Heckenstaller.<sup>121</sup> These documents proved that the low-pressure chamber remained in Dachau until July 1942.<sup>122</sup>

[34] Wetz requested that Dr. Rascher be withdrawn of Wetz was consulted regarding the experiments by Friday May 1.<sup>123</sup> Himmler was informed of this request and, on 30 April 1942 ordered Wolff, “to send a telegram to Field Marshal Milch requesting that Dr. Rascher be ordered to the German Aviation Research Institute [Deutsche Versuchsanstalt fuer Luftfahrt], Dachau Branch, and there to be at the disposal of the Reich Leader SS.”<sup>124</sup>

[35] From August 1942 through to February 1943, Wolff was also involved, in an administrative capacity, in the coordination of *freezing experiments*. During the medical case, in the Subsequent Proceedings at Nuremberg, Wolff appeared as a witness for the defense.<sup>125</sup> It was here that the prosecution provided additional details of the rationale and the murderous nature of the freezing experiments:

The purpose of these experiments was to determine the most effective way of rewarming German aviators whom were forced to parachute into the North Sea. The evidence will show that in the course of these experiments, the victims were forced to remain outdoors

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<sup>121</sup> *Id.* at Pros. Ex. 64.

<sup>122</sup> NCA, *supra* note 96, Vol. 3, at 110.

<sup>123</sup> *Id.* at 95.

<sup>124</sup> *Id.*

<sup>125</sup> Wolff gave evidence on 18 February 1947. See pp.1228-1268 of the court transcript. Mazal, *supra* note 11. The following defendants in Case I (the Doctors’ Trial) testified as witnesses for the defendant Milch: Hans Wolfgang Romberg, Wolfram Sievers, Hermann Becker-Freyseng, Georg August Wetz, and Rudolf Brandt. *Id.* In addition, six other defense witnesses testified regarding the medical experiments: Erich Hippke, Walter Neff, Dr. Leo Alexander, Siegfried Ruff, Karl Wolff, and Gerhard Engel. See Mazal, *supra* note 11, Vol. 2, at 889-90, <http://www.mazal.org/archive/nmt/02/NMT02-T0889.htm> (for a list of witnesses and dates, as well as transcript page references).

without clothing in freezing weather from 9 to 14 hours. In other cases, they were forced to remain in a tank of iced water for 3 hours at a time. The water experiments are described in a report by Rascher written in 8/1942. (1618-PS.) I quote: 'Electrical measurements gave low temperature readings of 26.4 degrees in the stomach and 26.5 degrees in the rectum. Fatalities occurred only when the brain stem and the back of the head were also chilled. Autopsies of such fatal cases always revealed large amounts of free blood, up to 0.5 liter, in the cranial cavity. The heart invariably showed extreme dilation of the right chamber. As soon as the temperature in those experiments reached 28 degrees, the experimental subjects died invariably, despite all attempts at resuscitation. Other documents set forth that from time to time the temperature of the water would be lowered by 10 degrees Centigrade and a quart of blood would be taken from an artery in the subject' throat for analysis. The organs of the victims who died were extracted and sent to the Pathological Institute at Munich.'<sup>126</sup>

In August 1942, at Dachau Concentration Camp, victims were immersed in cold water until their body temperature was reduced to the point at which they all died.<sup>127</sup>

[36] Having clarified the details of the war crimes committed under the guise of medical experimentation in which Wolff was personally implicated, it is now appropriate to consider this SS official's strategy of reinterpreting his involvement to minimize the threat of prosecution. In particular, the next section will emphasize Wolff's attempts to reinterpret the question of the alleged "consent" of the victims of these experiments, and to deny that he possessed the sufficient criminal intent and subjective knowledge to justify prosecution and conviction for war crimes.

### **Wolff's defensive strategy**

[37] When confronted with documentary, and other evidence, of his involvement in the altitude experiments, Wolff adopted a series of defensive strategies. He sought to relativise these

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<sup>126</sup> Mazal, *supra* note 11, Vol.1, at 42-3, <http://www.mazal.org/archive/nmt/01/NMT01-T042.htm>.

<sup>127</sup> Letter from Dr. Hippke to Obergruppenfuehrer Karl Wolff, Secret Service (Mar. 6, 1943), <http://www.mazal.org/archive/nmt/02/NMT02-T0631> (last visited Feb. 15, 2004).

experiments and insist that his initial involvement was entirely innocent and in good faith. There is a clear parallel here between Wolff' s claims and the line of defense taken by administration officer Rudolf Brandt, one of the defendants in the doctors' trial. In his final statement, Brandt stated:

I do not deny that some of the documents submitted here by the prosecution went through my hands, but I do deny - and I pray the Tribunal may believe me - that I knew the contents of the documents particularly the reports and therefore the essential core of the human experiments. During my activities which stretched over many years I exclusively acted on the express orders of Himmler without ever making a decision on my own initiative.<sup>128</sup>

[38] Furthermore, Wolff claimed he had personally witnessed the fact that the subjects were all *willing volunteers*, and that they had suffered little more than two minutes of disorientation before they fully recovered.<sup>129</sup> Each of these tactical claims will now be critically examined.

[39] Wolff gave an affidavit in London on November 21, 1946, which was important because Wolff had watched experiments in Dachau and reported on these experiments to Hitler.<sup>130</sup> This nine-page affidavit merits close examination because it provides important clues as to Wolff's strategy to minimize his own potential liabilities.<sup>131</sup>

[40] The most general part of Wolff's strategy was the familiar technique of relativising these experiments as simply one of a range of comparable scientific investigations and technological

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<sup>128</sup> Mazal, *supra* note 11, Vol. 2, at 1, <http://www.mazal.org/archive/nmt/02/NMT02-T0001.htm>. Rudolf Brandt' s testimony can be found directly at <http://www.mazal.org/archive/nmt/02/NMT02-T0153.htm> (last visited Jan. 15, 2004).

<sup>129</sup> Voluntary Statement by Karl Wolff, LD 1470, Low Pressure and Low Temperature Experiments in Concentration Camps, report No: WCIU/LDC/1436 (a) – APS/HC, available from PRO, WO 208/4372.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

innovations that Himmler encouraged.<sup>132</sup> Most of these experiments and innovations, such as developing improved winter clothing and vitamin pills for SS officials, were not objectionable by any moral or legal standards.<sup>133</sup> Wolff claimed, ‘But Himmler was personally, in peace and especially in war, a constant imaginative and indefatigable promoter and driving force in the improvement of food, clothing, equipment, health and physical culture within the SS.’<sup>134</sup>

[41] Wolff characterized this mania for experimentation, ‘in all fields of science and life’ as ‘one of the favourite hobbies’ of Himmler, whose scope ‘ranged from the most extreme ideal to the most extreme material field.’<sup>135</sup> Presumably medical experiments on human subjects were located at the ‘extreme material’ end of this spectrum, one stage further than Himmler’s insistence that Waffen SS troops conduct training with live ammunition being fired over their.<sup>136</sup> Having relativised the medical experiments as one amongst many other of Himmler’s hobbies, Wolff’s strategy sought to draw the conclusion that, when medical experiments were first proposed, his senior staff regarded these as unremarkable, as more of the same, as yet another would-be technical innovation ‘to be smiled on quietly at first’ but which like most of the others would, over time ‘lead to practical results.’<sup>137</sup>

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Voluntary Statement by Karl Wolff, LD 1470, Low Pressure and Low Temperature Experiments in Concentration Camps, report No: WCIU/LDC/1436 (a) – APS/HC, available from PRO, WO 208/4372.

<sup>136</sup> *Id.* at 2.

<sup>137</sup> *Id.*

[42] Wolff's description of his own involvement continued in the same defensive, self-exonerating tone by emphasizing that Himmler told him that the rationale and ultimate goals of Rascher's low pressure experiments were essentially humanitarian in nature and that the idea was to lessen injuries and remove a source of injustice to German military pilots.<sup>138</sup> With reference to certain 'introductory explanations' Himmler had made to Wolff during 'a journey made together by car from Munich at the end of February 1942 for the purpose of witnessing some low pressure experiments in Dachau,' Himmler had discussed:

[T]he inexplicable circumstances which accompanied the crashing from high altitudes of hitherto experienced German pilots. He wove into his story that these wretched men, in addition to their personal misfortune, were also being punished for damaging military property . . . With a view to clearing up and putting to a stop to future accidents of this nature, a number of young members of the Luftwaffe had offered themselves voluntarily as subjects for physical experiments. Some time ago Dr Rascher had conceived the idea that . . . concentration camp inmates who volunteered for the purpose might be used. In compensation . . . they would have to be given appropriate favourable treatment when they had undergone approximately a dozen experiments, e.g., release from imprisonment, and a chance to make good on active service. He, Himmler, had taken up Dr Rascher's suggestion very willingly and had authorised it.<sup>139</sup>

[43] Wolff claimed that the mere fact that the setting was to be the notorious Dachau concentration camp should not be considered evidence that he knew of the sinister nature of the experiments.<sup>140</sup> On the contrary, Wolff claimed that this choice of location gave Himmler's senior staff no cause for suspicion as this camp had previously hosted other innocent experiments, for

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

example, the testing of SS camouflage suits.<sup>141</sup> Wolff's account of these background factors appears to lend rhetorical support to his claim, which is literally underlined, that:

Himmler's entourage had become used to this mania for experimenting on the part of their Reichfuehrer-SS, and therefore faced all new experiments, i.e., also the pressure etc, experiments in the concentration camp Dachau, without suspicion, and in actual fact in best [good?] faith. . . . The taking into account of these facts is of the greatest importance to a truly just and dispassionate judgement of those not principally involved.<sup>142</sup>

Another of Wolff's defensive strategies was to deflect responsibility upon other, now conveniently deceased parties, particularly Dr. Rascher and Himmler. At the very start of his written statement, Wolff had insisted that "the two men mainly responsible" were Dr Rascher and Himmler.<sup>143</sup> This indicates that Wolff sought to convince his post-war interrogators that he was amongst "those not principally involved."<sup>144</sup> Wolff's statement sought to portray the, now deceased, Dr. Rascher as the "unscrupulous" prime force behind these experiments. Rascher was not only "the originator of the idea of carrying out such experiments" but also their "executive director."<sup>145</sup> Wolff explained the doctor's influence over the SS leadership by reference to his "clever exploitation" of "the intimate relations" that Himmler enjoyed with Rascher's wife, who in turn had used deceit to gain Himmler's admiration and "patronage" for her husband's experiments.<sup>146</sup> In short Wolff's account

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<sup>141</sup> Voluntary Statement by Karl Wolff, LD 1470, Low Pressure and Low Temperature Experiments in Concentration Camps, report No: WCIU/LDC/1436 (a) – APS/HC, available from PRO, WO 208/4372.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 3.

<sup>146</sup> *Id.* at 2.

creates the impression that SS decision-making processes were shaped by two highly subjective, idiosyncratic factors, neither of which incriminated him personally, specifically Himmler's "mania for experimentation" combined with his intimacy with Frau Rascher.<sup>147</sup>

[44] According to Wolff, these two factors meant that Himmler, alone, determined and oversaw SS policy in this field, as "the person primarily responsible for making possible the carrying out of these experiments."<sup>148</sup> Himmler's personal involvement and enthusiasm meant that, in practice, his immediate subordinates were never in a position to exert influence or direct policy-making. Wolff claimed that, given that this area of SS activity stemmed directly from Himmler's personal interests, it was Himmler who took the initiative, even to the point of dismissing strongly argued objections from his immediate subordinates.<sup>149</sup> For example, Dr. Brandt, sought to expose Rascher's strategy and the deceptions that underpinned it, had been "vigorously talked out of his doubts by Himmler."<sup>150</sup> Clearly, in setting out this re-interpretation of SS "medical experimentation," Wolff was seeking to distance himself in the eyes of the prosecutors from any possibility of being held legally accountable for either executive decision-making or the pragmatic level of policy execution.

[45] From a strictly legal point of view, one of the most interesting aspects of Wolff's defensive strategy relates to the question of the alleged "consent" of the inmates who participated in these experiments. In Wolff's account of having personally witnessing one set of these experiments at

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<sup>147</sup> Voluntary Statement by Karl Wolff, LD 1470, Low Pressure and Low Temperature Experiments in Concentration Camps, report No: WCIU/LDC/1436 (a) – APS/HC, available from PRO, WO 208/4372.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

the Dachau Concentration Camp he made a clear attempt to rebut any suggestion of unwilling participation:

Immediately after Himmler's arrival at the Dachau concentration camp Dr Rascher commenced his experiments. About 10 prisoners were standing in front of their living quarters. They appeared at ease and willingly entered a low-pressure chamber which was built in a car drawn up in front of them. Each individual experiment, according to each person's height and the velocity of falling bodies, lasted a few minutes. After leaving the low-pressure chamber the prisoners needed only about two minutes on a blanket on the barrack floor to recover from the short pressure test. Then, conscious of what they had just done, they became quite trusting. There were no political prisoners amongst them, but also persons sentenced in accordance with the law . . . . In my presence they asserted solemnly with Himmler that, after their application for service in the field had been refused, they voluntarily wished to make a modest contribution to the German war effort in this manner and to give proof of their real good will. Himmler thereupon promised to use his influence with the Fuehrer to obtain their release from imprisonment and employment on active service, which they desired.<sup>151</sup>

[46] Wolff also claimed that Himmler had honoured this promise in many cases, and that the release of prisoners to active service was additional proof that these individuals had not been "recruited forcefully" or subjected to "inhuman deeds."<sup>152</sup> Had such criminal acts "really taken place, [then] Himmler would never had been able to afford the risk of desertions to the enemy when the "Dirlewanger" unit [the group of probationary soldiers] went into action."<sup>153</sup> Wolff's statement re-emphasized this point by noting the claim that, "I did not hear either from Himmler nor, as far as

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<sup>151</sup> *Id.* at 4.

<sup>152</sup> *Id.*

<sup>153</sup> Voluntary Statement by Karl Wolff, LD 1470, Low Pressure and Low Temperature Experiments in Concentration Camps, report No: WCIU/LDC/1436 (a) – APS/HC, available from PRO, WO 208/4372.

I remember, from any other source that low-pressure experiments on prisoners took place on a non-voluntary basis.”<sup>154</sup>

[47] Wolff’s statement also drew some subtle distinctions regarding lines of administrative responsibility that might have otherwise escaped the prosecutors, who focused exclusively upon the formal titles of those mentioned in SS correspondence. His account emphasized that, from the start of World War Two, when he was promoted to become Principal Waffen SS Liaison Officer with Hitler’s headquarters, his title as Chief of Staff for Himmler’s Personal Office became largely formal.<sup>155</sup> This was because his permanent office was now in Berlin, geographically separated from Himmler’s offices, which he visited little more than “once a month” for senior conferences lasting one or two days.<sup>156</sup> The largely formal nature of his official position as Chief of Personal Staff meant that, in practice, his subordinates handled his correspondence.<sup>157</sup> Indeed, Wolff insisted that his sole direct and personal involvement in SS medical experiments was that of a witness during one of Himmler’s visits to Dachau:

I thus held an authoritative position during the concentration camp experiments . . . from 1.5.41 until 18.2.43. I was not, however, actively concerned either in the carrying out of the experiments, nor in the paperwork and planning connected with them which were in the hands of Dr Rascher, Dr Romberg, Sievers and Dr Brandt. At the end of February 1942 . . . I came into contact with these matters for the first time in the Dachau concentration camp, without any previous knowledge or previous participation. I did not take part in any further experiments subsequently.<sup>158</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

Wolff even insisted that his experience and knowledge were confined to the comparatively safe and voluntary low-pressure experiments that he witnessed at Dachau, and were distinct from the frequently fatal freezing experiments.<sup>159</sup>

[48] Wolff explained away his signature on later documentation, stating that, “I signed only in the best of faith and on the instructions of the Reichsfuehrer SS and in the course of my official routine duties.”<sup>160</sup> He also claimed that such documentation should be viewed in light of Wolff’s subjective knowledge at the time, which was entirely innocent, as opposed to recent evidentiary disclosures regarding what was actually taking place.<sup>161</sup> The remainder of Wolff’s written statement consists of attempts to explain away the incriminating letters and annotations in terms consistent with the voluntary nature of the experiments he had witnessed, as well as his lack of direct administrative involvement in their execution. With respect to his signature on a letter extending the periods of experimentation, he claimed that this had been drafted by Siever’s office and forwarded on to Wolff, by Himmler, for his signature, on the basis that Himmler refused to sign correspondence with officials of a lower rank than himself.<sup>162</sup> Other documents presented to him never even crossed his desk; whilst others, such as the highly-incriminating telegram to Field Marshal Erhard Milch, the Inspector General of the German Air Force, on 12 May 1942, “was obviously sent off by Dr Brandt in my name for reasons of urgency and because of the distance

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<sup>159</sup> Voluntary Statement by Karl Wolff, LD 1470, Low Pressure and Low Temperature Experiments in Concentration Camps, report No: WCIU/LDC/1436 (a) – APS/HC, available from PRO, WO 208/4372.

<sup>160</sup> *Id.* at 5.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

involved.”<sup>163</sup> Milch’s reply never crossed his desk, as it lacked the addition of the handwritten “W”, which Wolff customarily employed to indicate that he had personally received and read paperwork.<sup>164</sup>

[49] Wolff maintained that an informed interpretation of other apparently incriminating correspondence actually confirmed that it was Himmler, not Wolff, who “in practice exercised the right of first decision.”<sup>165</sup> Wolff also maintained that Himmler decided, after censoring what Milch was to receive . . . about the results of the experiments.”<sup>166</sup> The correspondence confirms “Himmler’s assumption of personal and sole responsibility for all experiments,” and that Wolff’s inclusion in the circulation list is explicable in purely administrative terms, such as the fact as “SS Personnel Chief,” he had to deal with Rascher’s transfer from the Luftwaffe to the SS.<sup>167</sup>

[50] An additional piece of Wolff’s defensive strategy was his insistence that he played no personal role once these experiments were expanded to include the most problematic type of activities, such as freezing experiments.<sup>168</sup> Wolff maintained that he was unable to comment on Himmler’s decision to expand the Dachau experiments to related activities in Auschwitz and

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<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Voluntary Statement by Karl Wolff, LD 1470, Low Pressure and Low Temperature Experiments in Concentration Camps, report No: WCIU/LDC/1436 (a) – APS/HC, available from PRO, WO 208/4372.

<sup>166</sup> *Id.* at 5-6.

<sup>167</sup> Through Wolff’s interventions, Rascher was temporarily assigned to the SS, but retained his status as a Luftwaffe physician, rising from a second lieutenant to a captain in the Luftwaffe. The Avalon Project at Yale Law School, 4 Nuremberg Trial Proceedings: Twenty Fourth Day, Morning Session, at <http://www.yale.edu/lawweb/avalon/imt/proc/12-20-45.htm> (last modified Feb. 15, 2004).

<sup>168</sup> Voluntary Statement by Karl Wolff, *supra* note 129, at 5.

Lublin concentration camps.<sup>169</sup> These experiments took place without Wolff's knowledge after February 18, 1943 when, because of his hospitalization and later transfer to Italy, he had become "completely removed from the official activity of the personal staff of the Reichsfuehrer -SS."<sup>170</sup> Wolff's testimony directly contradicts evidence of his personal involvement created by the internal correspondence.

[51] Wolff made additional points regarding his own subjective intent and knowledge at the relevant time. These points appear to have been designed to create the impression that, although the benefit of hindsight and newly released details reveal the true nature of the sadistic crimes, the reality as known to Wolff *at the relevant time* was different. Presumably, Wolff's previous legal studies had forewarned him that the prosecutors would have to establish his subjective intent to knowingly or recklessly commit a war crime. As such, Wolff insisted that he operated strictly on a "need to know" basis with Himmler, despite their close working relationship.<sup>171</sup> He explained that, "in some cases he [Himmler] kept the most important matters secret."<sup>172</sup> Wolff supported this contention with the example that Himmler was well aware of his medical condition and the dangers of allowing it to go untreated, but refused to pass on this information to Wolff himself.<sup>173</sup>

[52] Indeed, Wolff claimed that his only involvement in this later period was to act on communication from SS Obergruppenfuehrer Eberstein that, "Dr Rascher had shamelessly misused

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 3.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

Himmler's confidence" by extorting "high bribes" from Dachau detainees in return for promises of release.<sup>174</sup> Wolff's statement thus claims credit for effectively exposing Rascher and ending Rascher's involvement in these experiments, "I thereupon courageously reported this embarrassing case to Himmler and insisted on Dr Rascher being arrested immediately and brought before an SS court. Himmler, after some hesitation, promised to do this and . . . this also happened. Dr. Rascher is said to have hanged himself subsequently."<sup>175</sup> Wolff's attempt to minimize his own subjective intent and knowledge stood some chance of success if it could be made in a credible manner. Certainly, that impression was created by the judges' decision in defendant Milch's case. Notwithstanding the details of his apparently incriminating communications with Wolff regarding the freezing experiments, Milch successfully denied that he had ever possessed the legally required degree of criminal attempt.<sup>176</sup> The Nuremberg judges concluded that they were satisfied on the evidence that these experiments objectively constituted war crimes in which Milch (and by implication Wolff to) were directly implicated.<sup>177</sup> However, they decided Milch must be acquitted because the prosecution had not provided sufficient evidence of Milch's criminal intent.

As to the cooling or freezing experiments performed at concentration camp, Dachau, for which the defendant is charged with responsibility, I find as a fact that the defendant ordered experiments to be conducted at the camp for the benefit of the Luftwaffe. In a letter from Milch to Obergruppenfuehrer Wolff of the SS, dated 20 May 1942, the following is stated: "In reference to your telegram of 12 May our medical inspector reports to me that the altitude experiments carried out by the SS and Luftwaffe at Dachau have been finished. Any continuation of these experiments seems

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<sup>174</sup> Voluntary Statement by Karl Wolff, *supra* note 129, at 3.

<sup>175</sup> *Id.* at 3.

<sup>176</sup> Mazal, *supra* note 11, Vol. 2, at 875-76, <http://www.mazal.org/archive/nmt/02/NMT02-T0875.htm>.

<sup>177</sup> *Id.*

essentially unreasonable. However, the carrying out of experiments of some other kind in regard to perils at high sea would be important. These have been prepared in immediate agreement with the proper offices. Oberstabsarzt Weltz will be charged with the execution and Stabsarzt Rascher will be made available until further order in addition to his duties with the medical corps of the Luftwaffe. A change of these measures does not appear necessary and an enlargement of the task is not considered pressing at this time.' Further evidence makes it manifestly plain that subsequent to the receipt of the letter of Wolff, officers of the Luftwaffe, under the command and subordinate to the defendant, conducted medical experiments on concentration camp inmates at Dachau, against their will, by placing such experimental subjects in tanks of water of freezing temperatures, and requiring them to remain there for long periods of time while certain medical data concerning such subjects was gathered; and that as a result of such experiments, many of the human subjects died or were gravely injured. The defendant admits giving orders for the conduct of experiments within the scope of the authority conferred by the letter, but contends that he did not know of, or contemplate, that the experiments would be conducted in an illegal manner or would result in the injury or death of any person. The defendant further asserts that he did not know or have any reason to believe that the experiments were conducted in such manner until after they had been completed. He therefore insists that he was and is not responsible for the unlawful manner in which the experiments were actually conducted by the Luftwaffe officers, and that he is not guilty of any crime as a result thereof. . . . In weighing the evidence, the Tribunal was mindful of the fact that the defendant gave the order and directed his subordinates to carry on such experiments, and that thereafter he failed and neglected to take such measures as were reasonably within his power to protect such subjects from inhumane treatment and deaths as a result of such experiments. Notwithstanding these facts, the Tribunal is of the opinion that the evidence fails to disclose beyond a reasonable doubt that the defendant had any knowledge that the experiments would be conducted in an unlawful manner and that permanent injury, inhumane treatment or deaths would result therefrom. Therefore, the Tribunal found that the defendant did not have such knowledge as would amount to participation or responsibility on his part and therefore found the defendant not guilty on charges contained in count 2.<sup>178</sup>

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<sup>178</sup> *Id.*

In short, Wolff adopted a defensive strategy emphasizing the humanitarian rationale behind these experiments, the initially voluntary nature of those who participated as research subjects and the direct executive responsibilities of Himmler and Rascher in authorizing, as well as conducting such practices. By so doing, Wolff's statement gave the impression that no real fault could be attached to his own limited and purely administrative form of involvement. On the contrary, Wolff explained that his interventions led to humanitarian outcomes, including the early release of unharmed concentration camp prisoners, and the exposure and removal of Dr. Rascher, the prime mover behind these unlawful experiments.

Wolff finished his statement by denying that he was anything more than Himmler's liaison officer, between 1942 and 1943, with respect to the Dachau experiments.<sup>179</sup> Indeed, Wolff claims that his presence as a witness at Dachau did not reflect any administrative responsibility for these experiment, on his part, but merely that Himmler,

[C]onsidered it important . . . that I should witness the experiment then to be carried out, in order that I might be able to tell the Fuehrer about it on a suitable occasion. This I did. The Fuehrer was very satisfied with it. . . . My short discourse resulted in the subsequent release of the prisoners subject to their proving themselves on active service.<sup>180</sup>

[53] Wolff's elaborate testimony regarding his passive role in the medical experiments withstood intense cross-examination by the Nuremberg prosecutors. In order to substantiate his claims, Wolff had to explain away harmful evidence that contradicted his position. The next section of this article will focus on the extent to which Wolff's claims withstood such testing, particularly those with respect to questions of the consent of the research subjects.

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<sup>179</sup> Voluntary Statement by Karl Wolff, *supra* note 129, at 7.

<sup>180</sup> *Id.* at 3.

## **The testing of Wolff's claims during trial testimony, cross-examination and interrogation at Nuremberg**

[54] Prior to the Doctors' Trial, the prosecutors in the international Nuremberg trial presented evidence of Wolff's role in the Dachau experiments and his encouragement of the freezing experiments.<sup>181</sup> Justice Jackson singled out the criminality of those involved in high-level decision-making and administration of these notorious 'medical experiments' and related atrocities during his opening address to the first Nuremberg trial. During this famous speech, the chief American prosecutor characterized the Nazi's experiments on fellow human beings as one of the *most incriminating* aspects of the case against the various defendants. He cited Wolff's correspondence with Milch as an integral part of the prosecution's case against the; 'masterminds high in the Nazi conspiracy,' indicating that Wolff fell within this group of high-ranking criminal conspirators:

Then, to cruel experiments the Nazi added obscene ones. These were not the work of underlying degenerates but of masterminds high in the Nazi conspiracy. In 5/20/1942, General Field Marshal Milch authorized SS General Wolff to go ahead at Dachau Camp with so-called 'cold experiments'; and four female gypsies were supplied for the purpose. Himmler gave permission to carry on these 'experiments' also in other camps (1617-PS). At Dachau, the reports of the "doctor" in charge show that victims were immersed in cold water until their body temperature was reduced to 28 degrees centigrade (82.4 degrees Fahrenheit), when they all died immediately (1618-PS). This was in August 1942. But the 'doctor' s' technique improved. By February, 1943, he was able to report that thirty persons were chilled to 27 to 29 degrees, their hands and feet frozen white, and their bodies 'rewarmed' by a hot bath. But the Nazi scientific triumph was 'rewarming with animal heat.' The victim, all but frozen to death, was surrounded with bodies of living women until he revived and responded to his environment by having sexual intercourse (1616-PS). Here Nazi degeneracy reached its nadir.<sup>182</sup>

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<sup>181</sup> The Avalon Project at Yale Law School, 2 Nuremberg Trial Proceedings, *at* <http://www.yale.edu/lawweb/avalon/imt/proc/11-21-45.html> (last modified Feb. 15, 2004) [hereinafter Avalon Project].

<sup>182</sup> *Id.*

Later in the first international trial, one of the American prosecutors, Major Farr, provided additional details of Nazi medical experimentation that once again highlighted the complicity of Wolff. Farr stated that:

I offer an original letter, dated 20 May 1942, addressed to SS Obergruppenfuehrer Wolff, and signed E. Milch, as Exhibit Number USA-463. That letter,<sup>183</sup> . . . is as follows: 'In reference to your telegram of 12 May, our sanitary inspector reports to me that the altitude experiments carried out by the SS and Air Force at Dachau have been finished. Any continuation of these experiments seems not to be necessary. However, the carrying out of experiments of some other kind, in regard to perils on the high seas, would be important. These have been prepared in immediate agreement with the proper offices; Major Wertz (Medical Corps) will be charged with the execution and Captain Rascher (Medical Corps) will be made available until further orders in addition to his duties within the Medical Corps of the Air Corps. A change of these measures does not appear necessary, and an enlargement of the task is not considered pressing at this time. The low-pressure chamber would not be needed for these low-temperature experiments. It is urgently needed at another place and therefore can no longer remain in Dachau. I convey the special thanks from the Supreme Commander of the Air Corps to the SS for their extensive co-operation. . . . E. Milch.<sup>184</sup>

[55] On the same day, Farr presented other letters that made it clear that Wolff had acted as an intermediary between Himmler and those responsible for commissioning and conducting the freezing experiments. The chain of documentation established that the cold-water freezing experiments began on 15 August 1942, and continued until the early part of 1943.

MAJOR FARR: Having finished his high-altitude experiments, Dr. Rascher proceeded to experiment with methods of rewarming persons who had been subjected to extreme cold. I refer to our Document

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<sup>183</sup> It appears on Page 2 of the translation and on Page 1 of the original German.

<sup>184</sup> Avalon Project, *supra* note 182, Vol. 4, at 204. It is cited as Nuremberg document, 343-PS.

1618-PS, which is an intermediate report on intense chilling experiments which had been started in Dachau on 15 August 1942. That report, signed by Dr. Rascher, I offer in evidence as Exhibit Number USA-464. I shall read only a few sentences from the report, beginning with the first paragraph:

‘Experimental procedure.’”

The experimental subjects (VP) were placed in the water, dressed in complete flying uniform, winter or summer combination, and with an aviator's helmet. A lifejacket made of rubber or kapok was to prevent submerging. The experiments were carried out at water temperatures varying from 2.5° to 12° (centigrade). In one experimental series the neck (brain stem) and the back of the head protruded above the water, while in another series of experiments the neck (brain stem) and the back of the head were submerged in the water. Electrical measurement gave low temperature readings of 26.4° in the stomach and 26.5° (centigrade) in the rectum. Fatalities occurred only when the brain stem and the back of the head were also chilled. Autopsies of such fatal cases always revealed large amounts of free blood, up to a half liter, in the cranial cavity. The heart invariably showed extreme dilation of the right chamber. As soon as the temperature in these experiments reached 28°, the experimental subjects (VP) were bound to die despite all attempts at resuscitation.<sup>185</sup>

Following this detailed emphasis upon the repugnant nature and grim effects of Rascher's experiments, Major Farr referred to a chain of correspondence that further directly implicated Wolff providing as one of the key individuals who provided high-level SS support to Dr Rascher.

To insure the continuance of Rascher's experiments, Himmler arranged for his transfer to the Waffen-SS. I offer in evidence a letter which appears as our Document 1617-PS. It is a letter from Reichsführer SS addressed to "Dear Comrade Milch" — General Field Marshal Milch — dated November 1942. I offer it as Exhibit Number USA-466. I will now read the first two paragraphs of that letter, our Document 1617-PS. I quote: ‘Dear Comrade Milch: You will recall that through SS General Wolff I particularly recommended to you for your consideration the work of a certain SS Führer Dr. Rascher, who is a physician of the supplementary reserve of the Air Force. These researches which deal with the reaction of the human organism at great heights, as well as with manifestations caused by

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<sup>185</sup> NCA, *supra* note 96, Vol. 3, at 266.

prolonged chilling of the human body in cold water, and similar problems which are of vital importance to the Air Force, in particular, can be performed by us with particular efficiency because I personally assumed the responsibility for supplying asocial individuals and criminals, who only deserve to die, from concentration camps for these experiments. . . . I beg you to release Dr. Rascher, medical Officer in the Reserve, from the Air Force and to transfer him to me to the Waffen-SS. I would then assume the sole responsibility for having these experiments made in this field and would put the experiences, of which we in the SS need only a part for the frost injuries in the East, entirely at the disposal of the Air Force. However, in this connection I suggest that with the liaison between you and Wolff a non-Christian physician should be charged.<sup>186</sup>

In short, the first International Trial of “major” war criminals drew attention not only to the appalling character and effects of Rascher’s experiments, but also to correspondence that implicated Wolff in direct involvement in the administrative aspects of these war crimes. Whilst it was too late for Wolff’s name to be added to the list of defendants for these trials, it was certainly possible that such evidence could have prompted the American prosecutors to include him in the subsequent proceedings, particularly given that they had decided to devote the first trial of these American-led proceedings to the involvement of Nazi doctors in illegal euthanasia and experiments on concentration camp inmates.

[56] During the second round of trials at Nuremberg, the “subsequent proceedings,” additional pertinent evidence surfaced regarding Wolff’s knowledge and administrative involvement in such experiments.<sup>187</sup> For example, the prosecutors used, as evidence, a letter from Himmler to Rascher on 24 October 1942:

I have read your report regarding cooling experiments on humans with great interest. SS Sturmbannfuehrer Sievers should arrange the possibility of evaluation at institutes which are connected with us. I

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<sup>186</sup> Avalon Project, *supra* note 182, Vol. 4, at 204-208.

<sup>187</sup> NCA, *supra* note 96, Vol. 1, at 41-43, 199.

regard these people as guilty of treason and high treason, who, still today, reject these experiments on humans and would instead let sturdy German soldiers die as a result of these cooling methods. I shall not hesitate to report these men to the offices concerned. I empower you to make my opinion on this known to the offices concerned. I invite you to a personal conference in November as I cannot make it sooner despite my great interest. SS Obergruppenfuehrer Wolff will once again get in touch with Field Marshal Milch. You are empowered to make a report to Field Marshal Milch — and, of course, to the Reich Marshal if he has time — concerning those who are not doctors. I am very curious as to the experiments with body warmth. I personally take it that these experiments will probably bring the best and lasting results. Naturally, I could be mistaken.<sup>188</sup>

Not surprisingly, Wolff's account, provided in the affidavit already discussed, of the voluntary nature of the low-pressure experiments strained the credibility of his interrogators at Nuremberg. They clearly presumed that, almost, no person would knowingly give informed consent to experiments that were either fatal or at least disabling. This presumption is clear from the following extract:

Q. In the interrogation you stated the following: "In my memory Milch concerning the low pressure and freezing experiments [Unterdruck-Kühl-Versuche] back then knew that those experiments were conducted on human beings in concentration camps, although on a voluntary basis." How did you know that Milch knew that those experiments were conducted on a "voluntary" basis?

A. . . . Field Marshall Milch would come to the Führer HQ in certain time intervals, on these occasions we sat side by side at the dinner table. We met on the way to the Führer, or when Milch returned from the Führer. . . . We talked and asked how it goes and what is the news. That all was in a very generous form, as was possible within the personal staff of the Reichsführer SS and because Milch . . . was the former director of the Lufthansa and a man who had to direct and was responsible for great service and work sectors. It was only generally discussed, and Milch confined himself to general statements, such as: The Rascher command etc. is now in order. I

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<sup>188</sup> Mazal, *supra* note 11, Vol. 1, at 244-45, <http://www.mazal.org/archive/nmt/01/NMT01-T0244.htm>.

took care of all that. Typically he was very general. If you want to know exactly what happened, then I should try to . . . .

Q. The statement which you made in England, and since then you have had many a night to think it through, is very definite, especially this remark: 'although on a voluntary basis.' In fact, I have never heard of anyone who would report for his own death on a 'voluntary basis.' . . . In other words, if you take a person to a low-pressure container and in this low-pressure container . . . experiments were conducted by Rascher, I cannot imagine that anyone would report to such an experiment on a 'voluntary' basis just like a similarly naive member of the former Hitler-regime stated before the Supreme Court that a certain Professor Hirth [sic] put together a collection of skeletons of Jews in Strasbourg and that all the Jews had volunteered. I think this is something that strains our imagination too much. I have never heard of anyone, including a thorough-bred idiot, who would report for his own death on a voluntary basis. It's a puzzling statement, to say the least. I'm simply asking you: did Milch tell you in the course of that conversation that they were volunteers, or did you always believe that they were volunteers?

A. I may answer in the order of your reproach: I don't know about the case of the skeleton collection. The way you tell me about it, I thoroughly agree with you. However, as regards what you say about my own case, I cannot agree with you, because I saw with my own eyes that none of the persons, who participated in the experiments, took longer than two minutes to recover, or are you saying that I too am a total idiot. It would be a pleasure for me to agree today to participate myself any time in the same number of similar experiments if I would be released from captivity for that.

Q. Mr. Wolff, we shall not have a polemical discussion here. I have got here an unquestionable legal statement, we need not beat about the bush with this. I asked a clear question in good, indisputable German. The question is: Is it your opinion that the people were volunteers, or did Milch tell you that they were volunteers? The answer must be one or the other.

A. In my opinion, he put as an aside that everything was in order with those voluntary experiments. That is a definite statement on my part.<sup>189</sup>

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<sup>189</sup> Interrogation of the Obergruppenführer Karl Wolff: This occurred on 11 December 1946 from 11 o'clock to 11:30 by Mr. Walter H. Rapp (partially illegible). A copy is contained United States National Archives, microfilm 1019, Roll 80, pp.3-4.

[57] One can, perhaps, sympathize with the incredulity of the interrogator and his desire to establish confirmation in oral exchanges of the supposedly voluntary nature of these experiments. And yet we can also understand the reasons behind Wolff's refusal to accept evidence about these experiments that contradicted his own firsthand experience. The interrogator then sought to confront Wolff with apparently indisputable evidence of the non-voluntary, and often fatal, character of many of these experiments:

Q. That the people, whom you saw, recovered on that day, and that on that day even the people, who were in the machines, were not bumped off but left alive, I do not doubt at all, but on the other hand you should not doubt that today we have persons imprisoned here in Nürnberg, who from 1942 had continuously been assistants to Dr. Rascher, until the moment when this infernal machine was removed, and that those persons, just like you, declare under oath that 70, 80, 90 fatalities occurred in the low-pressure containers, that in the freezing experiments 120 to 150 fatalities occurred, that, hence, on the day when you were there and it was demonstrated to you no fatalities occurred or, as it might be put so nicely, proved terminal, does not disprove the fact that Mr. Rascher killed dozens of human beings. The matter is simply how long the people were left to remain inside the machines; in other words: one of the main assistants of Dr. Rascher, who, as everybody knows today, was nothing but a big bluff, the assistant who personally handled the machine testified: if I do not remove a person after a few minutes at an altitude of 12,000 meters, he dies immediately and the experiments were continued and continued at 13,000 meter, at 13,500 meters everything went well, at 13,600 meter a man suddenly began bleeding badly, so that this actually confirms the fact that hundreds of human beings were killed in the machine. I simply would like to have this established as correct.

A. I believe that personally as I look at you. But we have experienced such horrible disappointments in the [past] 20 months that I in principle do not believe anything unless I saw it with my own eyes.

Q. . . . You saw, as you state yourself, some of the experiments yourself?

A. Yes. Well, on one day one experiment, which lasted a certain amount of time, I would estimate about ½ hour and afterwards there was talk about it for another hour, but contained I guess 6 to 8, it might as well have been 10 experiments. I don't remember exactly.

Q. Fine. Mr. Wolff, your statement that the persons regained consciousness after 2 or 3 minutes I do not doubt at all.<sup>190</sup>

[58] Lang makes the point that even, as Wolff later claimed in this interrogation, one believes that he was not fully aware of the most brutal aspects and impact of Rascher's high altitude experiments, this belief is contradicted by later experiments that commenced on 15 August 1942. These "freezing experiments" included an element of sheer sadism. Rascher clearly enjoyed watching human beings suffer and die knowing that their life or death fell entirely within his jurisdiction.<sup>191</sup>

[59] When later questioned, Wolff initially denied any knowledge about the freezing experiments.<sup>192</sup> However, after being confronted with a letter that he had written on 27 November 1942 to General Field Marshal Erhard Milch, the highest-ranking superior of Dr. Rascher, Wolff finally admitted limited knowledge of, and complicity within, these experiments.<sup>193</sup> This letter, which we will examine in more detail later, clearly reveals that Wolff had supported a policy of continuing with the freezing experiments, even after the German Air Force withdrawing its support. Wolff originally claimed that the subjects used in the experiments were merely criminals and other anti-social elements.<sup>194</sup>

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<sup>190</sup> *Id.*

<sup>191</sup> VON LANG, *supra* note 64, at 187.

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

[60] During 1949, Wolff gave direct evidence, as a witness before the Nuremberg court hearing, in the medical case of the doctors accused of conducting high altitude and freezing experiments.<sup>195</sup>

He testified that, while on a one-day visit, he had witnessed the clearly voluntary nature of the experiments:

[V]olunteer concentration camp inmates who were to be given compensatory privileges . . . the inmates, about 10 in number, appeared quite relaxed and, in their turn, willingly entered the low-pressure chamber which had been driven up . . . the inmates reported to Himmler, in my presence, that in this manner they could at least voluntarily . . . give a proof of their genuine good will . . . I never learned through Himmler, nor, as far as I remember, by any other means that later low-pressure chamber experiments . . . took place on a non-voluntary basis . . . I only knew about voluntarily low-pressure chamber experiments and these were made, without doubt, on a voluntary basis.<sup>196</sup>

[61] Given the prosecution' s focus upon the issue of consent in this trial, Wolff's emphasis on his observation of the voluntary cones of individuals was well placed. The significance of the consent issue is apparent from the outset of the trial. Under Count One of the indictment, the defendants were charged with performing "[M]edical experiments upon concentration camp inmates and other living human subjects, *without their consent*, in the course of which experiments the defendants committed the murders, brutalities, cruelties, tortures, atrocities, and other inhuman acts."<sup>197</sup>

[62] Later, when questioning their witnesses, individuals who had been experimented upon, the prosecution highlighted the lack of effort made to seek or gain the consent of participants by the

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<sup>195</sup> *Id.*

<sup>196</sup> Mazal, *supra* note 11, Vol. 1, at 21, <http://www.mazal.org/archive/nmt/01/NMT01-T021.htm>.

<sup>197</sup> *Id.* at 10.

experimenters.<sup>198</sup> For example, the prosecutor questioned Father Leo Miechalowski who had been intentionally infected with Malaria at Dachau concentration camp and forced to take part in the freezing experiments.<sup>199</sup> The prosecutor asked,

Q: Father, do I understand you to say that you were injected with malaria in the middle of 1942?

A: It was approximately in the middle of 1942 when I was infected with malaria.

Q: And you were not asked your consent to the malaria experiment?

A: No. I was not asked for my consent.

Q: And you did not volunteer for this experiment?

A: No.<sup>200</sup>

Similarly, prosecution witness Vladislava Karolewska was questioned as to whether she had ever been asked to consent to the experiments conducted upon her at Ravensbrueck concentration camp.<sup>201</sup> Her reply was “*never.*”<sup>202</sup> In light of such damning evidence against the defendant doctors, Wolff’ s testimony that the experiments he observed were undertaken with the subjects’ voluntary consent makes obvious sense, whether given for his own purposes in order to protect himself, or the defendant doctors at the trial.

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<sup>198</sup> *Id.*

<sup>199</sup> *See* Linder, *supra* note 18.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> Mazal, *supra* note 11, Vol. 2, at 1, <http://www.mazal.org/archive/nmt/02/NMT02-T0001.htm>. Sievers’ s trial testimony can be found directly at <http://www.mazal.org/archive/nmt/02/NMT02-T0157.htm> (last visited Jan. 15, 2004). We will discuss the case against this defendant in more detail below.

[63] Despite the evidence submitted by the prosecution during the Doctors' Trial, a number of the defendants emphasized that they believed the research subjects participating in the experiments were genuine volunteers.<sup>203</sup> For example, in his final defense statement, Sievers, Himmler's administration officer, reiterated that:

During my examination as a witness on the stand, I said quite truthfully that the experimental subjects to whom I had talked in connection with the last experiment in Natzweiler had confirmed to me that they were voluntary subjects . . . I testified that the two experimental subjects whom I met in connection with the altitude experiments, in reply to a question by me, confirmed specifically that they had volunteered . . . . The only experimental subject whom I met in connection with the typhus experiments upon my definite question regarding the voluntariness of his testimony, confirmed that this was so.<sup>204</sup>

[64] Wolff's claims, regarding the limited nature of his involvement in the experiments, were directly challenged during court testimony.<sup>205</sup> In the doctors' trial, the court's final judgement noted that Brandt had written to Wolff requesting additional experiments on human subjects, as proof that he was aware that human experimentation was taking place:

By letter bearing date 1/26/1943 Karl Brandt wrote to Wolff at the Fuehrer's (Hitler's) headquarters asking if it were possible to carry out 'nutritional experiments' in concentration camps. The nature of the desired experiments does not appear, nor does the evidence show whether or not such experiments were ever made. The letter, however, indicates Brandt's knowledge of the fact that human subjects could be [used].<sup>206</sup>

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<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 192, 195.

[65] Wolff's response to other evidence of the SS's involvement in fatal medical experimentation was more successful. For example, the collection of skeletons of Jews supplied to Himmler by Dr. August Hirt, an anatomy professor at the new Reich University in Strasburg, stemmed from a period of 1943, when Wolff he was seriously ill and hospitalized.<sup>207</sup>

[66] With regards to Wolff's administrative involvement in the experimentation, the prosecution presented correspondence to and from Wolff and the doctors involved in conducting these experiments, suggesting that Wolff had been proactive in facilitating, as well as extending the duration of these "experiments":

Already on 11/27/1942, the chief of the personal staff of the Reich Leader SS, SS General Wolff, had applied to Field Marshall Milch in order to make possible Rascher's further experiments in Dachau. In the closing sentence of this letter the loan of the low-pressure chamber is once again requested. (No-269, Pros. Ex. 78) (Pros. Ex.118 in the Milch Case). That General Wolff by Himmler's orders laid great stress on making further experiments possible is seen from the fact that a copy of the letter went also to SS Oberfuehrer Dr. Wuest, who was office chief of the Ahnenerbe. Thereby the special importance of the affair was to be shown also to the Ahnenerbe, on which the obligation rested to procure the requisite apparatus in accordance with figure three of Himmler's order of 7/7/1942 (No 422, Pros. Ex. 33) and repeated later under figure five of Himmler's order of 12/13/1942 (1612-PS, Pros. Ex. 79).<sup>208</sup>

[67] The Nuremberg prosecutors cited other correspondence, suggesting that Wolff actively enforced Himmler's determination that no internal resistance to the experiments should be permitted.<sup>209</sup> For example, the prosecution submitted a letter from General Hippke<sup>210</sup> to Wolff,

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<sup>207</sup> *Id.* at 138-39.

<sup>208</sup> *Id.*

<sup>209</sup> General Hippke was the Medical Inspectorate Chief and a direct subordinate of Milch, and was the physician in charge of the Luftwaffe Medical Department. Mazal, *supra* note 11, Vol. 2, at 210, <http://www.mazal.org/archive/nmt/02/NMT02-T0210.htm>. All medical institutes and

dated of June 3, 1943.<sup>211</sup> This letter rebutted the accusations that the Luftwaffe medical researchers had not fully cooperated with Rascher's plans to use live subjects for altitude and freezing experiments, and in fact had criticized such initiatives. Hippke told Wolff, and thereby indirectly told Himmler, that he had supported these experiments from the outset and had no objection to Rascher leaving to set up his own Waffen-SS medical institute.<sup>212</sup> Specifically, he said, "Your opinion that I as responsible head of all research activities in medical science had objected to freezing experiments on human beings and had thereby obstructed the development is erroneous."<sup>213</sup> Any criticism from Hippke's officials simply reflected professional vanity amongst researchers, each of whom wanted to be personally associated with new discoveries.<sup>214</sup> This correspondence indicates that Wolff intervened to challenge Hippke's alleged obstruction of Rascher's program of experiments, a point that directly contradicts Wolff's claim to have been the victim of Himmler's policy to shroud the experiments in secrecy.

[68] Another relevant part of transcript of the doctors' case indicates that, contrary to Wolff's claims to have been excluded from Himmler's inner circle of decision-makers, he continued to act as the primary SS administrator who, on Himmler's behalf, liaised between the various interested

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Luftwaffe medical men were subordinate to Dr. Hippke. *Id.* at 272, <http://www.mazal.org/archive/nmt/02/NMT02-T0272.htm>.

<sup>210</sup> *Id.*

<sup>211</sup> Nuremberg Document, NO-262, Pros. Ex. 108 (March 6, 1943), translated version *available at* <http://www.mazal.org/archive/nmt/02/NMT02-T0631.html> (last visited Jan. 15, 2004).

<sup>212</sup> *Id.* at 949-50.

<sup>213</sup> HILBERG, *supra* note 106, at 1006. It is important to note that Himmler was strongly in support of Rascher at this time. *Id.*

<sup>214</sup> *Id.*

parties: ‘Other evidence included a letter dated 12 January 1943, from the Reich Chief Manager [Reichsgeschaefstfuehrer] of Ahnenerbe to Wolff concerning Rascher’ s transfer to the Waffen SS.’<sup>215</sup>

The prosecution’s summation of the evidence on the freezing experiments is contained in its final brief against the defendant Sievers in the ‘doctors case’.<sup>216</sup> Here, the prosecution presented evidence regarding such experiments’ carried out by the defendant Weltz and his subordinate Rascher. Part of the evidence included the Milch letter to Wolff of 20 May 1942 already discussed.<sup>217</sup> The transcript of the case summarises the main evidence of Wolff’s involvement:

The deep interest of the German Air Force in capitalizing on the availability of inmates of concentration camps for experimental purposes is even more apparent in the case of the freezing experiments. These too, were conducted at Dachau. They began immediately after the high-altitude experiments were completed and they continued until the spring of 1943. Here again, the defendant Weltz was directly in charge of the experiments, with Rascher as his assistant, as is shown in a letter written in 5/1942 by Field Marshal Erhard Milch, the Inspector General of the German Air Force, to SS Obergruppenfuehrer Wolff, one of Heinrich Himmler’ s principal subordinates, and this letter specifically requested that the freezing experiments be carried out at Dachau under Weltz’ s supervision.<sup>218</sup>

[69] In other words, and contrary to Wolff’s claim that it was Himmler alone who was the prime mover in medical experiments, Milch had specifically directed his request for the extension of these

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<sup>215</sup> NCA, *supra* note 96, Vol. 3, at 208-209.

<sup>216</sup> This was the first of the Nuremberg ‘subsequent proceedings’ trials conducted by the American authorities under the leadership of Telford Taylor. CONOT, *supra* note 15, at 516-518. Taylor worked closely with the large group of OSS officials assigned to the interagency team of American prosecutors who had contributed to the previous international trials. *Id.*

<sup>217</sup> NCA, *supra* note 96, Vol. 3, at 266.

<sup>218</sup> NCA, *supra* note 96, Vol. 3, at 99-100.

experiments to *Wolff personally*.<sup>219</sup> This extended the experimentation into even more problematic areas where the planned death of a proportion of the victims was an integral part of the overall process. On the face of it, at least, this letter suggested that Wolff was in an executive position to either approve or reject this request, and that he must be held responsible not only for the administrative coordination on Himmler's orders but also for *specifically authorizing* these experiments. When confronted with this documentary evidence, Wolff switched his strategy from outright denial of any involvement in these later freezing experiments to one of minimizing the implications of a letter that *he had personally signed*. He denied personally composing, or even reading over, this letter, and claimed he had signed it unread on the direct orders of Himmler himself.<sup>220</sup>

[70] In their judgement, with respect to Milch, the Nuremberg judges made a series of factual findings, and summarized the main documentary evidence against this defendant.<sup>221</sup> As the following extract of their judgement makes clear, the judges came to the conclusion that some of the most damning evidence regarding Milch arose in the contexts of his exchanges with Wolff. This implies that, had the issue arose in this case, then Wolff too must be considered heavily implicated by the evidence, not least because it reveals that he was the key intermediary and administrative trouble-shooter between Rascher and Himmler:

On 20 May 1942, Milch wrote a letter to General Wolff, stating that his medical inspector had reported to him that the high-altitude experiments conducted by the SS and the Luftwaffe had been finished, and he did not recommend that they should be continued. He did, however, authorize experiments "of some other kind in

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<sup>219</sup> Voluntary Statement by Karl Wolff, *supra* note 129, at 5.

<sup>220</sup> *Id.*

<sup>221</sup> Mazal, *supra* note 11, Vol.2, at 855, <http://www.mazal.org/archive/nmt/02/NMT02-T0855.htm>.

regard to perils at high seas." On 4 June 1942, Milch authorized Hippke the continued use of the low-pressure chamber. On 20 July 1942, Rascher sent Brandt a report on the high-altitude experiments and the accompanying letter stated that it is Himmler' s desire that the report should be sent to Milch. . . . On 23 August 1942, Sievers wrote Brandt discussing a revival of the high-altitude experiments and stating that a report was to have been made to Milch, but that the report was not made. On 3 October 1942, Rascher wrote Brandt that the report to Milch, planned for September, could not be made because Milch was not present. On 27 November 1942, Wolff wrote Milch a long letter pointing out the need and the great value of the experiments with human beings, stating that Himmler: 'has accepted the responsibility for supplying death-deserving, asocial persons, and criminals from the concentration camps for these experiments.' He asks Milch to assign Rascher to the SS so that he can continue with the experiments directly under Himmler' s orders. 'In any case, these experiments must not be stopped. We owe that to our men.'<sup>222</sup>

This extract is significant for present purposes. Although it focuses upon the liabilities of Milch (who was ultimately acquitted as lacking sufficient *mens rea*), it indicates a series of judicial "findings of fact" regarding the decision -making processes. These findings of fact related to the altitude and freezing experiments that clearly contradicted key elements of Wolff's defensive strategy, particularly his efforts to minimize the centrality of his role.<sup>223</sup> This, in turn, suggests that the credibility of Wolff's various attempts to minimize his own involvement in the administrative decision-making processes had not withstood the tests of court testimony, cross-examination and critical scrutiny. Given the way the judicial acceptance of the prosecution's evidence, directed primarily at other defendants, damaged the credibility of Wolff's strategy, we can only assume that had Wolff stood trial alongside Milch and the medical personnel, this strategy would have been undermined to a greater extent.

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<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

[71] It is not possible to conclude, with absolute certainty, that had Wolff stood trial for his administrative involvement in medical experimentation, then he would have been convicted. His lawyers may have been able to outmanoeuvre the prosecution team and Wolff may have been able to develop a line of defense supported by compelling documentary and witness testimony whose effects would have been to secure an acquittal. Nevertheless, given the failure of one strand of his defensive strategy, regarding the documentary record and the court's findings of facts with respect to the case against Milch, it is more than likely that Wolff's lawyers would have faced considerable difficulties in securing his acquittal.

[72] This conclusion is supported by the way the doctors' case evaluated another administrator, Sievers, whose involvement took place at a far lower level with respect to executive decision-making than Wolff. During the Doctors' Trial, one of the defendants and Himmler's administrative assistant, Sievers, was convicted of special responsibility for, and participation in, criminal conduct involving freezing experiments, as well as convictions for his role in other medical experiments. Thus, it is relevant to consider the evidence the prosecution presented against Sievers in order to further explore the question of whether Wolff could have been successfully prosecuted for his involvement in the experiments at the Dachau concentration camp.

[73] In making its case against Sievers, the prosecution alleged that he made efforts to send a telegram requesting the transfer of four gypsy women from Ravensbrueck concentration camp to Dachau for the purpose of rewarming experimental subjects, at Rascher's request.<sup>224</sup> One of the prosecution's exhibits was a letter written by Rascher, which stated that Sievers had been asked to do this and to have a low-pressure chamber made ready for use.<sup>225</sup> As with Wolff, it was alleged

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<sup>224</sup> Mazal, *supra* note 11, Vol.1, at 202, <http://www.mazal.org/archive/nmt/01/NMT01-T0202.htm>.

<sup>225</sup> NCA, *supra* note 96, Vol. 3, at 222.

that Sievers was present when some of the experiments occurred and that he admitted that he had seen a man being given anaesthetic during an experiment and that he had questioned the man about whether he voluntarily gave consent for his involvement.<sup>226</sup>

[74] It is telling that Wolff's administrative role was more senior than Sievers and that the prosecution felt they had sufficient evidence against Sievers, yet no legal action was brought against Wolff.

[75] On the other hand, had Wolff stood trial he would have not denied that he was implicated at an administrative level, in acts that objectively constituted war crimes under the Nuremberg charter. His legal team would have been well advised to focus on questions of Wolff's subjective knowledge and intent. The grounds given by the tribunal, more specifically by Judge Michael Musmanno, for acquitting Milch are of particular interest here:

In order to find Milch guilty on this count of the indictment, it must be established that:

1. Milch had knowledge of the experiments.
2. That, having knowledge, he knew they were criminal in scope and execution.
3. That he had this knowledge in time to act to prevent the experiments.
4. That he had the power to prevent them. In pressing this count against the defendant, the prosecution has the burden, as it has the burden in every count, to prove the guilt of the defendant beyond a reasonable doubt. We begin our deliberations with the cardinal rule that the defendant is presumed to be innocent. The proof against Milch on this count is entirely circumstantial, and before we can find him guilty we must conclude that every hypothesis resulting from the circumstances is consistent with guilt and inconsistent with innocence. One can easily reach the hypothesis of guilt from the documents and testimony but that hypothesis in

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<sup>226</sup> *Id.* at 276.

many of its phases is also consistent with innocence. Thus, applying the rule of evidence just cited, the test of guilt fails. . . . Guilt cannot be founded on a set of facts from which arguments are equally convincing as to guilt and as to innocence. Remarks such as "the defendant must have known," or "to the best of my knowledge he knew," and other similar inconclusive conjectures frequently used in this part of the case are not the kind of links which are imperatively needed to make up a chain strong enough to sustain the weight of a conviction. . . . Though Milch is acquitted of complicity and participation in the medical experiments, we have nonetheless commented on those experiments at length. We have done this because otherwise the reference to Milch' s acquittal standing alone might convey impression that the experiments themselves were not criminal. The Tribunal holds that the *corpus delicti* was established and a crime was committed, even though Milch is not guilty of it.<sup>227</sup>

It is worth considering the likely outcome had a Nuremberg tribunal applied this severe test of legal liability to Wolff. This test imposes high standards of subjective knowledge, in addition to complicity in criminal acts. On the basis of the evidence considered in this study, derived from sources available to the prosecutors, Wolff would have an arguable case only with respect to points two and four.<sup>228</sup> With respect to point two, it is unlikely that the prosecution would have had difficulties convincing the tribunal that, at some point during the extended period of experimentation, Wolff had not come to appreciate from his firsthand involvement with Himmler's schemes, that these were unlawful in nature because of their fatal consequences and that the research subjects were not willing subjects.<sup>229</sup>

[76] Wolff's strongest case would be under point four; namely that he was not in a position to overrule Himmler at whose direct bequest he was acting. On the other hand, had Wolff's defense lawyers relied on this point alone, then it would have amounted to the "superior orders" defense

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<sup>227</sup> Mazal, *supra* note 11, Vol. 2, at 856-57, <http://www.mazal.org/archive/nmt/02/NMT02-T0856.htm>.

that was explicitly rejected as defense to criminal liability by the Nuremberg Charter. The charter insisted that following orders was relevant only as a mitigating factor when determining the severity of punishment.

[77] Furthermore, if we consider another aspect of the grounds on which Milch was acquitted, it is possible to draw some negative implications for any case against Wolff,

So far as chronology is concerned, Milch does not come into the picture of the experiments until 20 May 1942 with a letter in which he states that his medical inspector informed him that the high-altitude experiments had been completed. Obviously if they were completed there was nothing he could do to prevent them. Nor did the medical inspector or anyone else testify that Milch was informed of the precise nature of the experiments. Further, there is no evidence that Milch ever received any reports at all on the freezing experiments. No one ever suggested that Milch attended the operations at Dachau or that he ever gave an order that human beings were to be used to the point of death.<sup>230</sup>

By contrast, Wolff was not only involved in the experimentation from the beginning, but also personally attended one of the experiments at Dachau.<sup>231</sup> Furthermore, he was certainly far better informed than Milch as to “the precise nature of the experiments.” It would only be the final sentence of the above quote that would support a possible defense argument by Wolff’s lawyers.

### **Conclusion**

[78] The present study has sought to cast light upon one aspect of the war criminality of a leading Nazi, who benefited from a series of interventions by U.S. intelligence officials which contributed to his *de facto* immunity from being prosecuted by the Allies during the Nuremberg or related war crimes trials. We have discussed the details of his elaborate and superficially plausible claims, that he was not directly involved in these experiments in an executive capacity, and that he

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<sup>230</sup> *Id.*

<sup>231</sup> *See* NCA, *supra* note 96.

entered into this work only during its early phases, in good faith, with no awareness of any compulsion or fatal consequences. During both the international and subsequent trials at Nuremberg, the prosecution developed evidence, which implied that Wolff played an active and knowing role in the administrative approval and organization of the altitude and freezing experiments. His claims that, as far as he was concerned, these experiments were voluntary, was met with considerable scepticism. Understandably, such claims indicated that Wolff was either naïve or, more likely, that he was deliberately concealing his complicity in war crimes that resulted in hundreds of agonizing civilian deaths. Through a close examination of the evidence accepted by the judges in the Doctors' Trial, we have shown that the credibility of Wolff's attempts to exonerate himself by insisting that he lacked criminal intent and knowledge of details of the criminal character of these experiments was weak and was unlikely to withstand probing interrogation or cross examination.

[79] Our conclusion is, if later studies can demonstrate with compelling evidence that Wolff was granted *de facto* immunity as part of his reward for cooperating with the OSS's Allen Dulles in Operation Sunrise, the implications of the immunity need to be re-evaluated in a number of significant respects. If in many cases of atrocities, such as in former Yugoslavia, we must give credit to civilian and military intelligence agencies, for playing a vital role in gathering evidence through electronic intercepts, agents and satellite surveillance that would not otherwise have been available to the prosecutors, then we must also recognize the possible of a "down side."<sup>232</sup> If it can

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<sup>232</sup> Ian Bryan & Michael Salter, *War Crimes Prosecutor and Intelligence agencies: The Case For Assessing Their Collaboration*, 16 INTELLIGENCE AND NAT'L SEC. 93-120 (2001); Michael Salter, *The prosecution of Nazi War criminals and the OSS: The Need For a New Research Agenda*, 2 THE J. OF INTELLIGENCE HIST. 77-119 (2002).

be shown, as we believe it can,<sup>233</sup> that Wolff gained legal immunity through the interventions of Allen Dulles, then in the light of the evidence discussed in this article (which is a mere subset of the range of charges Wolff could have faced), it must be interpreted as a major breach of one of the key principles underpinning the entire Nuremberg process: the need to reinstate and consistently apply the rule of law following a period of extended state lawlessness and dictatorship.

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<sup>233</sup> Michael Salter is currently preparing a paper based upon recently discovered documentary evidence. This evidence demonstrates, for the first time, that Dulles intervened within the independent Nuremberg process on behalf of Wolff and also reveals the precise way in which this intervention was possible through the senior participation of OSS personnel within these trials.