

Kurt Gerstein's Actions and Intentions in Light of Three
Post-War Legal Proceedings

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Abstract

Kurt Gerstein entered the Waffen-SS in 1941 with the intention of working against the Nazi regime from the inside. Despite being required to participate in some of the criminal activities of the SS, Gerstein believed he could be most effective for the resistance if he remained in the SS. This thesis examines the evidence presented in and the results of three separate legal proceedings (a criminal trial, a Denazification hearing and a rehabilitation and compensation case) which took place in the 24 years following Gerstein's death in 1945. Each of the three proceedings was brought about for a different legal purpose, and therefore involved different laws and standards for judgment. However, all of the proceedings dealt with the problem of balancing the incriminating nature of Gerstein's means of resistance against what he had hoped to accomplish, or did accomplish, from that position.

Résumé

Kurt Gerstein s'est joint au groupe Waffen-SS en 1941 avec l'intention de travailler contre le régime Nazi depuis l'intérieur du mouvement. Malgré qu'il fut requis qu'il participe à quelques activités criminelles du groupe, Gerstein crût qu'il pouvait être plus efficace, pour la Résistance, en demeurant membre des SS. Cette thèse examine les témoignages présentés de même que les résultats atteints lors de trois procédures légales et distinctes qui prirent place dans les 24 années suivant la mort de Gerstein en 1945. Chacune de ces procédures furent motivées pour des raisons légales différentes et, de ce fait, impliquaient des lois et normes différentes pour en influencer le jugement. Toutefois, toutes les procédures traitaient avec le problème à savoir comment faire le juste poids entre la méthode de résistance de Gerstein, avec la nature incriminante qu'elle engendrait comparé à ce qu'il espérait et / ou a accompli depuis cette position.

Review of the Literature

Secondary Sources:

The focus of published works on Kurt Gerstein has been primarily his pre-war and war-time activities. There are three biographies: Helmut Franz's *Kurt Gerstein. Aussenseiter des Widerstandes der Kirche gegen Hitler* (1964), Saul Friedländer's *Kurt Gerstein ou L'Ambiguïté du Bien* (1967), also published in German in 1968 and in English in 1969, Pierre Joffroy's *L'Espion de Dieu: la passion de Kurt Gerstein* (1969), also published in English in 1970 and 1971 and in German in 1995. There are also numerous journal articles, most of which were written by people who knew Gerstein and had his resistance as their subject. In 1963, German playwright Rolf Hochhuth published the play "Der Stellvertreter" (published in English the same year as "The Representative") about the Vatican's knowledge of the Holocaust and which included Gerstein as a main character. Gerstein also figured largely in articles in the German press. The majority of these articles reported on his rehabilitation, although some short biographical pieces appeared in the papers at the time of the production of Hochhuth's play.

Primary Sources:

By far the most valuable primary source of information about Gerstein's life and activities are the reports he wrote at the end of the war, shortly before his death on 25 July 1945. There are three: the first, written by hand in French, was produced on 26 April 1945, the second, typed in German, was written on 4 May 1945 and the third, also in German, was written on 6 May 1945. The first served as the main basis for Friedländer's work, the second was published by the Institut für Zeitgeschichte of Munich in its journal *Vierteljahrshefte für Zeitgeschichte* along with a commentary by

Professor Hans Rothfels in 1953. Both were used in the preparation of this thesis. I was able to find only a few short excerpts of the 6 May report in the records of the Gerhard Peters trial.

For the preparation of this thesis I wrote approximately 80 letters in German, French and English to archives, libraries and government institutions in Germany, France, Israel and the United States. I visited 9 archives in 8 cities in Germany to collect the bulk of the primary source material used to write the thesis. The following is a list of the archives visited and a summary of their holdings as related to Gerstein.

Bundesarchiv Berlin: Documents of Gerstein's arrest for activities deemed hostile to the State in 1936 and for high treason in 1938, letters written by Gerstein and Gerstein's father for his reinstatement to the party.

Hessisches Hauptstaatsarchiv Wiesbaden: Documents related to the Dr. Gerhard Peters trial (e.g. appeal reports). This archive claimed to have all the existing material of the trial, but did not have complete trial transcripts.

Hauptstaatsarchiv Stuttgart: Documents of Gerstein's compensation case, some newspaper articles about the rehabilitation and compensation cases.

Institut für Zeitgeschichte, Munich: Mainly secondary material, records of the Adolf Eichmann trial in which Gerstein's report was used, John W. Haught's and Major Derek C. Evans' reports, interrogation report of Dr. Wilhelm Pfannenstiel, copies of some records from the French Military Justice archive, newspaper articles.

Kurt Gerstein Haus, Hagen-Berchum: The archive of this Protestant youth centre formerly held a vast collection of letters by Gerstein assembled by the former director of the centre and friend of Gerstein, Pastor Herbert Weisselberg. The collection was handed over to the Landeskirchliches Archiv in Bielefeld around 1970. The Kurt Gerstein Haus continues to hold seminars about Gerstein every year.

Landeskirchliches Archiv, Bielefeld: Enormous collection of letters written by Gerstein between 1933 and 1945 to friends and family, as well as copies of the pamphlets he published in the 1930s, his French and German (May 4) reports, some secondary material.

Staatsministerium Baden-Württemberg, Stuttgart: Documents of Gerstein's rehabilitation.

Staatsarchiv Sigmaringen: Documents of Gerstein's Denazification trial.

Zentrale Stelle der Landesjustizverwaltungen, Ludwigsburg: Gerstein's German report of 4 May 1945, some related documents, including a statement by Dr. W. Pfannenstiel.

The source base (consisting of hundreds of documents) is almost entirely German, while some documents are in French. Excerpts of these documents included in the thesis are my own translations.

Introduction

The published works about Kurt Gerstein have focused on his pre-war and war-time activities. I have chosen as the subject of this thesis the three sets of post-war legal proceedings (the Dr. Gerhard Peters trials, also known as the Degesch trials, the Denazification hearing and the rehabilitation and compensation cases) which passed judgment on these activities and the question of Gerstein's true intentions. Gerstein's biographers Saul Friedländer, Pierre Joffroy and Helmut Franz have only touched on them in their works. Friedländer uses the May 1955 verdict of the Gerhard Peters trial, but in fact this was the seventh revision of an original judgment handed down in March 1949. I have analyzed the original trial judgment with reasons and the seven revisions. These provide more complete information about Gerstein's activities for 1943 (for which there is no information in his reports and letters). Joffroy and Franz say nothing of the Peters trials. Friedländer, Joffroy and Franz summarize the conclusion of the Denazification court, but offer little or no detail about the proceedings. Friedländer includes only a brief mention of Gerstein's rehabilitation, and nothing about the compensation case, which continued the debate of the value of Gerstein's resistance in relation to his position as a Nazi Party member and SS officer for five years after the rehabilitation. Neither Joffroy nor Franz mention the rehabilitation or the compensation cases. These three sets of proceedings were governed by different laws and therefore also by differing criteria with which Gerstein was judged. The results of these proceedings represent an important addition to Gerstein's story since they highlight the legal and moral problems involved in coming to a conclusion about his life.

Chapter 1 - Kurt Gerstein's Life

Note to Chapter 1

In writing the first chapter, I have tried to keep to a minimum the use of statements made about Gerstein after the war by his contemporaries, preferring to tell the story of his life as he did through his letters and the German and French reports. I have included such "outside" testimony only in the interest of clarity, that is, to fill in the blank spots left by the reports and letters which represent an important event or series of events necessary to understand Gerstein's life, or, to substantiate a conclusion about his activities. The testimony provided by his friends, family and contemporaries is discussed at length in the subsequent trial chapters.

Kurt Gerstein was born on 11 August 1905 in Münster, Westfalia. His father, Ludwig Gerstein, was a provincial court president and a major in the German army. His mother's maiden name was Clara Schmemann. Kurt had six siblings: brothers Ludwig, Alfred, Johannes, Carlheinz, Friedrich and a sister Annemarie.¹ Gerstein was descended from a long line of justice officials on his father's side and successful businessmen on his mother's. The Gerstein family's ancestors had been living on the left bank of the Rhine since the 16th Century. Following the First World War, in which Ludwig Senior and three of his sons, Ludwig Junior, Alfred and Carlheinz fought, and in which Ludwig Junior was killed, the family was forced to move and Ludwig Senior was made to relinquish the post he had held at the court in Saarbrücken since 1911.² Gerstein does not speak about his childhood in either his letters or reports, but statements made after his death reveal that following the war, the Gerstein family's home life became harsh and severe. Ludwig Senior inflicted frequent punishments on his children and Clara was cool and distant. Karlheinz Gerstein said of Kurt:

He was certainly the most difficult of my parents' seven children. There was a good deal of tension between him, his brothers and sisters. He had always gone very much his own way, so that he was not exactly easy to approach. Many things about him gave him an almost adventurous air.³

The Gerstein family moved to Neuruppin near Berlin in 1921. In 1925, Kurt matriculated from the Friedrich-Wilhelm Gymnasium there. He studied economics, law, mathematics, physics and chemistry at the University in Marburg-Lahn for two years before transferring in 1927 to the Institute of Technology in Aachen and later in Berlin-Charlottenburg. He passed his mine engineering examination in 1931 in Berlin with the result “Good”.⁴

He began work in mines as a pit foreman in July 1931 in Herne. In April 1932 he was appointed as a civil service trainee. His training took him to mines in Stahl, Königsberg, Cologne, Dortmund and elsewhere. He took the mine inspector’s exam on 27 November 1935.⁵ Soon afterward he began work at the Saar mine administration office in Saarbrücken.⁶

Kurt Gerstein was a strictly devout man, whose religious convictions often brought him into conflict with his less religious family.⁷ Beginning in 1925 he was an active member of the Evangelical youth organization and the school Bible circles.⁸ From 1931 on he devoted one third of his yearly income of 18 000 RM to the pursuance of religious goals. (Most of this income came from share-holdings in his mother’s family business DeLimon Fluhme and Company in Düsseldorf, which manufactured machinery for locomotives.⁹) From 1932 until the organization’s dissolution he was responsible for the leadership of all the Evangelical youth in Germany.¹⁰ Gerstein gave talks, led Bible studies, and organized field trips. In this capacity Gerstein met and worked closely with many influential Church leaders including among many others Dr. Martin Niemöller, Dr. Otto Dibelius and Dr. Hermann Ehlers (the future president of the Bundestag).

What makes this period of Gerstein’s life so interesting is that he did all of these things while a member of the Nazi Party. In his German report Gerstein stated he had been an active supporter of Stresemann and Bruening. Whether their appeal was their

more conservative views or their achievements in the revision of the Versailles treaty, or something else altogether, is not explained. In any case, on 2 May 1933 Gerstein joined the NSDAP as member number 2 136 174.¹¹ In October of the same year, he joined the SA.¹² Gerstein provides no information on why he joined these groups, possibly because his subsequent exclusion from the Party for resistance activities may have in his mind rendered it a moot point. However, Pastor Kurt Rehling, who had known Gerstein since 1928, recounts in an article for the journal *Unsere Kirche* (Our Church) a conversation he had with Gerstein in 1932 regarding Hitler's telegram to the Chancellor protesting the death sentence which had been imposed on several SA members who had murdered a communist. Rehling had declared no Christian could come to terms with the Nazi Party since, should it come to power, such a double standard of justice as held by Hitler would inevitably lead to a collision between Church and State. Gerstein replied that if the danger of the Nazis coming to power truly existed, "perhaps one ought to go [...] into the Party. There are great forces in it. How else do you think you can help except from inside?" Rehling continues: "Gerstein felt in 1933 that he had to join the Party, despite strong hesitations. He hoped in this way to be able to help."¹³ In view of Gerstein's later activities, this explanation seems entirely plausible. Yet other reasons for his membership should not be completely excluded. There were many hints of family pressure to be a Nazi Party member as will be shown below. As well, Gerstein may have accepted it as a necessity for his career, as he entered the civil service shortly after graduating in 1932. Gerstein wrote many letters in 1933 and 1934 to a friend and curate named Egon Franz, also an active member of the Evangelical Church. It is clear from these letters that his priority was undoubtedly the Church, but one gets the impression that he was not yet entirely disenchanted with Nazism. In fact there are hints that he believed the two could co-exist. On 19 August 1933 he wrote:

The answer to it for me is this: to stand as strongly as possible on the basis of National Socialism (e.g. especially for me to struggle for National Socialist penetration of the economy). But under all circumstances to cling tenaciously to the foundation of the Church and - without a look back to any one outside power or development.

Later on in the same letter he points out that the Führer may have even helped the Church: "Perhaps Adolf Hitler has saved the world from Bolshevism".¹⁴

Despite Gerstein's desire to acknowledge the merits of National Socialism his personal experience of government interference and increasing control over the Church's activities drove him to open conflict with the Nazis. Field trips he organized were visited and broken up by the Gestapo.¹⁵ He had represented the Confessing Church in the general meeting of the Evangelical Lutheran Church District as an elected member, but this organization was eventually dissolved by the National Socialists.¹⁶ The federation of German Bible circles of which Gerstein had been a leader was also prohibited from operating in December 1933. These restrictions were a personal provocation to Gerstein. He wrote to Egon Franz on 18 March 1934:

Growing in me, contrary to some earlier cowardice and shyness and reserve, more and more is the courage to lay down before each person a totally clear testimony: Jesus Christ is master! To bear witness to this is becoming to me an ever more unavoidable compulsion.¹⁷

He sent telegrams of protest to the Reich bishop against the merging of the Evangelical youth with the Hitler youth in December 1933.¹⁸ He joined in the resistance against the German Christians, a group which sought to enforce the view of the Third Reich in the churches.¹⁹ Gerstein wrote religious pamphlets aimed at the German youth and distributed confidential circulars of the Confessing Church.²⁰ He claimed in his French report that he had had printed and mailed approximately 230 000 anti-Nazi religious brochures.²¹ On 30 January 1935 Gerstein interrupted the performance in Hagen of the play "Wittekind" by Edmund Kiß decrying its anti-Christian message. He was publicly beaten by some local Nazis in attendance.²² Later that year, Gerhard Schinke, a former

teacher of Gerstein, attended one of his Bible studies for German boys in Hagen-Berchum. He had chosen to speak of the story of the old Jewish martyr Eleazer, who had preferred to die rather than to behave according to a commandment of a powerful king which went against his faith and conscience.²³ Pastor Gädeke who knew Gerstein at this time said of him later:

Only out of love for young people and out of an inner duty to show these young people in these critical years when Volk, honour, blood and race were presented by the other side as the highest values, the true highest value from the word of God in the holy scriptures.²⁴

These activities did not go unnoticed by the authorities. In the summer of 1936 Gerstein anonymously sent four brochures entitled “Entchristlichung der Jugend” (The de-christianization of youth), “Ein Wort zur kirchlichen Lage” (A word about the church situation), “Predigt am 3. Mai 1935 in der Gemarker Kirche zu Wuppertal-Barmen, gehalten vom Pastor Humburg” (Sermon from 3 May 1935) and “Erklärung zum Protokoll der Gendarmerie - Station Penzberg / Oberbayern zur Anzeige wegen Nichtbeflaggung der Kirchen am 1. Mai 1936” (response to the denunciation of certain churches in Upper Bavaria for not flying the swastika)²⁵ to 380 high-ranking justice officials. Three of these brochures had already been banned because of their content.²⁶ Gerstein was arrested because of this mailing on 24 September 1936 and held in a Gestapo jail until 18 October.²⁷ Shortly after his arrest the Gestapo searched his office where they found over a thousand letters ready for mailing along with the brochures to high ministry and justice officials and approximately 7000 addressed envelopes.²⁸ As a consequence of his arrest Gerstein was excluded by interim injunction from the Nazi Party on 15 October 1936.²⁹ This was formalized by a judgment of the Party court on 8 January 1937.³⁰

For reasons not discussed in detail by Gerstein either in his letters or his reports, he actively sought reinstatement to the Party. In his appeal to the Party court in South

Westfalia Gerstein wrote that he had felt impelled to behave as he did at a time when religious conflicts among the German people had reached a high point, but that he did so as a conscious Christian, free from any specific dogma (a distancing from the Confessing Church). He stated he had feared a German youth without God, but that he now realized the Nazi State was simply anti-Church. During the time the brochures were being distributed, Gerstein continues, he had had a conversation with a young Party member “through which I was retrieved in full extent back into National Socialist responsibility”. Gerstein claimed he stopped the further distribution of pamphlets and “placed [himself] inwardly with greatest responsibility again to National Socialism”. His defense went on:

I am fully aware that the way of behaviour to which I was carried away is false and reprehensible. I have given the State police satisfactory explanations about my future activities. [...] I have stood up for the State and movement in religious discussions besides this one exception. [...] Besides this I refer to my years-long defense against Jewish-Bolshevist attacks against the substance of the German people, which I, as I was left in the lurch by my church, had to lead on my own initiative and cost under a monstrous expense finally to a victorious end. The records of my years-long struggle against the Jewish-Galician disgraceful firms Fromms Act and Prim Eros, which distributed millions of free samples through the communist league for the protection of mothers to young adolescents, can be found at the Minister of the Interior. The records about my fight against the Remarque film are at the court office in Herne. I do not wish to dodge a punishment because I fully recognize that I earned it. I ask nonetheless to refrain from the severest punishment of exclusion.³¹

In view of his earlier activities this letter is perplexing. Had Gerstein truly been converted? This is unlikely. His brother Johannes wrote in 1964 that at the time of these appeals (more were forthcoming) Friedrich (another brother) had told him that he had drafted the letter and that Kurt had signed it under pressure from and to please his father, despite the fact that it ran counter to his convictions.³² At the time of Gerstein’s second appeal he wrote to his fiancée Elfriede Bensch: “Today my defense letter for the Party court was due. My family forces me here quasi to insincerity.”³³

In the second letter of appeal Gerstein denied having known the brochures he had mailed were hostile to the State and prohibited, claiming they were simply a religious discussion and took no position on the Party or State. He returned again and again to the explanation that they were a defense against attacks on Christianity, attacks with which the Party itself did not identify, and spoke only about the private views of Party members with which the Party would not have agreed. Gerstein referred to Hitler's own declaration that a true and real Christianity should have a place in Germany and to point 24 of the Party program³⁴. He adamantly denied having had the intention to stir up judges against the Party and State. Gerstein concluded:

I encouraged youth to be true Christians and true National Socialists. [...] My actions were not on behalf of the Confessing Church but for a serious faith in God. [...] After all this I cannot admit that I broke the trust of the National Socialist movement and placed myself on the side of the opponents who sought to sabotage the work of the Führer. I feel most closely bound with this movement and possess a passionate will to serve it and the works of Adolf Hitler with my entire strength, wealth and life. If I committed an offense, so I cannot consider the punishment of exclusion as a justified atonement for it. I consider this punishment, as every decent German would, as a defamation. I did not earn it.³⁵

Letters of defense notwithstanding, Gerstein remained concerned about the Church vis à vis the Nazi State. He wrote in February 1937: "The Church position, that is, the new development, gives occasion to even greater concern. We are going toward difficult decisions which actually can only end in a mess."³⁶ In fact, there is a hint in a subsequent letter that Gerstein was disappointed by the Church's apparent lack of resolve:

For months and weeks I have gotten into contact with them [the Confessing Church and a mission in Münster], [to ask them] to help me, to figure out in time our brochure mission to confirmation. But the men, who at the time promised me help, do not stir or move themselves. I am gripped by a blinding rage, when I think of all the cut-off and never again returning opportunities.³⁷

In the midst of uncertain employment prospects and a continuing ambivalent relationship with the government, Kurt Gerstein married Elfriede Bensch on 2 May 1937. The couple eventually had three children: Arnulf in 1939, Adelheid in 1941 and

Olaf in 1942.³⁸ Shortly after the marriage, the Gestapo imposed on Gerstein a ban on public speaking for the entire Reich area because of subversive attacks against the Reich Labour office.³⁹ What these attacks were was not stated explicitly.

Without any immediate employment opportunities, Gerstein began theological studies in Tübingen.⁴⁰ He transferred to medical school at the German Institute for Medical Missions also in Tübingen. He remained there until July 1939.⁴¹ During this time Gerstein wrote and published at his own expense several brochures intended for German adolescent boys.⁴²

At the end of 1937 Gerstein met Reinhold Wulle, a former member of the Reichstag and leader of the Society for German Freedom (Gesellschaft Deutsche Freiheit), which was interested in a return of the Hohenzollern monarchy. Gerstein maintained the relationship through conversations and letters.⁴³ This connection caused him to be arrested along with seven others on 14 July 1938 for suspicion of high treason, specifically, the preparation of a monarchy.⁴⁴ From police custody in Stuttgart Gerstein wrote to Elfriede:

I have realized that I've been at the end of my rope. I have never experienced such days and I must honestly say that I was not spiritually prepared for them. Yet I must say I have been relatively but not comparatively rather well treated both by the Gestapo and the custody police. So unbearable is merely the full uncertainty about the duration of the matter.⁴⁵

He was subsequently transferred to the Welzheim Concentration camp in South Germany. From there he wrote to Elfriede, again lamenting that the uncertainty of the matter was the most difficult to bear, and yet on other matters he appeared optimistic, declaring: "I have besides the lack of freedom no serious reason for complaint. As in Stuttgart one is also here not without goodwill, so that I can last out."⁴⁶ The tone was very different in a letter to his uncle and cousin Robert and Robert Jr. Pommer in America:

This time was for me the most terrible in my whole life. I cannot describe the humiliations, the ill-treatment, the hunger, the cramming together in tiny rooms with pimps and criminals. [...] Lice, bugs, mites, hunger, forced labour and a treatment that cannot be described. [...] I was many times only a hair's breadth away from hanging myself or by another way to leave this life, because it was not in the least known to me whether and if, yes if, I would be let out of the concentration camp.⁴⁷

Records of the district attorney's office in Stuttgart indicate Gerstein and one other of the accused (Wilhelm Mayer) provided incriminating evidence for the case against Wulle, which may explain Gerstein's release on 28 August 1938.⁴⁸ However there is other evidence that Gerstein may have been helped. In the letter to his uncle and cousin, Gerstein mentioned that the State police official who handled his case, K.S. Zerrer, had enacted his release.⁴⁹ Pastor Kurt Rehling confirmed this after the war in a statement, claiming the Gestapo official had read some of Gerstein's writings and passed them on to his adolescent son and had "believed Gerstein was a man of integrity" and used his influence to have Gerstein released despite opposition from the Berlin Gestapo.⁵⁰

The attempts at reinstatement to the Party continued after his release. Gerstein's father had taken a decisively active role, pleading his son's case before the court. He wrote to Kurt on 8 October 1938 saying he believed the outcome would be positive and to explain what he had told them:

You felt dragged into the Confessing Church, you were not in agreement with it in everything, therefore you also gave up your theological studies. [...] I emphasized that you placed great value on remaining in the Party and that you would fulfill fully and completely your duty in the Party.⁵¹

Kurt replied:

Since September 1936 I have not been active for the Confessing Church, rather I struggled in the most general sense for the preservation of a genuine faith in God among the German youth and German people. [...] I was able to prove to the Stuttgart police that I not only [...] unreservedly and unequivocally voted for Adolf Hitler at all elections, rather that I reprimanded and steered back other "hesitators". [...] Since 1936 I have strictly modified my circle of friends and acquaintances and held fast to those who fundamentally agree with National Socialism.

But in a letter to his father from 26 November 1938, Gerstein appeared resigned to the possibility that he would not be re-admitted:

[...] after what I have experienced, I do not think nearly as optimistically as you. I think it is possible that the Party court will lift the judgment and let me back into the Party. But I do not think this is very likely. At best I believe I will receive a smooth, that is, not dishonourable, discharge, because it was an offense of conviction.⁵²

This is precisely what happened. The final judgment regarding Gerstein's Party status was handed down on 10 June 1939. The court contended Gerstein had to have recognized the disparaging nature of the brochures. Further, it stated that given his religious convictions, he was not in the position to fulfill unconditionally his duties as a Party member. Nonetheless, it could not be decisively proven that Gerstein was aware his behaviour was punishable by law, so the exclusion was changed to dismissal.⁵³

The fall of 1938 was a major turning point in Gerstein's life and thinking. To recover from his internment in Welzheim, Gerstein and his wife took a cruise in the Mediterranean. While away, he learned his home in Tübingen had been searched. Gerstein considered fleeing to Switzerland, but decided, reluctantly, to go back home.⁵⁴ Once in Germany Gerstein explored the three possible courses of action left to him. He could (and indeed revealed a certain desire) to reconcile himself with the government, as he had attempted to do before. Or, he could simply keep away from politics, by finding a job that would allow him some measure of non-involvement. He could also continue on the path of resistance. His experiences at the hands of the Gestapo had only opened his eyes wider to the injustices of the Nazi system. He saw the potential benefit for society in exposing these injustices and yet feared the personal cost of such a confrontation. He wrote about all these options to his family:

We have from the beginning thoroughly approved politically of National Socialism 'giving to Caesar what is Caesar's'- But we have pointed out that a youth without God is a dangerous thing. [...] Should one in Germany know that justice is a sublime, elevated concept, safe from human attack [...] and that any

person who applies the law does this with the authority of the highest judge and will be called to answer for this? Or is justice that which serves the people, is it a matter of expediency, is justice a whore of the State?

We have all been at pains, where we have had to raise resistance, not to strike at the political National Socialism, because that is not our matter. We have only tried to defend rights and responsibilities, which were and are again and again solemnly guaranteed to us by Herr Hitler and National Socialism. [...] It is so that despite all the opposite talk, these highest values - faith in God, Justice - only have so much room in Germany, as they preserve and secure themselves only through indescribable grief. It is also certainly not pointless, to place oneself against the stormy powers. Then without doubt the unscrupulousness and injustice would go considerably still farther, if it did not have to fear the judgment of the public abroad and at home. Then also at home despite all the minimizing by the press indeed sufficient assurance would be secured, so that the well-meaning souls of which there are also in the ranks of the National Socialists, would know the decision. [...] I am careful of what I say and so hope to avoid further measures. A third arrest would undoubtedly mean for me that I could not go on living. [...]

In your visits to Germany you have seen the good that the Hitler movement has produced: roads, employment, construction - but you were not able to see the tragedy which results from the loss of intellectual freedom, religious freedom and justice.⁵⁵

And

My readiness to return to the mining company and to work quietly, diligently and exclusively, remains as before. [...] I am ready to take a mining job if it is offered, [...] if my complete hopes on this matter are shattered, so I will accept it as fate, to take on a medical mission. [...] You know how reluctantly I would leave Germany. [...] However here I must reconcile myself with difficulties.⁵⁶

This change in Gerstein, from wishing to be able to accept National Socialism (albeit only politically) to no longer believing this was possible is most clearly expressed in a letter written to his father after the burning of the synagogues in November 1938. One month earlier, his father had sent him a glowing commentary on the state of German politics and society:

What great times we are living through! [...] I was with many peasants and carpenters in Upper Bavaria and spoke a lot with them. To my happy surprise I found everywhere and without exception the greatest joy and satisfaction over the recent events and an overwhelming love for our Führer. How proud - in the best sense - we can be again to be German. It cost me a great effort of will to give up the beloved black, white and red flag. Now however I acknowledge without reserve the Swastika and recognize that it is a necessity for the new Reich.⁵⁷

Gerstein responded:

Unfortunately I cannot share your view about the future development. We have since 1933 experienced the consistent line that the most radical course has constantly succeeded and from now on will succeed. Please think of the last achievements of the Black Corps. I have not the slightest doubt on this consequence for the future. Above all - also for one as passionate as me - this can bring with it still more difficult conflicts of conscience, than those [caused by] having to answer for the last events. I was inwardly considerably 'brought into line' but these last things have struck me very deeply.⁵⁸

For a short time Gerstein did find work at a private mining enterprise⁵⁹, but this was far from a return to normalcy, as he was about to embark on the most radical course of resistance in his life thus far. One may think that Gerstein's reluctance to continue resisting Nazism detracts from the moral value of his choice. In fact it is the opposite, for it reveals the enormous strength of his convictions. Gerstein intensified his resistance activities aware of the potential personal danger, in defiance of his father's views and despite an intellectual desire that it did not have to be so.

On 10 March 1941, Gerstein entered the Waffen-SS. The date of his initial application is a point of contention. Overviews of Gerstein's life prepared for the rehabilitation and compensation cases (discussed in chapter 4) place the time of application in October 1939⁶⁰ and September 1940⁶¹, but provide no supporting documentation. The report presented at Elfriede's appeal of the Denazification verdict (discussed in Chapter 3) places it at the beginning of 1940, but again with no reference.⁶² Gerstein prepared his curriculum vitae on 15 August 1940. A note at the end indicates he was interested in joining the armed forces in some way in October:

From this activity I wish on 1 October 1940 or according to the needs of the Armed Forces office to change to a teaching activity (mining school) for which I consider myself especially suited, or in a position in the newly acquired areas, which offers me more prospects for the future.⁶³

When Gerstein was interrogated by French military authorities at the end of the war he stated he had first applied to the Waffen-SS in December 1940.⁶⁴ In a letter to his wife of 5 December 1940, Gerstein wrote: "Why I hear nothing from the Waffen SS I don't know." What makes the uncertainty of this date so troubling is that it potentially

contradicts the reason given by Gerstein to explain why he joined. In his French report Gerstein writes:

Having heard of the massacres of imbeciles and handicapped persons, shocked and injured inwardly, having had such a case in my family, I had only one sole desire: To see, to see into all this machinery and then to cry to all the people. Armed with two references of two employees of the Gestapo who dealt with my case, it was not difficult to enter the SS.⁶⁵

His German report provides the same reason:

As I heard about the beginning of the killing of mental patients in Grafeneck and Hadamar and other places, I decided in any case to make the attempt to look into these ovens and chambers in order to know what was happening there. All the more since a sister-in-law Bertha Ebeling was deliberately killed in Hadamar. With two references from Gestapo officials, who were dealing with my case, it was not difficult to enter the SS.⁶⁶

Gerstein presents as the precipitating cause for his joining the SS his having learned about the euthanasia program and particularly the death of his sister-in-law Bertha. During the deliberations of Gerstein's compensation matter, the State Ministry of Baden-Württemberg ascertained that she had to have died in February 1941, as her sister remembered, and not February 1940 as Pastor Weisselberg (a friend of the family) claimed, since killings at Hadamar only began in January 1941. However, this Ministry noted that the euthanasia program had begun in the fall of 1939.⁶⁷ Given this, one wonders why Gerstein applied to the SS before Bertha Ebeling's death. At the same time, these facts do not absolutely contradict Gerstein's explanation of his motives for joining the SS. He could very well have heard about the euthanasia program in 1939, as he was well connected to members of the Church resistance, decided then that he would join the SS, to confirm the truth of these rumours, only to have this decision reinforced when such a case occurred in his family. The problem is that Gerstein was not specific in his reports. It led to much doubt on the part of justice officials charged with deciding his case in the years after the war, and it is why so much importance had to be placed on

witness testimony. This testimony is discussed at length in following chapters, it will be referred to only briefly here.

Pastor Rehling declared that Gerstein entered the SS:

with the pronounced will 1) to study as thoroughly as possible the plans and intentions of the Third Reich and 2) to hinder murders and rescue his old friends in the collapse of the Third Reich which he expected.⁶⁸

When Otto Dibelius challenged Gerstein about his decision, asking him how a Christian could enter the SS, Gerstein apparently replied: "Someone has to be inside to witness, and who can be a witness to the world." Kirchenrat Otto Wehr also stated that the impetus for Gerstein's decision was the death of his sister-in-law, in that he wished to find out the truth about the killings. There was one aberrant piece of testimony about Gerstein's motive for joining which came from a former friend Armin Peters. He claimed that:

Because of his opposition to National Socialism and internment in the concentration camp he had many professional difficulties and felt shattered. Besides this he was pressured in certain ways by his family, which was outspokenly German nationalistic and conscious of tradition. [...] He himself was and remained according to my view a full opponent of National Socialism. He hoped, in the SS, as soon as his earlier concentration camp internment would become known, to be sent to a unit on the front, which as is well known was in immediate battle operation, and that he by this way with great probability would be killed.⁶⁹

This is the only statement of its kind (and incidentally, it was not given much weight in subsequent judgments about Gerstein). There was admittedly no consensus on the date of Gerstein's entry, or the precipitating cause, but there was absolute agreement (save the above example) on his motivation, which was exclusively resistance. There remained the question of how Gerstein managed to be accepted by the SS, given his resistance activities, arrests and Party status. Gerstein stated in his reports (as seen above) that he had had help from members of the Gestapo who vouched for him to the SS. He had told the same to friends who testified after the war. This almost unbelievable

achievement, in conjunction with the potential for doubt regarding his motivation for joining the SS proved to be a stumbling block for the courts after the war. This was not entirely unjustified since even at this time (1940), he tried once again to have his Party status changed.

On 17 August 1940, Gerstein visited the Reich Party Headquarters. In the notes of the meeting it states: “[Gerstein] has turned away from Confessing Christianity and is today fully converted. He stands fully behind the Führer and has become a radical opponent of the Confessing Church.”. Gerstein was apparently told he could submit a claim for reinstatement but that it would probably require a long period of probation. Gerstein declined the offer, stating he did not wish to jeopardize his chances with a premature attempt.⁷⁰ While the final outcome is not stated anywhere in the records, presumably the matter was dropped, as Gerstein’s Party status remained a dismissal. Gerstein disavowing the Church on whose behalf he had already suffered so much is easily explained if one also accepts the reason he gave for joining the SS, that is, this was the means to that end. Pastor Rehling said as much after the war in a statement used by the Denazification court: “For this [joining the SS] of course it would be necessary that he get the reputation, no longer to be a so branded representative of the Confessing Church.”.⁷¹

Gerstein began basic training for the Waffen-SS on 10 March 1941 with 40 other doctors, in Hamburg-Langenhorn and later in Arnhem, Holland. He mentioned in his German report that while in Holland he contacted the Dutch Resistance movement, and in particular J.H. Ubbink of Doesburg.⁷² He wrote to his wife from Arnhem: “It is a strange life, which I must lead. [...] The sphere of view, the inner clarity has become unendingly greater. [...] I recognize here still more than before, what is essential.”.

When basic training ended in June, Gerstein, because of his engineering and medical studies, was assigned to the medical-technical service of the SS

Führungshauptamt - Department D, SS Sanitation service - Hygiene Department. Gerstein writes that he himself chose to build disinfection apparatus and water filtration equipment for troops and concentration camps, boasting: "I succeeded where others did not, considerably lowering the death rate"⁷³ and that he was regarded as a technical genius and had succeeded in containing the typhus epidemic of 1941.⁷⁴ He was rewarded with a promotion to SS-Obersturmführer (lieutenant). At Christmas time in 1941 the Nazi Party court judge who had decided on Gerstein's exclusion apparently learned of his entry into the SS and tried to have him removed, but the Chief of the Hygiene department, Dr. Joachim Mrugowsky, because of Gerstein's achievements, protected him, declaring he was sincere and indispensable. In January 1942 he was appointed head of the technical health department, which included overseeing disinfection with highly poisonous gases⁷⁵, including prussic acid.⁷⁶ He wrote to his friend Erich Capito from his office in Berlin:

In several ways I earn your scorn. But my life is - you know it - always very eventful, always on the cutting edge, always interesting and - always dangerous. [...] I cannot and wish not to say much about my inner development. Only you know I have always had tension in my life, perhaps now I live in great tension. My activity is - without any exaggeration - interesting.⁷⁷

To his wife he wrote: "I am in a place here where I can be of use and can hinder very much. That is a thoroughly pleasant feeling."⁷⁸ It is not obvious to what he was referring, resistance or simply his work, but either way he seemed satisfied with his present position.

On 8 June 1942 SS-Sturmbannführer Rolf Günther of the Reich security office handed Gerstein an order to obtain 100 kg of prussic acid and to take it to a location known only to the driver of the truck in which he would travel. Several weeks later, he picked up the prussic acid at a manufacturing plant in Kolin near Prague. Gerstein said in his report he had suspected that the poison was intended to be used against people,

but cooperated with the order to find out more about the killings and also, since he was considered an expert in gases, he had felt confident that he could make up an excuse to keep it from being used.⁷⁹ Gerstein claimed that he dropped hints at Kolin about the gas' purpose in order to start rumours about the Nazis' crimes.⁸⁰ During his interrogation by French authorities in 1945, Gerstein stated Günther had asked him to examine the technical possibilities of replacing the existing killing method (which used diesel exhaust piped into sealed rooms) with prussic acid.⁸¹ He traveled with Dr. Pfannenstiel, professor of hygiene at the Marburg-Lahn university. According to Gerstein's reports, they were met at Lublin, in the Government-General (German-occupied Poland) by SS-Gruppenführer Odilo Globocnik, who told them what they were about to see was of the utmost secrecy and anyone who spoke about it would be immediately shot. He explained that at the moment (17 August 1942) there were three installations that were operational: Belzec, situated on the Polish-Russian border near Lublin which (Gerstein claimed) had a daily killing capability of 15 000, Sobibor, (Gerstein was not certain of the location), which had a killing capability of 20 000 per day, Treblinka, 120 km North-North-East of Warsaw, which had a killing capability of 25 000 people per day and that a fourth, Maidanek, was still under construction. Globocnik told the men there was a vast quantity of clothing (left behind by the victims) which had to be disinfected in order to disguise their provenance, and secondly, that a more fast-acting and toxic gas was required for the gas chambers. Apparently Hitler and Himmler had visited the camps just two days previously and ordered that the killing be sped up.⁸²

The following day, Gerstein visited Belzec and met Hauptmann Christian Wirth, commandant of the camp. In his report Gerstein provides a fairly detailed description of the camp. It was situated next to a train station. Nearby was a building with a cloakroom and wicket where valuables would be handed in, and another room with

about 100 chairs called “Hairdresser”. Outside was a 150 m corridor bordered on each side with barbed wire and with a sign indicating “to baths and inhalation rooms”. At the door to the bathhouse itself were pots of begonias and geraniums. Inside were six rooms “like garages” measuring 4 m long by 5 m wide and almost 2 m high. The next morning shortly after seven a.m. a train arrived from Lemberg carrying 6 700 men, women and children, of which about 1 450 were already dead. Two hundred Ukrainians employed for the task drove the people from the wagons. They were ordered to undress (including eye glasses and prostheses) and to turn over their valuables at the wicket. A small boy of about three or four years handed out pieces of string in order to tie the shoes together. The women and girls had their hair cut off “in one or two strokes”, which was then put in potato sacks, to be used, Gerstein was informed, to make something for the submarines. Prodded with whips and bayonets, all of the people, naked, passed in front of Gerstein, Pfannenstiel and Wirth. An SS man announced in loud voice that nothing would happen to them and that they should breathe deeply in the inhalation rooms to protect themselves against disease. When asked what was to be done with them, he explained the men would be sent to work in construction, and the women could help with kitchen chores if they wished. Gerstein states most people already knew what really was about to happen, as the pestilential odour which hung in the air left no doubt, but that most entered the chambers silently while others simply prayed. Hauptmann Wirth ordered the rooms filled to capacity (Gerstein claims there were approximately 700 to 800 people per room). The diesel motor was started, but failed. Inside the rooms Gerstein could hear people crying.⁸³ In his German report, Gerstein writes:

I prayed with them, I pressed myself into a corner and cried aloud to my God and theirs. How I would have liked to have gone into the chambers with them, how gladly I would have shared their fate. [...] I may not, I must still bear witness to what I experience here!⁸⁴

Using his stop watch, he recorded that it took 2 hours and 49 minutes until the motor started again. After another 32 minutes, everyone was dead. At the opposite ends of the chambers, Jewish workers opened other doors to remove the bodies. The people had been packed in so tightly that they were still upright, and families could be identified as their hands were still clasped together. About two dozen workers examined the corpses for hidden valuables and gold teeth, which were removed.⁸⁵ The bodies were then thrown into open pits measuring 100 by 20 by 12 m. In several days the bodies, having swollen and then settled together, would be covered with about 10 cm of sand. Gerstein states Hauptmann Wirth asked him not to suggest any changes in operation to the office in Berlin. Gerstein writes: "I lied, saying the prussic acid had been destroyed in transit, and could not be used and had to be buried, which was done immediately." The following day Hauptmann Wirth brought Professor Pfannenstiel and Gerstein to Treblinka, which Gerstein states was similar to Belzec, only with eight gas chambers⁸⁶ In his report Gerstein also mentions having toured Maidanek, but gives no date⁸⁷. He left the next day for Warsaw.⁸⁸

On the overnight train to Berlin, Gerstein happened to meet the secretary of the Swedish Legation, Baron Göran von Otter. Gerstein told him everything that he had witnessed and asked him to convey it to the Swedish government and the Allies. He suggested that the RAF drop leaflets about these crimes over Germany since:

He was firmly convinced that if the knowledge of this extermination was spread amongst the German population and the facts corroborated by impartial foreigners, the German people would not for a moment continue their support of the Nazi regime.⁸⁹

He visited him once more in Berlin, where von Otter told him he had sent a report to his government.⁹⁰ The Swedish government only forwarded the report to London three years later in August 1945.⁹¹

From 1942 on, Gerstein was on a mission to inform as many people as he could about what he had seen. He visited the Papal Nuncio in Berlin in order to pass on the truth to the Vatican, but was turned away once he admitted to being a soldier.⁹² He spoke to the Catholic bishop of Berlin, Dr. Winter, and asked him to speak to the Vatican.⁹³ He gathered anti-Nazi friends and contacts in his apartment, including the press attaché of the Swiss legation, Dr. Paul Hochstrasser and Domkapitular Peter Buchholz, the chaplain of the Plötzensee prison.⁹⁴ Gerstein made reports for the Protestant bishop of Berlin and sent information to the Dutch resistance. They in turn forwarded the news to their government in London, who reprimanded them for publicizing such unbelievable reports.⁹⁵ He told all of his contacts and friends from the Church.⁹⁶ Gerstein claims in his report that hundreds of people were informed by him.⁹⁷ But this information failed to elicit the response Gerstein had hoped for. The Allies remained silent, the Vatican feigned ignorance and while Gerstein's speaking to the Church leaders was an important and valuable act if only for its inherent danger, they could not slow or stop the continuing murders. Gerstein carried on his resistance in other ways, helping concentration camp prisoners and their families by smuggling food and cigarettes into the camps, arranging correspondence, bribing SS guards, and even shielding some from Gestapo persecution.⁹⁸

And yet Gerstein's work for the Waffen-SS had to continue. He wrote very few letters in 1943 and 1944 and mentions nothing of his day-to-day activities in his reports. Other sources show that at the beginning of June 1943, he met with Dr. Gerhard Peters, manager of the Degesch company in Frankfurt am Main in order to set up monthly deliveries of Zyklon B (the commercial name for prussic acid) to Auschwitz and Oranienburg. Gerstein never mentioned this meeting in his reports, although there is evidence proving the deliveries were made. (This is discussed at length in Chapter 2.)

Gerstein does discuss another order for the acquisition of prussic acid also via Dr. Peters at Degesch, which he received from SS-Sturmbannführer Günther at the beginning of 1944. It concerned a huge quantity (approximately 8 500 kg, enough to kill 8 million people) which was to be stored somewhere in Berlin. Günther claimed not to know its intended purpose, but specified it had to be readily available. Gerstein writes: "I later thought often of Goebbels' words: 'If Hitler should lose the war, he would slam the door behind him with such force that the whole world would tremble.'"

Gerstein suspected it would be used against the German people, pastors, dissenting officers, foreign workers or POWs. Gerstein apparently convinced Günther of the danger of storing such a volatile substance in Berlin, and instead had it delivered to Oranienburg and Auschwitz, where upon arrival, Gerstein claims, he had it disappear for purposes of disinfection. If asked what happened to the gas, he planned to claim (as before) that it had decomposed and so had to be used up immediately. The invoices were made out in his name, Gerstein writes, supposedly in the interests of discretion, but really in order to dispose of it more freely, that is, to extend his control over it.⁹⁹ Gerstein attached several of these invoices to his French report which accounted for 2 175 kg of prussic acid being delivered to Auschwitz and Oranienburg.¹⁰⁰

Gerstein's duties as an SS officer and his personal resistance mission placed an enormous strain on him physically, spiritually and psychologically. In 1941 he was diagnosed with hypoglycemia which often forced him to miss work, and caused pre-comatose conditions and "strange reactions".¹⁰¹ In 1942 Gerstein met Pastor Herbert Mochalski at the St. Anne Church in Berlin-Dahlem. He showed him the order to acquire the prussic acid, declaring he would rather kill himself than fulfill it. He suppressed these thoughts out of concern for the two SS men who had vouched for him. Pastor Mochalski was sympathetic to Gerstein's predicament, stating later: "Gerstein suffered from the SS system that placed him in a situation from which he could not

extricate himself.”¹⁰² In 1944 he had to be hospitalized because of a severe flu. He wrote then to his wife: “Whatever is the matter with my heart still endures. At the moment it reacts to even the smallest effort with great exhaustion.”¹⁰³ Even before his visit to Belzec, his friend Helmut Franz (Egon’s brother) had noted:

Today he is an absolutely shattered person, indecisive, without strength or stability. It is terrible! The worst is that he is not only weighed down spiritually, but also because of his job he is in a hopeless situation from which he cannot escape without catastrophe!¹⁰⁴

He continued trying to spread the truth of the mass crimes, hosting meetings of political opponents in his apartment, where they listened to the radio blaring BBC broadcasts.¹⁰⁵ Even Gerstein’s housekeeper Leokadia Hinz was an anti-Nazi, which made Hermann Ehlers remark later: “The tone in the apartment was unusually radical.”¹⁰⁶ However, the desperation he experienced at knowing what was happening in the east, the recognition of his own (albeit outward) complicity in it and the powerlessness he felt at not having been able to provoke concrete responses from the Allied and / or neutral powers, to stop the crimes, and the constant fear of being discovered by the SS and the threat this posed also to his family¹⁰⁷ at times proved almost too strong to bear. Otto Wehr wrote in 1949:

I still remember exactly his remark at the last night-time conversation in the fall of 1944: from one half hour to the next he was pursued by the knowledge of the working gas chambers. He had all sorts of plans for the conveyance of reports of these things abroad, and for the punishment of the criminals and for the end of the war. He came to terms with his own death.¹⁰⁸

Gerstein contemplated suicide. Dr. Walter Eckhardt stated after the war:

Physically and spiritually Gerstein seemed to me at the end so very troubled by the constant conflicts to which he was exposed [...]. Once again thoughts of suicide came to him, which he suppressed for religious reasons.¹⁰⁹

A series of letters between him and his father, written in 1944, reveals the agony of Gerstein’s own conscience, vacillating between feelings of redemption and guilt:

In view of the present and the future and with a view to the past I believe I have realized the principle “Know thyself”. At least with regard to my own person, I

am clear in my mind *in positivis et in negativis* about what is good and evil. What is so extraordinarily difficult for me to understand is how all scruples, ideas and standards are sacrificed to ends.

Thoroughly indeed you laid in us the standards and nourished and strengthened them as an indispensable pledge. I think of the windmill on your desk with our name: justice (Gerechtigkeit), honour (Ehrenhaftigkeit), peace (Ruhe), security (Sicherheit), loyalty (Treue), honesty (Ehrlichkeit), sincerity (Innigkeit) - do they all apply only to the life of the individual? Are there goals and virtues, no matter how high they may be - to which I, to which we all must subordinate these values and if need be sacrifice them? Do we have the right absolutely to dispose of one of these pledges entrusted to us, namely justice? [...] Can anything hold promise that consciously tramples upon these supreme values, this foundation of all being? [...]

Your words deeply shocked me, which you cried to me in a bitter moment in my life, or much more wrote, as I wrestled with the most difficult things: Hard times demand hard measures! No, such words are not sufficient to render acceptable what has happened. [...]

I am far distanced from my narrowness of the past. But I am conscious of the indispensable ideas and standards which one cannot violate without the worst consequences and effects.

However tight the limitations on a man may be, and however much he may follow the principle that intelligence is the predominating virtue, he must never lose a single one of his standards or ideas. He may never exonerate himself to himself before his conscience and to the higher order of things to which he is subject by saying: That is not my business, I cannot change things - *sileat, sed cogitet: mea res agitur*. He is silent, but he thinks: this thing concerns me. I stand in this responsibility and this guilt, and indeed as a conscious person with a corresponding measure of blame. [...]

Do not underestimate this responsibility and this obligation of accountability. It can come sooner than one thinks. I know about this responsibility, admittedly, it is devouring me (*consumor in ea*).¹¹⁰

His father replied:

You are a soldier and an official and you must carry out the orders of your superiors. The person who gives the orders is the one who bears the responsibility, not the one who carries them out. You have to do what you are ordered to do. As a Prussian official and an old officer that is how I learned things.¹¹¹

Gerstein wrote back to his father in the fall of 1944, this time from the SS hospital in

Berlin:

It has fallen to me to think all these things through, the whole range between black and white, between good and evil, even to their last consequences, and - try to understand this - to suffer in doing this to the depths of my being. [...]

I lent my hands to nothing that this all has to do with. If I and so far as I received such orders, I did not carry them out and changed the carrying out course. I myself emerge from the entire [matter] with clean hands and an angelically pure conscience. That is to me extraordinarily calming. And indeed there is no

question of opportunism in it. And anyway - what does it mean to die? - What matters are principles and attitude.¹¹²

On 21 April 1945 Gerstein turned himself over to the French military commandant in Reutlingen. Shortly thereafter he was transferred to Rottweil and placed in "honourable" custody in the requisitioned Hotel Mohren.¹¹³ It was here that Gerstein composed his reports: the first, written in French, by hand, on 26 April, the second, in German, typed on 4 May and a third, also in German, typed, on 6 May.

While in Rottweil, Gerstein introduced himself to Major Derek Curtis Evans (an Englishman) and Mr. John W. Haught (an American civilian with the assimilated rank of Colonel) of the Combined Intelligence Objectives Sub-committee (CIOS) Consolidated Advance Field Team (CAFT) with the 6th Army group, and presented them with a statement in English and the seven page French report (Gerstein told them he had tried giving it to the French, but they had appeared uninterested in it), along with some invoices from the Degesch company for deliveries of Zyklon B to Auschwitz and Oranienburg, as well as one of his religious pamphlets. Gerstein told them he had purchased gases for use in the gas chambers and knew many of the men responsible for these deaths, but that he had joined the Nazis as an agent of Dr. Niemöller. He stated his wish to be used as a witness against war criminals. Mr. Haught wrote later: "He did not ask for any special consideration nor appear to be seeking any special favours from us in return for having furnished his report to us."¹¹⁴ At the conclusion of their notes of the conversation, the two officers added: "One wonders if Dr. Gerstein should not be protected against the local Nazis."¹¹⁵

Gerstein seemed confident that his history of resistance activities would be acknowledged, and that his testimony would be used as he intended, as shown by a letter to his wife from 26 May 1945:

"It is obvious that someone like me - like us - must be treated differently than other people. My activity in the SS-Führungshauptamt etc. was from the

beginning a pure activity of agency for the Confessing Church. [...] I can say nothing more detailed [regarding when he would be returning home], since one is very interested in my case and since I have to appear as one of the main witnesses against the war criminals before the international court.¹¹⁶

In his years with the SS, Gerstein had been exposed to a great deal. He wrote in his reports that the worst camps were not Dora, Belsen and Dachau, but Auschwitz and Mauthausen. He does not specify whether he visited these places personally but he obviously had some basis for comparison. Gerstein had witnessed experiments on living people in Ravensbrück and had heard of others in Buchenwald. He knew that all of the homosexuals at Oranienburg had simply disappeared in a couple of days, about the shooting of Polish priests and intellectuals and about the torture of a Polish-Jewish partisan. He declared thousands of Poles and Czechs had also died in the gas chambers and that most of the victims died anonymously. Gerstein claimed he had tried to keep away from the camps as it was customary to hang or otherwise execute prisoners in honour of a guest.

He looked forward to the end of his ordeal and a return to a more ordinary life, as evidenced by a letter he wrote to the French authorities requesting a travel pass to Tübingen:

After twelve years of tireless struggle, especially after the last four years of my most dangerous and tiring activity and the many dreadful things I have experienced, I wish to recover with my family in Tübingen. [...] I also have the wish, corresponding to the merit for struggling against Nazism, to return to the factory owned by me or to the office in the coal-mining industry, from which I was dismissed because of my anti-Nazi activity in 1936.¹¹⁷

Gerstein was transferred to Constance on 26 May.¹¹⁸ While still confident in his own right about what he had accomplished, there are hints that he suspected he might not be believed. He wrote to his friend Ubbink in Holland:

I am thankful to God that I did everything in my power in order to lance the boils on the body of humanity. Do me a favour: Put the most important of what you know about me to paper, have it certified by an authoritative office and send it to me [...]. One cannot know, for what purpose such a thing can be useful.¹¹⁹

The French authorities had decided to charge Gerstein with murder and accessory to murder, and he was placed under arrest and imprisoned at the Cherche-Midi prison in Paris on 13 July 1945.¹²⁰ In the subsequent interrogation, Gerstein claimed that his visits to various concentration camps had been purely technical in nature, that is, they were for the verification of the installation of filtration and disinfection equipment. He told them about his experience at Belzec, but his interrogators scarcely believed that he could have been able to destroy the gas he brought with him, and get away with it.¹²¹ Gerstein was now being treated with suspicion and disdain.

On 25 July 1945, Gerstein was found dead in his cell, apparently of suicide by hanging. He had been transferred to an individual cell five days prior to avoid him repeating to other SS prisoners the terms of his interrogation.¹²² Gerstein had apparently left behind some letters which explained the reason for his suicide, but these went missing shortly after his death and have never been found.¹²³ In the years since his death accusations of murder have been leveled, mostly in the press, against both the SS and the French, the former out of fear of someone willing to reveal incriminating information, and the latter out of an untempered desire for revenge. None of these accusations has ever been substantiated. It is entirely plausible that Gerstein did indeed take his own life. The anguish caused by having lived under the constant strain of the double role he was forced to play, the pressure from his father to conform, the torturous knowledge of the relentless killing, his failing health, and the constant fear of reprisal had driven him on several earlier occasions to consider suicide. For whatever reasons he had resisted then, they may not have been strong enough to sustain him through this last ordeal. There are hints in the letters written in 1944 that even Gerstein felt uncertain at times about his moral position. Not to be believed after having suffered and endured so much, and to face punishment for the very behaviour that allowed him the

position from which to resist may have simply been too much for his already fragile psyche.

Gerstein was a prolific writer: pamphlets, letters, reports. But these sources are frustrating because they offer so little detail about the most controversial events of his life such as his membership in the Nazi Party and SA, his activities in the SS and particularly his involvement in the killing program and his connection to Auschwitz-Birkenau. One does not get the impression from his writings that Gerstein was preoccupied with justifying his actions to anyone in that he did not leave behind a record that exonerates him. One does get the impression that he was troubled by the compromises he accepted in order to resist. Perhaps that is why he wrote so little about those events that are the hardest to understand. Gerstein was strictly devout, he saw things in their extreme: black and white, right and wrong, yet he himself led a life very much in the gray area spanning this divide. Witnesses for his activities described him after the war as “no Nazi”, but their testimony stopped short of a true definition of this man, of a label which could take into account his official position and his covert activities.

In the 24 years after his death, many courts and government bodies also deliberated the problem of Gerstein's life, that is, whether his complicity in the Nazi regime could be excused by what he hoped to accomplish or did accomplish by wearing its uniform. These proceedings can be divided into three parts according to the legal purpose concerned. The first was a series of criminal trials undertaken against Dr. Gerhard Peters of the Degesch company, in order to decide whether Peters was guilty of murder or of being an accessory to murder for having delivered Zyklon B to Auschwitz and Oranienburg. The second was Gerstein's denazification trial to determine whether his widow and children could receive a pension. The third involved the government deliberations over whether Gerstein could be rehabilitated and his family awarded

financial compensation. All three sets of proceedings placed Gerstein's life against a different standard, in that different laws governed their assessments. It is a fascinating addition to Gerstein's story to see if and how these judicial bodies could come to terms with this unique personality.

BAB = Bundesarchiv Berlin

HAS = Hauptstaatsarchiv Stuttgart

HHAW = Hessisches Hauptstaatsarchiv Wiesbaden

IZM = Institut für Zeitgeschichte München

KGH = Kurt Gerstein Haus Hagen-Berchum

LAB = Landeskirchliches Archiv Bielefeld

SAS = Staatsarchiv Sigmaringen

SMBWA = Staatsministerium Baden-Württemberg Archiv

ZSL = Zentrale Stelle der Landesjustizverwaltungen Ludwigsburg

¹ Gerstein, Kurt, curriculum vitae 15 August 1940, LAB.

² Friedländer, Saul, *Kurt Gerstein: The Ambiguity of Good* (New York, 1969), p. 4-5.

³ *Ibid.*, p. 5-6.

⁴ Gerstein, Kurt, curriculum vitae 15 August 1940, LAB.

⁵ *Ibid.*

⁶ Gerstein, Kurt, French report 26 April 1945, LAB.

⁷ Niemöller, Martin, statement 15 June 1946, LAB.

⁸ Gerstein, Kurt, German report 4 May 1945, ZSL.

⁹ *Ibid.*

¹⁰ Gerstein, Kurt, French report 26 April 1945, LAB.

¹¹ High Party Court, judgment 10 June 1939, LAB.

¹² Overview of Gerstein's life prepared for the compensation case, no date, HAS.

¹³ Rehling, Kurt, "Ein Aussenseiter des Widerstandes: Kurt Gerstein; sein Leben und sein Wirken in der Sicht eines Freundes" *Unsere Kirche* (1964), KGH. Although originally published in three parts, this was re-printed as one article for the handbook (a collection of material about Gerstein) used in the 3rd conference on Kurt Gerstein held on 21 and 22 November 1997 in Hagen-Berchum.

¹⁴ Gerstein, Kurt, letter to Egon Franz written in Breslau 19 August 1933, LAB.

¹⁵ *Ibid.*

¹⁶ Rehling, Pastor Kurt, statement 11 April 1946, SAS.

¹⁷ Gerstein, Kurt, letter to Egon Franz written in Dortmund 18 March 1934, LAB. (Underlining his)

¹⁸ Brinkmann, Ernst, "Im Engagement für die christliche Sache - Kurt Gerstein's Lebensweg" *Beiträge zur Geschichte Dortmunds* (1965), p. 7.

¹⁹ BWSM, report on the Gerstein case 27 January 1965, SMBWA.

²⁰ Wehr, Otto, statement 24 January 1949, SAS.

²¹ Gerstein, Kurt, French report 26 April 1945, LAB.

²² *Ibid.*

²³ Schinke, Gerhard, statement 27 January 1949, SAS.

²⁴ Gädeke, (first name unknown), statement 24 January 1949, SAS.

²⁵ BWSM, Overview regarding Kurt Gerstein from 6 July 1964, SMBWA.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ High Party Court, judgment 10 June 1939, LAB.

³⁰ Overview of Gerstein's life prepared for the compensation case, no date, HAS.

³¹ Gerstein, Kurt, letter of appeal to the Party court in South Westfalia 28 November 1936, BAB.

³² Friedländer, p. 50.

³³ Gerstein, Kurt, letter to Elfriede 22 January 1937, SMBWA.

³⁴ Point 20: "We demand liberty for all religious denominations in the State, so far as they are not a danger to, and do not, militate against the moral feelings of, the German race." The 25 Point Program of the German Workers' Party 25 February 1920.

³⁵ Gerstein, Kurt, letter of appeal to the High Party Court in Munich 25 January 1937, BAB.

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- ³⁶ Gerstein, Kurt, letter to Elfriede written in Tübingen 18 February 1937, LAB.
³⁷ Gerstein, Kurt, letter to Elfriede written in Tübingen 13 March 1937, LAB.
³⁸ Gerstein, Kurt, French report 26 April 1945, LAB.
³⁹ Munich Gestapo, ban on public speaking for Kurt Gerstein 24 May 1937, BAB.
⁴⁰ Gerstein, Ludwig, letter to Kurt 8 October 1938, LAB.
⁴¹ Gerstein, Kurt, French report 26 April 1945, LAB.
⁴² BWSM, overview regarding Kurt Gerstein from 6 July 1964, SMBWA.
⁴³ Reich Attorney General, records of the criminal case against Reinhold Wulle 15 March 1938, BAB.
⁴⁴ District Attorney, Stuttgart provincial court records of the Reinhold Wulle case 2 September 1938, IZM.
⁴⁵ Gerstein, Kurt, letter to Elfriede written while in police custody in Stuttgart 29 July 1938, LAB.
⁴⁶ Gerstein, Kurt, letter to Elfriede written from Welzheim concentration camp 25 August 1938, LAB.
⁴⁷ Gerstein, Kurt, letter to uncle and cousin Robert and Robert Jr. Pommer beginning November 1938, SMBWA.
⁴⁸ District Attorney, Stuttgart provincial court records of the Reinhold Wulle case 2 September 1938, IZM.
⁴⁹ Gerstein, Kurt, letter to uncle and cousin Robert and Robert Jr. Pommer beginning November 1938, SMBWA.
⁵⁰ Rehling, Kurt, statement 1 February 1949, SAS.
⁵¹ Gerstein, Ludwig, letter to Kurt 8 October 1938, LAB.
⁵² Gerstein, Kurt, letter to Ludwig 26 November 1938, SMBWA.
⁵³ High Party Court, judgment 10 June 1939, LAB.
⁵⁴ Völckers, Otto, statement 16 February 1949, SAS.
⁵⁵ Gerstein, Kurt, letter to uncle and cousin Robert and Robert Jr. Pommer beginning November 1938, SMBWA.
⁵⁶ Gerstein, Kurt, letter to Ludwig 26 November 1938, SMBWA.
⁵⁷ Gerstein, Ludwig, letter to Kurt 8 October 1938, LAB.
⁵⁸ Gerstein, Kurt, letter to Ludwig 26 November 1938, SMBWA.
⁵⁹ Overview of Gerstein's life prepared for the compensation case, no date, HAS.
⁶⁰ *Ibid.*
⁶¹ BWJM, note for the Gerstein rehabilitation 20 November 1967, SMBWA.
⁶² Wilhelm, Dr. H., report for the State Commissariat for Political Cleansing in Tübingen 3 March 1950, HHAW.
⁶³ Gerstein, Kurt, curriculum vitae 15 August 1940, LAB.
⁶⁴ Interrogation proceeding of Kurt Gerstein at the 2nd Military Tribunal in Paris for the investigation of war crimes 19 July 1945, LAB.
⁶⁵ Gerstein, Kurt, French report 26 April 1945, LAB.
⁶⁶ Gerstein, Kurt, German report 4 May 1945, ZSL.
⁶⁷ BWSM, Regarding Kurt Gerstein 4 August 1964, SMBWA.
⁶⁸ Rehling, Kurt, statement 11 April 1946, SAS.
⁶⁹ Peters, Armin, statement for the provincial court in Frankfurt am Main 23 October 1954, SMBWA.
⁷⁰ BSWM, overview regarding Kurt Gerstein from 6 July 1964, containing excerpt of High Party court records from 17 August 1940, SMBWA.
⁷¹ Rehling, Kurt, statement 11 April 1946, SAS.
⁷² Gerstein, Kurt, German report 4 May 1945, ZSL.
⁷³ Gerstein, Kurt, French report, 26 April 1945, LAB.
⁷⁴ Gerstein, Kurt, German report 4 May 1945, ZSL.
⁷⁵ *Ibid.*
⁷⁶ Gerstein, Kurt, French report 26 April 1945, LAB. Prussic acid is a poison which works by inhibiting cells' absorption of oxygen. It was commonly used in Germany from 1923 for fumigation and delousing. In liquid form it is very unstable, so in order to facilitate transport and use it was absorbed into a porous material (usually pellets) and packaged in tins. Once exposed to open air the prussic acid would evaporate. Thus it was called a "gas". The most common commercial preparation of this chemical was called Zyklon B. This is the poison that was used in the gas chambers.
⁷⁷ Gerstein, Kurt, letter to Erich Capito written in Berlin 7 June 1941, LAB.
⁷⁸ Gerstein, Kurt, letter to Elfriede written in Berlin 7 August 1941, LAB.
⁷⁹ Gerstein, Kurt, German report 4 May 1945, ZSL.
⁸⁰ Gerstein, Kurt, French report 26 April 1945, LAB.
⁸¹ Interrogation proceeding of Kurt Gerstein at the 2nd Military Tribunal of Paris for the investigation of war crimes 19 July 1945, LAB.
⁸² Gerstein, Kurt, French report 26 April 1945, LAB.

⁸³ *Ibid.*

⁸⁴ Gerstein, Kurt, German report 4 May 1945, ZSL.

⁸⁵ Gerstein, Kurt, French report 26 May 1945, LAB.

⁸⁶ *Ibid.*

⁸⁷ Gerstein, Kurt, German report, 4 May 1945, ZSL.

⁸⁸ Gerstein, Kurt, French report 26 April 1945, LAB.

⁸⁹ Aström, Sverker, statement for the Israeli police 17 February 1961, IZM.

⁹⁰ Gerstein, Kurt, French report 26 April 1945, LAB.

⁹¹ Aström, Sverker, statement for the Israeli police 17 February 1961, IZM.

⁹² Gerstein, Kurt, French report 26 April 1945, LAB.

⁹³ Gerstein, Kurt, German report 4 May 1945, ZSL.

⁹⁴ Gerstein, Kurt, French report 26 April 1945, LAB.

⁹⁵ Ehlers, Dr. Hermann, statement 26 January 1949, SAS.

⁹⁶ Dibelius, Otto, statement 5 July 1946, SAS, Rehling, Kurt, statement 1 February 1949, SAS, Wehr, Otto, statement 16 February 1949, SAS and Völckers, Otto, statement 16 February 1949, SAS.

⁹⁷ Gerstein, Kurt, German report 4 May 1945, ZSL.

⁹⁸ Buchholz, Peter, letter to Ernst Küpper 10 July 1946, and statements by Eckhardt, Dr. Walter, 18 December 1948 and 31 December 1949, Ehlers, Hermann 26 January 1949, Niemöller Dr. Martin, 13 November 1950, SAS and Peters, Armin 23 October 1954, SMBWA and Eckhardt, Dr. Walter, letter to Dr. Helmut Krausnick, 12 July 1952, IZM.

⁹⁹ Gerstein, Kurt, German report, 4 May 1945, ZSL.

¹⁰⁰ Gerstein, Kurt, French report, 26 April 1945, LAB.

¹⁰¹ Reutlingen Welfare court, judgment with reasons in the matter of pension payments to Elfriede, Arnulf, Olaf and Adelheid 25 July 1962, SMBWA.

¹⁰² Sagel-Grande, Irene, H. H. Fuchs, C. F. Rüter, *Justiz und NS-Verbrechen: Sammlung Deutscher Strafurteile Wegen Nationalsozialistischer Tötungsverbrechen 1945 - 1966* vol. XIII Lfd. Nr. 415 *Massenvernichtungsverbrechen in Lagern* (Amsterdam, 1975), Frankfurt am Main 4 Ks 2/48, p. 19. There is some confusion in the record about the actual date of this conversation. Sources cite it as having taken place in 1941, 1942, 1943 (?) and 1944. I believe 1942 is the correct year, for while Mochalsky did not give the date explicitly in his testimony, in the course of the investigations of the matter for the rehabilitation case, he was shown the record of his statement as it appeared in the Dr. Peters trial for verification. It gives the date as 1941 or 1942. While Mochalsky did not clarify, he also did not correct this date. I believe 1942 must be correct, since there is no other evidence that Gerstein was involved in acquiring prussic acid to be used against people before 1942.

¹⁰³ Gerstein, Kurt, letter to Elfriede from the SS Lazarett hospital in Berlin 22 September 1944, LAB.

¹⁰⁴ Franz, Helmut, letter to Egon Franz 13 June 1942, quoted in Franz, Helmut, *Aussenseiter des Widerstandes der Kirche gegen Hitler* (Zürich, 1964), p. 63.

¹⁰⁵ Ubbink, J.H., statement 14 September 1949 and Hoegg, Klaus, statement 31 January 1949, SAS.

¹⁰⁶ Ehlers, Hermann, letter to Helmut Krausnick 12 July 1952, IZM.

¹⁰⁷ Sagel-Grande, 415 b-19, p. 148) and Völckers, Otto, 16 February 1949, SAS.

¹⁰⁸ Wehr Otto, statement 24 January 1949, SAS.

¹⁰⁹ Eckhardt, Dr. Walter, statement 18 December 1948, SAS.

¹¹⁰ Gerstein, Kurt, letter to Ludwig from hospital in Helsinki March 1944, LAB. "I" underlined in the original.

¹¹¹ Gerstein, Ludwig, letter to Elfriede describing what he had written to Gerstein in 1944, 24 November 1946, SMBWA.

¹¹² Gerstein, Kurt, letter to Ludwig written from hospital in Berlin fall 1944, LAB.

¹¹³ Verbal proceeding of Kurt Gerstein at the 2nd Permanent Military tribunal of Paris, 13 July 1945, LAB.

¹¹⁴ Haught, John W., statement about the meeting with Kurt Gerstein in Rottweil on 5 May 1945 made on January 1961 for the Israeli police, IZM.

¹¹⁵ Haught, John W. and Evans, Major Derek Curtis, notes of conversation with Kurt Gerstein 5 May 1945, in Poliakov, "Le Dossier Kurt Gerstein" *Le Monde Juif* (March-April 1964)

¹¹⁶ Gerstein, Kurt, letter to Elfriede written in Rottweil 26 May 1945, LAB.

¹¹⁷ Gerstein, Kurt, letter to French authorities spring 1945, SMBWA.

¹¹⁸ Brinkmann, p. 17.

¹¹⁹ Gerstein, Kurt, letter to J.H. Ubbink no date, but had to written between June and July 1945, handed over to Elfriede by Ubbink on 10 March 1949, SAS.

¹²⁰ Verbal proceeding of Kurt Gerstein at the 2nd Military Tribunal in Paris, 13 July 1945, LAB.

¹²¹ Interrogation proceeding of Kurt Gerstein at the 2nd Military Tribunal in Paris, 19 July 1945, LAB.

¹²² Truiller, Dr. J., handwritten note about discovery of Gerstein's body and apparent cause of death 25 July 1945, LAB.

¹²³ L'Officier-Greffier, Chef du Dépôt Central d'Archives de la Justice Militaire, letter to Ministre des Armes, Direction de la Gendarmerie et de la Justice Militaire, Paris 26 October 1960, IZM.

Chapter 2 ~ The Degesch Trials

Note to Chapter 2

The source base for the discussion of the Degesch trials is the collection of the eight judgments and the written reasons for them given by the courts which handed down the judgments. These include excerpts of witness testimony and reproductions in whole or in part of documentary evidence that were considered as having special importance for the verdicts. The judgments are systematic summaries of the main trial and appeal proceedings and outline the facts of the case as they were established by the courts. It should be noted that some of these conclusions were made at the courts' discretion, that is, a lack of evidence and or conflicting testimony required a value judgment to be made. The trial transcripts could not be located.

During the Nuremberg trials it was established that the poison gas Zyklon B was used in Auschwitz for the mass destruction of people. As a result of investigations by the British military-prosecution authorities in March 1946 into the Hamburg firm Testa, Dr. Bruno Tesch, the manager of the firm, and Mr. Weinbacher¹, Testa's attorney, were sentenced to death and executed for having knowingly delivered this gas for the purpose of killing interned Allied nationals in concentration camps.² During these investigations, the name Dr. Gerhard Peters emerged, who was manager of the Deutsche Gesellschaft für Schädlingsbekämpfung (Degesch = German company for the combating of vermin) in Frankfurt during the war.³ It was established that the Zyklon B used in Auschwitz was supplied in large part by this company. The American authorities in whose occupation zone Frankfurt was located, chose not to prosecute Dr. Peters but left criminal proceedings to the German authorities. In 1948 and 1949 Dr. Peters and two other employees of Degesch, Mr. Amend and Mr. Kaufmann, were charged with all the killings which took place in Auschwitz from 1941 to 1944, by delivering the gas knowing its intended purpose.⁴ Specifically they were charged under articles 211 and 49 of the German penal code.⁵ To be found guilty of these crimes, one had to have knowingly provided help to the perpetrator of a crime⁶, in this case premeditated murder, which is defined in part as being committed out of base motives,

maliciously and / or cruelly.⁷ It is because the element of prior knowledge of the circumstances of the crime is of decisive importance when judging the criminality of the person accused, that Kurt Gerstein came to play so prominent a role in this trial. Dr. Peters claimed he first heard of the use of Zyklon B for killing people in June 1943 in a conversation with an SS-Obersturmführer Kurt Gerstein.⁸ Dr. Peters' innocence or guilt hinged on what the court believed was said and understood during this conversation.

The reasons given for the judgment against Dr. Peters began with an outline of the factual conclusions of the case. The first section dealt with the objective facts. It was established that in Auschwitz mainly Jews and Gypsies who were considered incapable of work were gassed with Zyklon B beginning in the summer of 1942. Zyklon B was a commonly used fumigation material for barracks, buildings and even foodstuffs before it was used against people.⁹ Regarding the extent of the mass killings, it could not be determined for lack of evidence exactly how many were put to death in Auschwitz. However the court concluded that deaths by Zyklon B amounted to "several million".¹⁰

It was established that the Zyklon B used in Auschwitz was provided by Degesch. Degesch was essentially a marketing firm, owned by three companies: the Deutsche Gold- und Silber-Scheideanstalt (Degussa) in Frankfurt am Main, the former IG-Farben Industry in Frankfurt am Main and the Th. Goldschmidt corporation in Essen.¹¹ The owners' mandate was to develop gases to be used for extermination of vermin and insects and fumigation. They gave Degesch the exclusive distribution rights for these products and the procedures by which they worked.¹² Degesch sold other extermination materials besides Zyklon B, such as the prussic acid products Calcid and Cyanogas and the Athylenoxyd products T-Gas and Cartox. Zyklon B was manufactured for Degesch by two companies: Dessauer Werke für Zucker-Raffinerie G.m.b.H. in Dessau and Kaliwerke AG in Kolin.¹³ The product was delivered by two other firms, called Tesch and Stabenow, Internationale Gesellschaft für Schädlingbekämpfung m.b.H. (Testa) in

Hamburg, which was responsible for the area east of the Elbe and He.-Lingler G.m.b.H. (Heli) in Frankfurt, which was responsible for the area west of the Elbe. Orders for the gas would be placed with Degesch, Degesch would have the product manufactured in Kolin and / or Dessau and would then send the product to either Testa or Heli, which would in turn deliver it to the customer.¹⁴ Degesch itself employed about 25 people in its office, five to six people in the laboratory and about twelve in its research practice. Office work was divided according to product, for example the co-defendant Mr. Amend was employed in the Zyklon B department where he bought raw materials, settled accounts with the manufacturing companies and dispatched the Zyklon B to the delivery firms.¹⁵

Zyklon B is a form of prussic acid which had been used in Germany since 1923 for fumigation and de-lousing. During the war it was used in huge quantities to combat the danger of typhus epidemics.¹⁶ Prussic acid in liquid form is prone to decomposition (=polymerisation), so to ease storage and transportation, a chemical stabilizer such as chlorethylester acid would be added and the prussic acid would be absorbed into a porous material such as Kieselgur or Diatomit pellets and placed in tins.¹⁷ The commercial name of this composition was Zyklon B. Once the tins were opened and the contents spilled out, the prussic acid evaporated immediately, which is why it is referred to as a gas. It was packaged in 100, 200, 500, 1000 and 1200 g containers. The dosage to be used depended on the size of the area to be fumigated.¹⁸ The poison worked by inhibiting the cells' absorption of oxygen.¹⁹ Prussic acid gas is colourless and odourless, so Degesch also added Bromomethylester acid²⁰ or Chlorkohlenmethylester acid²¹ as a warning agent, which would irritate the mucous membranes of one exposed to it.²² This was intended to act as a before- and after- warning, that is, it would alert people the gas was present in the area.²³ The Wehrmacht and the Waffen-SS were the two main

consumers of Zyklon B. As of the end of 1942, their requirements for the gas were coordinated through the Hauptsanitätspark in Berlin-Lichtenberg.²⁴

Many witnesses were heard to establish the characters of the three defendants. Mr. Kaufmann operated in only a limited sphere, working in book-keeping and correspondence, and had no training in science. Mr. Amend was a functionary in the Zyklon department, with little room for personal initiative. Dr. Peters was described as “magnanimous, kind-hearted, deeply serious and of a high moral mind.”²⁵ In 1942 he founded the “work committee for room fumigation and the defense against epidemics”²⁶ For his contribution to this committee he was credited with the absence of a large typhus epidemic in Germany during the war and for having saved thousands of lives.²⁷ Witnesses testified to his objective outlook on his work, citing the case when he stood up to Hitler’s favourite doctor Dr. Theodor Morell in opposing the use of a second-rate chemical for extermination purposes, and also in refusing entry of the company Getak into the professional association of exterminators, even though this was favoured by the chief of the SS Hygiene Institute Dr. Joachim Mrugowsky.²⁸ Regarding political affiliations, Dr. Peters stated himself he was a National Socialist until the end of 1944, and had tried to realize Nazi ideals in all areas of his personal life and career.²⁹

As stated earlier, Dr. Peters testified he first learned about the use of Zyklon B for killing people from SS-Obersturmführer Gerstein during a conversation in June 1943. The other two defendants declared they had no such knowledge during the war. The court sought to establish Gerstein’s character, the details surrounding this conversation and the reason for it having taken place before rendering a judgment about each man’s knowledge.

The court was presented with a two-fold image of Gerstein: on the one hand as a deeply and intensely involved member of the evangelical youth movement and the Confessing church, who was dismissed from the Nazi Party and arrested for anti-Nazi

activities, and on the other hand as a lieutenant in the SS and participant in the Nazi program of destruction. He was described as a person who only used the SS uniform as a disguise in order to spy and to sabotage, who never deviated from his religious convictions. Another saw him as a cold and brutal SS leader from whom one should distance oneself, as one of the “main actors”.

The list of witnesses testifying to a favourable image of Gerstein was impressive. It included Pastor Kurt Rehling, who knew Gerstein from 1928 to 1944; Armin Peters, a longtime friend and engineer in the Luftwaffe; the Church President Dr. Martin Niemöller, who had known Gerstein since his twenties; Oberkirchenrat Dr. Hermann Ehlers, who had known Gerstein from 1930 to 1944; Bishop Dr. Otto Dibelius, Pastor Herbert Mochalski and Domkapitular Peter Buchholz; who had all met with Gerstein during the war, his widow Elfriede, Baron Göran von Otter, the Swedish diplomat, and several doctors and university graduates. The court heard about Gerstein’s resistance activities, in particular his protest against the anti-Christian play “Wittekind”, his publication and distribution of anti-Nazi brochures, his dismissal from the Party and the public service and his internment in Welzheim concentration camp.³⁰

Witnesses explained that Gerstein joined the SS after learning about the death of his sister-in-law in the Hadamar mental institution; that his motivation was entirely resistance-oriented. They told of Gerstein recounting to them his experiences in the Belzec death camp and his attempts to make the truth known to the Allies, the Vatican, the Dutch Resistance and others.³¹ Armin Peters and Domkapitular Buchholz testified that Gerstein helped interned friends and their relatives, by delivering food and cigarettes to the camps and arranging correspondence. They spoke of meetings at his apartment where they listened to English broadcasts at full volume. They also stated that he knew many of the planners of the 20th of July coup.³² Armin Peters and Pastor Mochalski expanded upon the effects of his double life as resister and SS Officer,

declaring that by 1944 Gerstein was completely shattered emotionally and physically, terrified of fellow SS men and of what would come with the end of the war.³³

The John W. Haught and Major Derek Curtis Evans report from 5 May 1945 and Gerstein's French report from 26 April 1945 along with the Degesch invoices were also presented to the court for consideration.³⁴ The vast majority of witnesses agreed and the court accepted, that Gerstein remained a Christian even while a member of the SS and that he wore the uniform as a disguise to obtain the most complete view possible of Nazism's crimes and to be able to sabotage them where he could. The following are excerpts of trial testimony: Bishop Dr. Dibelius: "I believe Gerstein remained true to his Christian convictions and tried to work against the National Socialist will to destruction. The way in which he did this was and remains very strange. But I cannot doubt his pure will." Pastor Rehling: "Gerstein remained a Christian inside and saved people where he could. He set himself the task of being God's political informer." Armin Peters: "His life was only and exclusively 'service to his fellow-man', readiness to help and suffer at every instant." Dr. Niemöller: "He was and remained an anti-Nazi. Gerstein was a truth fanatic....I believe he sabotaged where he could." ³⁵ The court believed this image of Gerstein was accurate but declared it could not be inferred from these statements to what degree or whether at all Gerstein had been successful in his attempts to sabotage Nazi crimes.³⁶

The next step in the proceeding was to establish the details surrounding the June 1943 conversation. Gerstein and Dr. Peters had already met, although not spoken, at a meeting of the work committee for room fumigation and for the defense against epidemics since Dr. Mrugowsky had appointed Gerstein the SS representative in all matters pertaining to Zyklon B. While on a business trip to Berlin some time later, Dr. Mrugowsky informed Dr. Peters that Gerstein wished to see him.³⁷ Dr. Peters had been questioned about the conversation many times prior to the Degesch trial. Each

examination produced a different version. The first interrogation took place on 11 December 1945 with a lieutenant-colonel from the English war crimes commission seeking information in connection with the Dr. Tesch case. Here Dr. Peters stated that he had delivered a total of 600 to 800 kg of the gas to Oranienburg in Gerstein's name for research purposes.³⁸ (Oranienburg was a concentration camp outside Berlin which also housed the SS Disinfection School. SS personnel were instructed there in the operation of de-lousing chambers and fumigation.³⁹) On October 26, 1947 Dr. Peters was interrogated by two men, Mr. J.W. von Halle and Mr. Elbau from the American department for war crimes in connection with the IG Farben case. This time he stated Gerstein told him the gas was required "to remove a series of inferior people, idiots, patients", but that death by prussic acid was painful and Gerstein wished to develop a faster-acting method. Dr. Peters stated he knew the gas was destined for Oranienburg and Auschwitz but never imagined the entire quantity would be used against people.⁴⁰ That night he wrote a statement for Mr. von Halle. The following is what appeared in this statement. He declared that Gerstein told him the gas would be used against certain criminals, incurables and mental inferiors, on order of the Reichsführer-SS Himmler, and that he wanted a faster-acting method to alleviate unnecessary suffering. Both men agreed that the action was abominable and cruel, but had been ordered and was therefore unavoidable. They discussed a more humane method and decided on removing the customary irritant from the gas. They then moved on to the details about the deliveries. Gerstein insisted that Heli and Testa be excluded from the transaction in order to maintain secrecy. Gerstein stated that only a relatively small quantity of gas was required, but Dr. Peters suggested a larger monthly quantity, explaining a standing order would ward off suspicions about the gas's intended use. Dr. Peters stated to Mr. von Halle that this secret had been "oppressive" for him, but that he had believed the action was within the State's legal rights.⁴¹ The fourth version came from an affidavit

made the same morning Mr. von Halle obtained the note. In it Dr. Peters stated Gerstein told him that Himmler had ordered the death of certain criminals, incurable patients (e.g. mental patients) and inferior people.⁴² The fifth account resulted from Dr. Peters' testimony at the IG Farben trial on April 3, 1948. Here he declared that Gerstein had threatened that the matter had to remain secret, on penalty of death, and had disclosed that on order directly from Himmler and indirectly from Hitler, "for quite some time, criminals who had been sentenced to death and in particular cases also insane people or people who were mentally or physically incurable were killed by hydrocyanic acid"⁴³ Gerstein had asked for pure prussic acid to make death more humane, to which Dr. Peters had responded that the difficulties of storing and transporting such a chemical were too great. Gerstein had then asked for irritant-free Zyklon, to which he had responded that he "could not imagine that the omission of the irritants would cause any change"⁴⁴. Dr. Peters also stated that Gerstein had assured him it was a matter of individual cases which were justifiable in every way and that it was therefore their duty to alleviate the agonies inherent in the customary procedure. He claimed that he had felt comforted by the fact that the action had a legal foundation, however in order to avoid continued contact with the matter had suggested a standing order of a larger quantity of gas, whereby the surplus could be used for fumigation purposes. Gerstein had also asked that Heli, Testa and Dr. Mrugowsky be kept out of the matter. Dr. Peters' sixth account of the conversation came during the main trial of the Degesch case. He retracted his earlier statements about "inferior people", stating he had only ever known that certain criminals and mentally and physically incurable patients would be affected by the Gerstein order for Zyklon B. He reiterated that Gerstein had told him these were humane, justifiable cases, and had felt reassured that the selection of victims would be carried out by either judges or doctors. He added that he did not believe Gerstein had any role in deciding who would be killed, rather he had simply been the one entrusted

with acquiring the means.⁴⁵ He again stated that they had agreed on a standing order of 200 kg per month in the interests of maintaining secrecy, and would tell Degesch the gas was needed for experimental purposes. They had confirmed the pledge of secrecy with a handshake, and Gerstein once more warned him against breaking this pledge. Although Dr. Peters had been shocked by the matter, he stated he had not doubted it was legally in order. To him, Gerstein had represented state authority, the order had seemed irreversible, and therefore his conscience had not been troubled. In Dr. Peters' view, the purpose of the conversation was to discuss a humane method of killing, one which ruled out as much unnecessary suffering as possible. He stated that if he had not become involved, another person would have been found. He believed anyone else would have acted the same way, and felt a refusal to cooperate would have been impossible during wartime.⁴⁶

Dr. Peters' statements varied greatly, from no knowledge of killings with Zyklon B, to knowledge of its use against criminals, "idiots", inferior people, to only criminals sentenced to death and exceptional cases of incurable patients. He was obviously limiting more and more the group of people for whose death he could be held liable.⁴⁷ In German penal law the accessory's knowledge of a crime's details prior to its commission was a major determinant in the assessment of that person's innocence or guilt.⁴⁸ Dr. Peters also tried to minimize the actual number of people killed by stating the delivered quantity of gas agreed upon had been made only in the interests of maintaining secrecy and to dissociate himself from the matter, that the quantity needed for use against people had been in reality much smaller.⁴⁹

It was up to the court to decide which version of the conversation was accurate. They decided on the note for Mr. von Halle, since it was written shortly after the events in question, it was authenticated at the time by Dr. Peters himself, and because in it he declared that he knew it would be used in the investigation of his own role as well as the

IG Farben case and therefore wished to present the most accurate picture possible. In the court's view, it had to be taken as the "minimum truth".⁵⁰

Book-keeping records, dispatch reports and invoices were also presented to the court as proof that Dr. Peters had indeed passed on the order for 200 kg of Zyklon B to be delivered to Oranienburg and Auschwitz each month, refuting his claim that Gerstein had only given him the Oranienburg address as the destination for the gas.⁵¹ The court calculated that 3 790 kg of Zyklon B were sent out in connection with the Gerstein order. It did not believe Dr. Peters' claim that Gerstein had required only a few tins of the gas per month and that it had been Dr. Peters who had increased the amount of the order in the interests of secrecy, since it was known at the time of the trial that there had been a shortage of Zyklon B during the war and only urgent orders would have been filled. The co-accused Amend and Kaufmann also stated that single orders for the gas would have been no more suspicious than a standing order. The court also did not think Gerstein would have wanted a personal reserve stock of irritant-free Zyklon B as Dr. Peters claimed he had, since there were so many dangers associated with its storage.⁵² Perhaps most convincing was the testimony from Armin Peters who stated Gerstein had shown him and his wife the order from the SS high command to acquire 500 kg of prussic acid monthly.⁵³ Gerstein could very easily have made up any number of different reasons for his ordering the gas. Since Dr. Peters admitted to having been informed on a limited scale of the gas' intended purpose, the court was convinced that indeed the order was given at least on the basis of the reasons given in the von Halle note.⁵⁴

The witness Sl. testified that he had informed Dr. Peters on three separate occasions about the gassing of POWs in a camp, the delousing of prisoner's clothing in Mauthausen, which caused some inmates to faint, and the gassing of incurable patients by an SS doctor in a camp. The court inferred from this that Dr. Peters, once Gerstein

had told him about the gassings of incurable patients and others in camps, must have realized this was not a matter of isolated cases but part of a program.⁵⁵

For the court to be able to prosecute Dr. Peters, Mr. Amend and Mr. Kaufmann for accessory to murder, it had to establish that not only had there been an order for gas to be used to kill people and that they had known about it, but also that the Zyklon B which Dr. Peters arranged to have delivered to Auschwitz and Oranienburg in the context of this order actually had reached its destinations and whether or not Gerstein had been able to prevent it from being used against people.⁵⁶

Armin Peters, who was in close contact with Gerstein during the war, testified that Gerstein personally collected the first shipment of gas (240 kg) from the manufacturing plant in Dessau and brought it to Lublin by truck. On the way, according to Peters, Gerstein faked an accident and destroyed the gas. The accused Kaufmann also remembered the first shipment having been picked up at the plant in Dessau. On the basis of this testimony, the court decided it could not be proven that the first delivery of gas on 30 June 1943 actually reached Auschwitz.⁵⁷

Regarding the Oranienburg orders, a witness, who while a prisoner directed the delousing operations at Oranienburg, testified that they received Zyklon B at the camp but some was sent out again, possibly to Auschwitz. Given this, the court could not ascertain how much of the Zyklon B from Gerstein's order actually stayed in Oranienburg. It only accepted as proven that from September to December 1943, 590 kg and from January to May 1944, 1 185 kg of irritant-free Zyklon B arrived in Auschwitz. The court also concluded that this gas was used to kill people.⁵⁸ For this conclusion the court had to weigh the statements of several witnesses for Gerstein who claimed that he had been able to destroy more than the first shipment of gas. Pastor Rehling testified that Gerstein told him he had connections in the SS and was paying off a man in Berlin to either destroy or divert the gas from its intended use. Dr. Ehlers

testified that Gerstein told him large quantities of prussic acid had been ordered to murder Jews and concentration camp inmates but that he had misdirected them so they would not be available in the camps at the “deciding moments” by which Dr. Ehlers believed Gerstein meant, once the Allies were approaching.⁵⁹ These contradicted Armin Peters, who stated that Gerstein had only been able to destroy the first shipment from 30 June 1943. The court did accept that Gerstein had been able to destroy the 100 kg of prussic acid he brought with him to Belzec in August 1943, about which he wrote in his French report of 26 April 1945 . It was not part of the Degesch order and therefore not of immediate significance for the case.⁶⁰ The court also considered the puzzling letter Gerstein wrote to Dr. Peters on 24 May 1944 in which he stated that none of the quantities of gas sent to Auschwitz and Oranienburg had been used and asked about their shelf-life. The court concluded that the letter could not have been accurate since the killings at Auschwitz had reached a high point around this very time with the arrival of 250 000 Hungarian Jews and the destruction of the Gypsies. It seemed very unlikely that any Zyklon B in stock would not have been used by this time, especially considering the crisis in supply caused by the Whitsuntide 1944 bombing of the manufacturing plant in Dessau.⁶¹

In the French report Gerstein states that he had the gas misdirected to be used for purposes of disinfection. The court did not see this as a likely possibility, since witnesses testified that de-lousing and fumigation were carried out by using steam and short-waves⁶², and since the use of irritant-free Zyklon B for this purpose was illogical given the increased danger. The court concluded irritant-free Zyklon B was used in Auschwitz to kill people, and that this form had been preferred since it allowed for an acceleration of gassings, in that people about to be gassed would have no warning.⁶³ Former commandant of Auschwitz Rudolf Höss had claimed the irritant had been left out for humanitarian reasons, but the court considered this an obvious attempt at

justification of his activities. In any case the Zyklon B contained an ever decreasing amount of irritant with the progression of the war and the resulting shortage of chemicals, so that at times the effect of the irritant was minimal.⁶⁴ The court also calculated that the amount of Zyklon B delivered within the framework of the Gerstein order would not have sufficed to kill all the people who died in Auschwitz during that period.⁶⁵ Therefore, it concluded that both forms of the gas were used to kill people at Auschwitz.⁶⁶

As part of the final judgment, the court gave its assessment of what could be believed of Gerstein's report. Some of the court's conclusions contradicted what Gerstein had written. With respect to the orders for poison gas, he mentions the 100 kg he brought to Belzec in August 1942 and also an order given to him by SS-Sturmbannführer Rolf Günther from the Reichssicherheitshauptamt to acquire prussic acid for an "unknown purpose" at the beginning of 1944. Gerstein, citing fears that the prussic acid would be used against the German people at the end of the war or against foreign workers and POWs, ⁶⁷ writes that he had the gas used for disinfection services. The court believed Gerstein had known the true purpose for this gas, that is, the same purpose he had communicated to Armin Peters and Dr. Peters. Gerstein does not provide any details about the June 1943 order, but does attach Degesch invoices for these shipments of gas to his French report of 1945.⁶⁸ Gerstein also states that the actual amount of gas ordered amounted to 8 500 kg. The court could account for only 3 790 kg, so it was unclear how Gerstein had reached this number.⁶⁹ In the end the court accepted that "Gerstein had had the good intentions not only to spy in the SS but also to sabotage the authorities. This was successful however in truth only in very small measures."⁷⁰ The court recognized that Gerstein could have destroyed the 100 kg of prussic acid he brought to Belzec by burying it after citing chemical decomposition, and the first shipment from Degesch in June 1943 by destroying it with the excuse of a

pretend accident, and that he also might have helped friends interned in camps and their families and spread the word about SS atrocities at home and abroad. “However,” the court continues, “he did not succeed in eliminating in a decisive way the deliveries of poison gas in which he was severely restricted by the giving of the order to Dr. Peters.”⁷¹ In the court’s opinion, Gerstein must have been concerned whether his true attitude and intentions would be considered by the Allies as justification for whatever participation he had had in the killings. Given this concern he obviously would have exaggerated his successes and minimized his failures in dealing with the poison gas.⁷²

This first section of the judgment laid out the objective facts of the case: what happened in Auschwitz, how Zyklon B came to be used in Auschwitz and what role Zyklon B played in the events there. The judgment now turned to the subjective facts of the case, that is: what the three men accused knew of the use of Zyklon B in Auschwitz, and in particular, the effect Dr. Peters’ conversation with Gerstein had on Dr. Peters’ knowledge of the events.⁷³ The court could not establish that any of the three men had any personal knowledge of the events in Auschwitz before the Gerstein order.⁷⁴ Neither Kaufmann nor Amend had ever visited a concentration camp or had any immediate contact with the SS.⁷⁵ It was not proven that Dr. Peters had told them anything of the secret revealed to him.⁷⁶

Dr. Peters had heard in March 1942 about gassings in Mauthausen, but had considered this an aberration. He had been in Oranienburg twice for business and may also have been in Auschwitz once. While he may have suspected Zyklon B was being used to kill people it could not be conclusively proven that he did. After all, until his conversation with Gerstein it was Testa that supplied Auschwitz with all the poison gas it required. Following a change in record-keeping in June 1942, Dr. Peters may not have even known the destinations of Testa deliveries. In any case concentration camps were all potential sites for typhus epidemics, and the orders for gas could be assumed to

be the means of defense against this. It could also not be proven that he knew of the euthanasia program before his meeting with Gerstein.⁷⁷

Dr. Peters was formally initiated into the program of destruction at his meeting with Gerstein. According to his testimony, he did not ask for specific details at the time, nor were they provided. It was important to the court to know, however, what Dr. Peters thought about the action after the conversation. He argued that even what the court believed he knew did not correctly depict the full extent of what was happening.⁷⁸ Dr. Peters admitted he knew the SS “did what they wanted”⁷⁹ and that one was powerless against the Gestapo. He said he knew people in the camps “had it very tough”⁸⁰ and that the camps were administered by the SS. He knew about the persecution of the Jews and the burning of the synagogues and was familiar with the National Socialist world view regarding the alleged inferiority of groups and races and their goals in the racial-political sphere. He could not have believed that the selection of victims was made according to strict standards once he found out about Himmler’s order and its basis in the victims’ alleged inferiority, subversiveness or danger. He very well may not have imagined the actual full scope of the destruction program, but had to realize it was a fairly extensive action when the poison requested allowed for the simultaneous killing of a considerable number of people, and when this in turn was ordered in considerable quantities. The court cited Dr. Peters’ own article “Prussic acid for combating vermin” written in 1933 which stated that slightly more than 1 g of prussic acid per cubic meter of air would bring about a person’s immediate death.⁸¹ He knew criminals who were considered dangerous and people whose illnesses caused them great suffering and / or prevented them from work were being killed. Given this the court felt he must have wondered about the fate of other camp inmates who were no longer able to work. Despite these logical suppositions, it could not be proven that Dr. Peters actually did suspect a lot more than what Gerstein actually told him.⁸² The court

could also not refute his claim that Gerstein had asked for the irritant to be removed from the gas for humanitarian reasons or that he believed in the legality of this reason. Earlier in the judgment the court asserted that in fact the irritant was removed for practical considerations (the reduction of time between gassings). This later statement simply meant that they could not prove Gerstein didn't ask for the irritant to be removed on allegedly humanitarian grounds.⁸³

Part two of the judgment deals with the legal assessment of the case, that is, how the facts of the case were to be interpreted in terms of German penal law, Dr. Peters' potential defense claims, the judgments of law (as opposed to the judgments of facts) and the sentencing. It is important to examine this part of the judgment since it shows which defense claims it considered valid or invalid and for what it reveals of the court's attitude to the crime and how this attitude may have applied to Gerstein.

German criminal law did not provide for mass murder, or rather the penal code did not outline what evidence was required to prosecute mass murder, therefore the camp killings were interpreted as an accumulation of independent single killings.⁸⁴ This refuted outright the potential defense claim that the killings were legal since they corresponded to the will of the State.⁸⁵ Dr. Peters' criminal act was defined as the giving of the written and oral instructions to effect the deliveries of irritant-free Zyklon B. There was not enough evidence to prove he had known about the camp killings prior to his conversation with Gerstein or that the gas he delivered to Oranienburg was used there for killing. He was therefore charged with having been an accessory to murder for all the killings committed at Auschwitz with irritant-free Zyklon B after June 1943.

Dr. Peters appealed to the idea that at least he had alleviated the suffering of "irretrievably lost" victims by removing the irritant. In response the court referred to the article written by Dr. Peters in which he stated that people exposed to the gas lost consciousness before the irritant was perceived. His removal of the irritant was seen

neither as justification for his participation nor mitigating in terms of his culpability.⁸⁶ It should be noted that this was not an outright rejection of the “help to the irretrievably lost victims” claim, but was refuted because of other circumstances (Dr. Peters’ knowledge and/or beliefs) which negated the charitable intention behind this “help”.

Several times during the main trial, Dr. Peters stated that if he had known the true extent of the destruction program, he would have found a way to hinder the use of Zyklon B. The court concluded that if he was unable to prevent the action (in whatever extent it was known to him), he should have exempted himself from the matter entirely:

Each taking part in such an action will, regardless from which motive and for which purpose it occurs, be felt from every morally feeling person as a taking part in an especially crass wrong and therefore wrong itself. The knowledge of right requires, if one cannot help, so one should keep away from any connection to this action.⁸⁷

Despite this apparently uncompromising conclusion, the court still sought to understand the circumstances of Dr. Peters’ participation. The court accepted that Dr. Peters had believed the matter was ordered by the State, that he could do nothing to change it, that the possibility of rescue did not exist and that the Zyklon B could not be kept from being used, since it was so important in preventing epidemics. Further, the court accepted that if the SS had decided to embark on this killing program it certainly would have been capable of acquiring the means to carry it out.⁸⁸

Dr. Peters tried to appeal to the idea that it was a binding order. However, what the court gathered from the von Halle note was that the order was not forced on him but Dr. Peters agreed to it after discussing several factors. He could not claim that he acted in a predicament either, since by law this requires that the person be conscious of the illegality of one of the options, which Dr. Peters claimed he was not. Regarding the possibility of the existence of a state of coercion, the law outlining this states that there must be a threat to the life or body of the person involved or to his relatives. The court did not believe that such a threat existed. This was supported by the court’s view of

Gerstein - who they believed personally wished to sabotage the deliveries of gas in any way he could. Pastor Rehling's testimony was cited, in which he stated Gerstein had even tried to make contacts at Dessau and Kolin, in hopes of sabotaging the packaging of the gas. The court concluded Dr. Peters went along willingly.⁸⁹

Dr. Peters also appealed to the excuse of a collision of duties. Jurisprudence had allowed for criminal acts to be excused if they were committed in the fulfillment of a higher duty. In the court's view, this was not the case. It did not accept that Dr. Peters' withdrawal from the committee in June 1943 in order not to take part in the deliveries of Zyklon B would necessarily have compromised Germany's defenses against typhus. This was compounded by the fact that Dr. Peters may not even have had to retire from the committee by retiring from Degesch - since he himself stated the two facets of his job were practically mutually exclusive.⁹⁰ He claimed it was unreasonable to expect that he retire. The court countered that such an expectation was reasonable in light of the magnitude of the crime in which he had been asked to participate. It conceded that it would indeed have represented a sacrifice and that someone else would have been found to carry out the order, but maintained the prohibition against killing should have been paramount.⁹¹

Despite all these arguments and following a strange twist of logic, the court concluded that Dr. Peters could not be found guilty of having been an accessory to murder since it could not be proven that he had been aware of the defining characteristics of the crime. Apparently for this court, proving his consciousness of wrongdoing, which was necessary for Dr. Peters to be prosecuted, could not be equated with his consciousness of at least one of the characteristics of murder as outlined in the penal code, which was necessary for him to found guilty of the charge.⁹² It had been established that Dr. Peters had had an ideal view of National Socialism, so much so that he was ready to believe in the necessity of killing certain people. Although it was shown

that he knew this was morally wrong, it was not proven that he believed the order was based on despicable ideas; thereby refuting his knowledge of base motives.⁹³ The court also believed it had not been established that Dr. Peters believed the killings were committed with cruelty (defined as causing suffering), since he (and the court) accepted that Gerstein's wish that the killing method be made more humane was sincere: "From [Gerstein] he had the impression that he troubled himself with great sympathy and conscientiousness with a manner of execution eliminating as far as possible all agonies."⁹⁴ In the court's view, Dr. Peters did not believe the administration of death had operated with an unfeeling and merciless attitude. The court also did not believe that he had felt the murders were committed maliciously, that is exploiting the victims' trust and limiting the possibility to save themselves. The reasons had already been established why he had accepted to organize the deliveries of gas, and while these were not termed base, his failure to fight for what was right and his not retiring in the face of such an order was described as "contemptible weakness".⁹⁵

The verdict against Dr. Peters was reduced to accessory to manslaughter. The legally prescribed punishment for this crime was incarceration in a prison for capital offenders. If extenuating circumstances were present, time would be served in jail. Dr. Peters' personality was seen in a positive light, the court acknowledged that he had been brought into the whole affair through no fault of his own, and that because of the pledge of secrecy, he had had to make his decision without outside guidance. His situation as the court saw it, was the following:

The impossibility to help, the slight prospect to be able to hinder the actual connection of his firm with the action, at least for the future, induced him, together with his irrational belief in Hitler and his movement, not to endanger the work of his life and the fate of his family and to commit an act which the State leadership approved of, for which the freedom from punishment was silently promised, which however the conscience rejected as wrong.

The court concluded that any mitigating circumstances would pale in comparison to the gravity of the act and its “monstrous results” - even if Dr. Peters imagined these results in only a limited way. The minimum sentence for his crime was one year and three months in prison. But after weighing all factors, the court sentenced him to five years imprisonment, and he was to be deprived of his civic rights for three years. The time Dr. Peters served while the trial took place was counted against his sentence.⁹⁶ He also had to pay for the trial.⁹⁷

Both Kaufmann and Amend were acquitted; Kaufmann because he had no knowledge of the purpose of Gerstein’s order and that people were being killed at Auschwitz, Amend because he did not know people were being killed with the gas he helped deliver and, since he was an outspoken opponent of Nazism, he was seen as one who would have retired had he known the truth.⁹⁸

This judgment and the sentence against Dr. Peters were appealed and revised nine more times before a final judgment was rendered. Appeals could be brought by the person sentenced (in conjunction with representation from the district attorney’s office), as well as the State (the public prosecuting attorney’s office), that is, new verdicts could be made more as well as less severe. In reviewing the case the appeal court was bound to the facts of the case as established by the jury court and the only way to alter the assessment of a fact was to prove a mistake in logic (literally “a violation of the laws of thinking”⁹⁹) when this fact was established. This was difficult to prove, therefore most appeals proceeded on grounds of a mistake in procedure. In this case it meant that there would be little change in the court’s assessment of Gerstein and his role in the program of destruction. Only those points which concern Gerstein or have implications for how he could have been seen by the court will be mentioned.

In his first appeal Dr. Peters objected to the assessment of evidence, most importantly, he raised doubt over how many shipments of gas Gerstein had actually

been able to destroy. The court would not alter the earlier decision that Gerstein had only succeeded in destroying the first shipment.¹⁰⁰ Dr. Peters' appeal also questioned why Gerstein had ordered the quantity of gas that he had, when it obviously had not represented all that was required or used at Auschwitz. The appeal court did not accept this as a valid objection, since it went against a fact conclusion of the jury court. However, this does represent an important point which will be expanded upon below.

The public prosecuting attorney's office also appealed against the judgment, stating Dr. Peters' skewed moral rationalization of the facts of the killings could not be allowed to stand in place of his actual knowledge of the characteristics of the crime. The appeal court showed that Dr. Peters had known that the victims were chosen out of utilitarian principles and that the method was malicious, in that it worked without the victims being aware of it.¹⁰¹ This was sufficient proof for his knowledge of two characteristics of the penal code definition of murder. On 19 October 1949 the main provincial court in Frankfurt amended the first verdict to accessory to murder in an indefinite number of cases.¹⁰²

A second jury court was convened to pronounce a new sentence and to decide who would bear the cost of the proceeding.¹⁰³ Dr. Peters demanded a re-examination of the evidence, which was not permitted by the procedure code. However, the court did reconsider the mitigating circumstances of the case. These included the fact that the order came from the State, was unchangeable and that Dr. Peters was otherwise an honourable man. Nevertheless, it was also pointed out that even the limited extent in which Dr. Peters imagined the crimes was still of unprecedented gravity, and emphasized: "Who like the accused took part in such an act, took the greatest guilt upon himself."¹⁰⁴ Dr. Peters was sentenced to four years imprisonment for every single

case of having been an accessory to murder, but the court settled on a total penalty of five years imprisonment.¹⁰⁵

The public prosecutor's office, the same office that had objected to the first jury court's judgment, appealed this decision, stressing the consequences of Dr. Peters' act demanded a stricter sentence. On 20 September 1950, the sentence was annulled.¹⁰⁶ The matter was forwarded to a jury court in Wiesbaden which was supposed only to reformulate a total punishment. However, this court raised objections to the original assessment of facts, rejecting decisions which had been made according to the Frankfurt court's judiciary discretion. The Wiesbaden court chose to allow Dr. Peters the benefit of any remaining doubt.¹⁰⁷ It settled on a total penalty of four years and six months imprisonment.¹⁰⁸

The public prosecutor's office did not accept Wiesbaden's decision, and had it annulled by a court in Karlsruhe on 4 December 1952. Its main objection was that the sentence was still too lenient, that the aggravating circumstances of the case demanded a more severe punishment. The question of a new sentence was referred to a different Wiesbaden court.¹⁰⁹

The provincial court in Wiesbaden reviewed the elements of the case. As extenuating circumstances the court cited that the crime had been committed under extraordinary conditions, and accordingly the court felt Dr. Peters should be judged by a special standard. He did save lives by preventing a widespread typhus epidemic, he had stood up to Hitler's favorite doctor and was an honourable man, for whom this act was an aberration.¹¹⁰ As aggravating the court pointed to the facts that Dr. Peters had involved himself in a huge number of killings, the victims were innocent and unsuspecting and these killings were part of an arranged program that shattered

Germany's reputation.¹¹¹ Nonetheless, this court concluded a milder punishment was justified, and the whole penalty was set at six years imprisonment.¹¹²

The matter was not entirely laid to rest until 1955. On 25 September 1954 a court in Frankfurt allowed for yet another appeal against the latest judgment. On 28 January 1955 a court decided to allow a new trial to take place, for the "expansion of the hearing of evidence, to verify independently and to decide about whether the act of the accused was punishable under any legal point of view."¹¹³ Whereas the courts until now had been bound to the October 1949 verdict that Dr. Peters was guilty of having been an accessory to murder, this new trial was convened to reopen the question of his guilt and how his actions could be interpreted within the German penal code. This court's judgment would rest solely on the new trial. All previous conclusions were erased.¹¹⁴ On 25 May 1955 the provincial court in Frankfurt handed down its final verdict on Dr. Peters. The judgments from 28 March 1949, 19 October 1949 and 7 August 1953 were annulled and he was declared acquitted of all charges.¹¹⁵

The decision regarding Dr. Peters' guilt was affected by the latest conclusions made about Gerstein's success or failure in keeping the gas from being used against people which had required a re-examination of Gerstein's personality and activities.¹¹⁶ The court began with his personal history, a review of his resistance activities, his dismissal from the Party and his internment in the Welzheim concentration camp. Character witnesses were heard again. Nothing new was brought forward.¹¹⁷ The court asked once more why Gerstein had entered the SS. Witnesses most often cited the death of his sister-in-law Bertha Ebeling at Hadamar as his primary motivation, that is, he suspected her death was intentional, and he had wished to find out all he could about what was really happening. There were differing opinions and slight contradictions as to dates, but the court believed it could be established without a doubt that Gerstein did

not join the SS out of National Socialist conviction or to support National Socialist ideas. Otto Wehr called Gerstein “a completely conscious, decisive and exclusive opponent of the Third Reich”.¹¹⁸ His experiences at Belzec in August 1942 were mentioned again, as were his reports, which “clearly expressed his horror and indignation”. The court recognized that Gerstein spread news of these crimes to contacts in resistance movements, friends and the diplomat Baron von Otter.¹¹⁹ In its summary, the court concluded that “Gerstein, despite all contradictions in his nature and in his behaviour was a sincere opponent of National Socialism, a unique personality in the framework of the SS.”¹²⁰

The court re-examined the conversation between Gerstein and Dr. Peters from June 1943, with Dr. Peters providing yet another version of their meeting. Dr. Peters’ earlier accounts of this conversation were mentioned to the court, and it was pointed out that they agreed in essential points neither with each other nor with the present testimony.¹²¹ The court was of the opinion like those before it, that with the von Halle note, Dr. Peters would have wanted to present the least incriminating picture, citing Dr. Peters’ own introduction to the document:

The course of questioning thus far for the judgment of the Degesch share of the use of prussic acid in the concentration camps still left some unclear points, which as well for the provincial court proceeding in entirety as also for the case of Dr. [Peters] could allow to come to single decisive mistakes. I will therefore explain and delineate my share in the events as precisely as possible.¹²²

Once again, it was accepted as the “minimum truth”.

The court reviewed the evidence for the deliveries effected on the basis of the Gerstein order and concluded, despite Dr. Peters’ claims otherwise, that he had known the extent and destinations of these shipments. The court then moved on to the issue of his knowledge of the killings. It stated his activities had ended with the dispatch of the

Zyklon B and that whatever happened then had been outside his sphere of influence, but added that if he had known what was going to happen he could still be held criminally responsible.¹²³ The court declared he had known what the gas was intended for and had had to know that it was a matter of illegal killings, since the matter had been kept top secret. The court did not believe he had consented to the order out of humanitarian reasons, citing the article written by him in 1942 entitled "The highly effective gases and vapours in the combating of vermin" which stated that regarding the irritant content, it was not so much that it had no effect, but that its effect was unreliable, since differing chemical properties allowed for the poison gas to escape and to work before the irritant would be detected.¹²⁴ Later on in this judgment, testimony was cited that the irritant content of the gas decreased with the war, that is, there was less and less of an odour.¹²⁵ This shows that it had the desired effect sometimes. The court concluded however, that Dr. Peters' knowledge of the unreliability of the warning agent meant he could not have believed that the omission of the irritant would have made the killing method more humane. He could have suggested a faster-acting poison in the interests of humanity, but did not. This compounded their view that he did not act out of humane considerations.¹²⁶ The court confirmed that Gerstein did not pressure Dr. Peters to accept the order, but that he joined in willingly, ignoring the strict instructions regarding the use and delivery of Zyklon B.¹²⁷

In conclusion the court agreed with the first Frankfurt court judgment: Dr. Peters was guilty of having been an accessory to manslaughter, since it was not convinced he had an overall view of the characteristics of the facts of the case which could justify an accessory to murder verdict. It was not proven to their satisfaction that Dr. Peters knew what was happening at Auschwitz.¹²⁸ There was a re-examination of how the gas Gerstein ordered was actually used. Documents showed 3 790 kg were

delivered, and of this 1 380 kg went to Auschwitz. The Oranienburg deliveries were not pursued since it could not be ascertained how or even if they were used there. Dr. Peters had stated the gas he sent to Auschwitz was delivered to the “Department for fumigation and protection against epidemics”, however the court could not determine what this department’s purpose was, how Gerstein was connected to it or even its physical location in the Auschwitz-Birkenau camps. No definite proof was provided that the gas Dr. Peters delivered was actually used.¹²⁹ Through his reports written at the end of the war, Gerstein was able to “testify” as to the route the Zyklon B took. He had attached twelve bills from Degesch for shipments of prussic acid to Oranienburg and Auschwitz.¹³⁰ While he never mentioned the June 1943 order, he did write about two other orders from August 1942 and the beginning of 1944, which he claimed to have diverted from their intended purpose. In 1942 he showed Pastor Mochalski the order to pick up several hundred kilograms of prussic acid, in order to kill tens of thousands of people: “inferior people” and “entire groups e.g. Yugoslavians”.¹³¹ In a letter addressed to Dr. Peters written 24 May 1944, Gerstein referred to the gas ordered in June 1943, stating: “Until now none of this quantity has been used at all.”¹³² Gerstein told witnesses he had misdirected, destroyed and diverted shipments of the poison gas from its intended use. No witnesses could testify specifically about the June 1943 order. It therefore could not be verified whether or not Gerstein had been able to hinder deliveries to Auschwitz in 1943 and 1944. At the same time, the court believed the Gerstein reports were authentic and accurate since they agreed with witness testimony.¹³³ Furthermore, it stated:

The court is also not of the view, that Gerstein drafted these reports in order to “whitewash” himself after the fact. This was not necessary for Gerstein, whose anti-National Socialist attitude could be confirmed credibly by so many prominent opponents of the Nazi regime.¹³⁴

Gerstein simply did not give many details about having the gas used for other purposes. He did not write about his failures, yet he might not have been entirely successful. It could therefore not be established that he kept the Zyklon B from being used against people. As for the puzzling letter from May 1944, the court concluded, it was possible that it was true, although there was nothing to say the gas had not been used for killing after the letter had been written. In September 1944 Gerstein had written to his father:

I have never lent my hands to what this all has to do with. If I and in so far as I received such orders, I did not carry them out and changed the carrying out course. I myself emerge from the entire [matter] with clean hands and an angelically pure conscience.¹³⁵

Gerstein may have believed his efforts alone (which were after all punishable by death) were vindication enough regardless of what measure of success he had achieved. He suffered personally from the things that were beyond his control but felt exonerated by his intentions. This view corresponded to the impressions of witnesses Prälat Buchholz and Pastor Mochalski.¹³⁶

The court concluded:

Gerstein represents accordingly the type of man who rejected the Nazi Regime from deepest conviction, even hated [it], but took part in it, in order to prevent worse [things] and to work against it from inside. Gerstein was however only an SS-Obersturmführer, a relatively small and a significant wheel only in a limited area in a monstrous machinery. His importance and his influence were for all the best efforts and all good intentions not large enough, in order to bring the machinery to a halt, or more concrete, to be able still to influence and direct that which occurred outside his immediate area. The machinery was stronger than he, he had to see this and obviously suffered severely under it and under the, at least in part, limited failures of his efforts. The suspicion, that the Zyklon B delivered by the accused despite Gerstein was used by the original intended clients of Gerstein and for the purposes known to the accused, still exists. The court concludes the following:

1. The Zyklon B ordered by Gerstein was delivered for the purpose of killing, which the accused knew
2. Gerstein did not order this Zyklon B on his own accord, rather on order from the SS

3. Gerstein indeed tried to use the Zyklon B otherwise than for killing, however, the possibility is not excluded, that he was not completely successful.

From this it follows, that a conclusion, that the Zyklon B delivered by the accused was not used for killing, cannot be made. It can, however, not be proven, that with the Zyklon delivered by the accused someone was killed.¹³⁷

The legal assessment of the case represented a major departure from the first appeal verdict and the attitude towards establishing facts. For this court, the uncertainty of Gerstein's success or failure regarding the use of Zyklon B translated into Dr. Peters' acquittal. The court still agreed that he had been an accessory to the plan to commit manslaughter, but because the killings could not be proven to have taken place with the irritant-free Zyklon B he delivered, Dr. Peters was termed an "unsuccessful accessory". There was the possibility that he could still be punished for this. According to the new version of article 49a paragraph 3 of the penal code, from 29 May 1943, this was a punishable offence. Since Dr. Peters' criminal act took place in June 1943, he would be subject to this law. However, in August of the same year, paragraph 3 was annulled without substitution, thereby removing the penalty from the crime. In 1953 article 2a of the penal code was annulled and replaced with article 2, which dictated:

An act can only be punished if the criminal nature was certain before the act was committed. The punishment defines itself according to the law which is valid at the time of the act. In case the law differs from the time of the committed action until its condemnation, the mildest law is to be used.¹³⁸

Therefore because article 49a of the penal code in 1953 was without paragraph 3, it was the milder of the two laws, and the older version could not be used against Dr. Peters.¹³⁹ In fact, Professor Dr. Drost, Dr. Peters' lawyer, cited the "unsuccessful accessory" article in the appeal report of 25 July 1949.¹⁴⁰ However, this only became valid once the court reversed its earlier position regarding the actual use of the gas and allowed for the possibility that it may not have been used against people.

Dr. Peters filed a motion for the State treasury to reimburse him for “necessary expenditures” incurred during the trials. Article 467 paragraph 2 of the procedure code allowed for reimbursement of the accused only if the original suspicion which prompted the trial was unjustified. The court asked itself, if the situation as seen at the conclusion of the trial could have been known at its start, whether a criminal proceeding still would have been undertaken. Dr. Peters was not found innocent, rather a lack of evidence and a fortuitous change in law allowed him to be acquitted. The court decided that the suspicion still existed to support a charge, declaring as long as there was the possibility that Gerstein failed to hinder the use of Zyklon B delivered by Dr. Peters in the knowledge of its killing purpose, the chief reasons for suspicion were not refuted. The motion for reimbursement was rejected.¹⁴¹

The Degesch trial conclusions about Gerstein were implicit at best, but the first three judgments (up to and including the May 1950 decision) were also considered in the Tübingen Denazification court’s assessment of Gerstein’s case, where, as will be shown below, many of the same principles appear to have been applied. It is worthwhile to review the main issues of the Degesch trials for their implications for Gerstein. First, an overview of the main laws concerned in the case is necessary.

The version of the article dealing with murder (article 211 of the penal code) from 4 September 1941 states that one could differentiate between murder and manslaughter (first and second degree murder) by deciding whether the killing was morally reprehensible and suggested a base disposition on the part of the perpetrator. If this could be shown, it was a case of murder.¹⁴² Therefore, a murderer was defined as one who:

out of bloodlust, for the gratification of a sexual urge, out of avarice or otherwise out of base motives, maliciously or cruelly or with means dangerous to the public or in order to enable or cover up another criminal deed, kills a person.¹⁴³

One was deemed guilty of manslaughter if one intentionally killed a person, but could not be termed a murderer according to the above definition.¹⁴⁴ Dr. Peters was not considered a main perpetrator, but accused of having been an accessory, which was defined as “one who knowingly helps the perpetrator for the committing of a crime or offence threatened with penalty by word or deed.”¹⁴⁵ The actual result of the accessory’s help was of primary importance since the August 1943 version of article 49a (the so-called unsuccessful accessory article) stipulated that the punishment of the accessory could be suspended if the crime was not carried out or carried out independently of the accessory’s help.¹⁴⁶ Therefore with each verdict in this series of trials, the court had to strike a balance between Dr. Peters’ knowledge of the crime, which was incriminating, his true motives, which could be mitigating, and the result, which was also potentially incriminating but complicated by what could actually be proven with regard to his relationship to the result. These same factors must be balanced in order to assess Gerstein’s role in the matter.

The primary importance of the issue of Dr. Peters’ knowledge required that a great deal of emphasis be placed on the June 1943 conversation. When the records of the trial were sent on to Tübingen, this conversation most probably took on undeserved weight. It must be remembered that the only existing accounts of this conversation come from Dr. Peters, whose interests may not have coincided with a truthful version of the discussion. The year 1943 is a blank space in Gerstein’s reports. Witnesses testifying on his behalf were not able to fill in much detail. By necessity, the court had to accept one of Dr. Peters’ accounts. But as will be shown below, the two crucial issues arising from this conversation can be interpreted very differently from how they were interpreted in the court’s conclusions, and these new interpretations have serious implications for Gerstein’s involvement in the matter. But first, an overview of the verdicts’ effect on how Gerstein may be seen.

In the first trials, knowledge was as incriminating as active participation. For Gerstein, the issue of knowledge requires no debate, since he knew the purpose of the gas was morally if not also criminally wrong. Therefore a judgment of him could only be made by weighing the mitigating factors. The courts did not allow the facts that the order was unchangeable, that Zyklon B could not be kept from being used, or the importance of Dr. Peters' job to serve as excuses for Dr. Peters' participation.¹⁴⁷ If it could have been proven that Dr. Peters participated because the order was binding, that he acted in a state of coercion¹⁴⁸, that he was faced with a collision of duty or that his involvement could not be avoided¹⁴⁹, he could possibly have been granted a pardon. Only the existence of a state of coercion is outlined in the penal code, but all grounds for pardon including coercion are essentially value judgments the court must make about the situation in which the accused found himself. Gerstein would most likely have been able to appeal for a pardon on the grounds that he was faced with a collision of duties, that is, his participation in a horrendous crime was the means to avoid a still greater crime. This was discussed in the Denazification and rehabilitation and compensation proceedings.

The strongest factor for Gerstein's moral justification of his involvement was his request that the irritant be removed from the Zyklon B. He could not change the order, he could not guarantee the use of the poison, but with this request, he believed he could at the very least alleviate the unnecessary suffering of the victims. The issue was handled rather clumsily by the courts which dealt with the Degesch trials. Interestingly it was not an issue in the Denazification hearing or rehabilitation and compensation cases. The courts concerned with the Peters' case decided that as far as Dr. Peters was concerned, removing the irritant should not be considered a humanitarian gesture since he believed its effect was unreliable. The courts however never denied Gerstein's good intentions behind the request, nor did they pass judgment on his legal or moral position

with regard to it, obviously since it was not important for Dr. Peters' case. But it is of interest for understanding Gerstein. The invoices show that the irritant was indeed removed.¹⁵⁰ In his written statement for the Frankfurt court Dr. Peters wrote that Gerstein told him during their meeting in June 1943 that he had witnessed killings with Zyklon B, and believed the gas' irritant content caused unnecessary suffering and was therefore seeking a faster-acting, more humane method of killing. He first asked for pure prussic acid, but the packaging of such a product was too difficult and dangerous. He then asked for irritant-free Zyklon. Dr. Peters then writes:

My objection, that I, for the speed with which death by prussic acid occurred, could attribute no great importance to the omission of the irritant, he refuted with his own observations, which were not within my experience.¹⁵¹

The statement seems reliable as it is not favourable for Dr. Peters' defense. Based on this, it appears Gerstein truly believed removing the irritant would have the effect he wanted. How should this issue be viewed? The Degesch courts rejected the explanation that the removal of the irritant was done for humanitarian reasons in favour of the idea that the true reason was to accelerate the killings. But if this was so, why remove the irritant from only a small fraction of the gas that was used? The court did not address this. In the appeal report of July 1949 the testimony of three experts on Zyklon B was quoted in which they declared the irritant did indeed work as a warning agent, giving a person enough time to distance oneself from the gas before it had its lethal effect.¹⁵² The Frankfurt court had asked Dr. Peters about the effect of the gas, to which he replied that in his opinion, a person who breathed in prussic acid with three to six breaths would become unconscious before the irritant would set in.¹⁵³ The court based their judgment of Dr. Peters on his testimony, despite other experts' countering that Dr. Peters had not been qualified to make these statements as he had never conducted his own experiments or had seen the actual effect the gas had on people.¹⁵⁴ The court was within its

discretion to disallow the removal of the irritant as a mitigating circumstance of Peters' criminality since whether his opinion was correct or not, he delivered the irritant-free gas believing its effect was doubtful, and therefore his act could not be termed completely humane. His appeal objected that the Frankfurt court had not even credited him with believing in the possibility that "death agonies" would be reduced by removing the irritant; that is, believing Gerstein's opinion.¹⁵⁵ But again this was a matter within the court's discretion. Whatever the real reason, the irritant was removed. Whether the removal of the irritant actually did bring on death without warning was never explored. If Gerstein is to be believed, it would have, and therefore could be seen as having had a more humane result. This is one part of the case where for the judgment intention overshadowed the actual result.

One has to believe that Gerstein was acting in good faith when he requested the removal of the irritant, since the opposite is so unbelievable given his disposition. It is extremely unlikely that Gerstein would have taken the initiative in looking for a way to accelerate the killing process, since every other indication is that he did his utmost to prevent it. If the removal of the irritant was done on order from higher SS authorities, one must ask again why only a fraction of the total quantity of gas allegedly used in the killing program was that which would allow for an accelerated rate of killing.

How does this issue fit into the overall story of Gerstein's resistance activities? The Frankfurt and other courts concluded for Peters that the removal of the irritant was neither mitigating nor exculpatory vis-à-vis his criminal guilt since his intention could not have been entirely charitable. The actual effect of removing the irritant was therefore not explored. On the other hand the court acknowledged that Gerstein's intention was sincere. If once again intention is to be allowed to overshadow result, his attempt to prevent unnecessary suffering may be considered a moral act. But seen within its context, that is, a killing program on a massive scale, the magnitude of this

crime causes utter revulsion, and the temptation is to reject the possibility that any measure of good could have been at work within it. The Frankfurt court seemed to be of this opinion when it stated that even giving help to the “irretrievably lost” victims was no justification for involvement in the killing program.¹⁵⁶

Another issue which may offer some explanation, if not justification for Gerstein’s involvement, is the issue of the true purpose and outcome of the poison gas he ordered from Dr. Peters. Open-ended questions and matters not resolved by the courts led to a re-examination of the existing evidence about this order, the result of which, while not definitive, suggests a whole other view of Gerstein’s involvement in the destruction action which, if it had been acknowledged by the courts, might have led to a different assessment of Gerstein.

Confronted with Dr. Peters’ version of the June 1943 conversation, the question arises why Gerstein did not also mention that the Jews would be the intended victims of the order for poison gas. This was not an issue for the court, since it concluded Dr. Peters did not know about the destruction program of the Jews until the end of the war. In spreading the truth about what he knew and had experienced in the death camps, Gerstein had always told his contacts about the fate of the Jews. When it came time to acquire the gas from Dr. Peters, Gerstein needn’t have told him anything about its true purpose. The gas could have been ordered on his own authority, on any number of pretexts. But Gerstein apparently did communicate information about the killing program - it therefore does not make sense, given his previous actions, for him to have left out the truth about the Jews, if it was indeed destined to be used against them (as the court believed). It is possible Gerstein was concerned about Dr. Peters’ sensibilities, perhaps he worried that he would not be sympathetic toward the Jews, and the request for removing the irritant to make their deaths less painful would be refused. Gerstein, after all, had not spoken with him before this conversation, Dr. Peters was in fairly close

contact with Gerstein's supervisor Dr. Mrugowsky and Gerstein may have been concerned about Dr. Peters communicating Gerstein's sympathies for the intended victims. However, Gerstein had shown himself willing to take risks before, whether by spreading the truth to contacts from Allied and neutral countries, or even by listening to BBC broadcasts at full volume in his apartment with a group of resistance members. Owing to the lack of detail from Gerstein, it is difficult to gauge his state of mind at this time. It appears he was resigned to having to carry out the order to acquire the gas and he must have realized that controlling its use would be difficult. Perhaps his primary goal for this meeting was only to secure the removal of the irritant from the gas, and not to spread the truth about the gas' purpose. His act of resistance here was not informing Dr. Peters about the killing program but attempting to make death less painful for the victims should he not succeed in keeping the gas from being used.

There are two other possible scenarios for what was said or what Gerstein's purpose was for this conversation. Perhaps Gerstein really did tell Dr. Peters that the Jews were victims. Dr. Peters, by claiming he had been told only that incurably sick patients were being granted mercy deaths and that criminals already sentenced to death were being executed with the poison gas, would still have a defense. There were no morally or legally justifiable grounds for the mass killing of the Jews. Further, there was nothing outside this conversation to link him to knowledge of what was actually taking place and Gerstein, after all, was dead.

The other possibility is that the gas was not intended for use against the Jews, nor destined for immediate use at all in the "general" destruction program. This possibility opens up the question of the true purpose of this order for the Zyklon B and its actual use. There is some confusion about the orders for gas as they are described in Gerstein's reports from 26 April, 4 May and 6 May 1945. Following the description of his experience in Belzec (August 1942) and his attempts to spread the truth about what he

knew to contacts inside and outside Germany, he states that at the beginning of 1944 SS-Sturmbannführer Günther of the Reichssicherheitshauptamt asked him to acquire very large quantities of Zyklon B. The following are excerpts of the three reports which describe this order.

French report from 26 April 1945:

I must add still that SS-Sturmbannführer Günther asked me for large quantities of prussic acid at the beginning of 1944 for an obscure purpose. The acid had to be supplied to Oranienburg and Auschwitz - concentration camps. I loyally had the acid sent as desired. But, as soon as it arrived, I had it disappear for disinfection. This was dangerous for me, but, if someone would have asked me where the acid was, I would have said it was already in a dangerous state of dissolution and that's why I had to use it for disinfection. I am sure that Günther, according to his own words, had the order to procure it eventually to kill many people. I have on me the invoices for these deliveries altogether 2 175 kg, enough to kill several million people. I had them written out in my name... [report ends]¹⁵⁷

German report from 4 May 1945:

I must still add that the SS-Sturmbannführer Günther from the Reichssicherheitshauptamt [...] at the beginning of 1944 asked again for very large quantities of prussic acid from me for a very obscure purpose. He showed me a shed on Kurfürstenstraße in Berlin, in which he thought of storing the prussic acid. I explained to him that I could take the exclusive responsibility for it. It was a question of several wagon-loads, enough to kill many millions of people. He said to me that he himself did not know yet whether the poison would be needed, when, for whom, in which way etc. But it had to be readily available. Later I thought often of Goebbels' words that if Hitler should lose the war he would slam the door behind him with such force that the whole world would tremble.

I can imagine that they wanted to kill a large portion of the German people, certainly including the clergy or the dissident officers. It was supposed to occur in some kind of reading rooms or club rooms, I inferred as much from the questions about the technical execution which Günther directed at me. It can also be that he wanted to kill the foreign workers, or prisoners of war - I don't know. In any case I directed it so that the prussic acid disappeared for any purposes of disinfection immediately after its arrival in both concentration camps Oranienburg and Auschwitz. That was somewhat dangerous for me, but I could have simply said that the poison was already in a dangerous state of decomposition. I am sure that Günther wanted to acquire the poison to kill eventually millions of people. It was enough for 8 million people, 8 500 kg. I have submitted the invoices for 2 175 kg. I always had the invoices made out in my name, supposedly for reasons of discretion, in truth in order to have it more freely at my disposal and in order to be able to have the gas disappear. Above all I avoided bringing the matter to [someone's] attention by not presenting the bills

for payment, rather I left the bills fully unpaid, to the indignation of the company.

The manager of Degesch [...] carried out these orders.¹⁵⁸

German report from 6 May 1945:

With trouble I was successful in convincing him (Günther) to keep the poison in the concentration camps Oranienburg and Auschwitz. I directed it then so that the poison disappeared for purposes of disinfection immediately after its arrival. The invoices of the delivery firm Degesch I had written out in my name, supposedly by reason of secrecy, in truth, in order to be undisturbed in my disposal and in order to be better able to have it disappear. For the same reasons I always avoided it, to present the continuing bills for payment.¹⁵⁹

There is some confusion about the original intended destination for this 1944 order (Berlin or Oranienburg and Auschwitz), but the three reports do agree on the final destination and outcome (Oranienburg and Auschwitz, disinfection). These descriptions also bear a strong resemblance to what is known about the 1943 order, that is, it was filled by Degesch through Dr. Peters, the shipments were sent to Auschwitz and Oranienburg, and Gerstein had the bills made out in his name. It is reasonable to conclude that these two dates do actually refer to the same order of gas. Why Gerstein dates it later than his actual meeting with Dr. Peters is a mystery. The invoices he attached to his report only showed dates in 1944. Perhaps dating the order in his reports later than it occurred was a way of avoiding confusion over the absence of 1943 invoices, or perhaps, it was simply an oversight on Gerstein's part at the time he wrote the report, which is not unreasonable given his state of mind at this point.

The June 1943 date for the onset of the shipments of gas is supported by book-keeping and dispatch documents, as well as by testimony by Mr. Amend who remembered writing out the order for the deliveries of Zyklon B to Oranienburg and Auschwitz to begin in June 1943.¹⁶⁰ The actual quantity of gas sent out on the basis of Gerstein's order amounts to 3 790 kg, according to the Gerstein account sheet, dispatch reports from Dessau to Degesch for 11 April to 26 May 1944, invoices from Degesch to Gerstein for 14 February to 31 May 1944, a list made by Dessau for Degesch about

freight and freight charges for 14 February, 8 March and 20 March 1944, and Degesch's Dessau Zyklon dispatch book for 1944. Quantities can be traced according to date for shipments sent to Auschwitz and Oranienburg.¹⁶¹ Documents also show that for September, October and November of 1943, 195 kg of Zyklon B was sent to each camp.¹⁶² For June 1943, documents show that an order for 240 kg was picked up from the manufacturing plant in Dessau. This is the shipment Gerstein allegedly destroyed by faking an accident on the way to Lublin. 1 185 kg of irritant-free Zyklon B can be shown to have been sent to Auschwitz and Oranienburg in 1944.¹⁶³ The Frankfurt court in 1949 would only acknowledge that 1 775 kg actually arrived in Auschwitz during both years because it was not certain that the Oranienburg shipments were not actually sent out again from that camp.¹⁶⁴ The invoices attached to Gerstein's report account for 2 175 kg of gas.¹⁶⁵ How he arrived at the sum of 8 500 kg is not clear, especially if the shipments were effected by a standing order of about 200 kg per month per camp. Auschwitz's former Commandant Höss testified that five to seven cans of 1 kg each were required to kill 1 500 people. If the weather was cold and damp, two to three extra cans were needed. The Frankfurt court calculated in 1949 that if on average 6 kg of gas was used to kill 1 500 people, "Gerstein's" 1 775 kg of Zyklon B that reached Auschwitz was enough to kill 450 000 people. Even if all the gas Gerstein ordered had reached the camp, it would not account for all who were killed there.¹⁶⁶

What other evidence is there about this order of gas? Armin Peters testified that Gerstein showed him and his wife a secret official letter from the High SS and Police Führer in Lublin ordering Gerstein to acquire 500 kg monthly for "vermin combating purposes". Gerstein told him the chief of the Hygiene Institute (Dr. Mrugowsky) did not know about the order, in fact only five people did. Peters remembered that Gerstein picked up the first delivery himself from Degesch and transported it by truck to Lublin, destroying it on the way by a pretended accident. He continues:

The further prussic acid deliveries were however from then on no longer organized under the seal of discretion and also other people at the institute, others under the SS Quarter Master Sergeant Weigelt, were entrusted with the transport. As Gerstein had received the order for the acquisition of prussic acid, and about his connections with Degesch had Dr. Peters at his disposal, he could no longer stop further deliveries, especially as he was by his own people constantly spied on and kept under surveillance.¹⁶⁷

Armin Peters could not put a date on this meeting, but the connection to Degesch and Dr. Peters suggests it was the June 1943 / beginning of 1944 order.

In the report prepared for Dr. Peters' appeal dated 13 January 1955, testimony by witnesses Scharkowski and Dr. Eckhardt (given again for the review of the case) is cited. According to them, Gerstein told them during the war that he was supposed to stock large quantities of poison in Berlin and this poison was supposed to serve - "at a later point in time to kill a large number of people in a fully unexpected way".¹⁶⁸ This bears a resemblance to what Gerstein wrote in his report about the order given to him by Günther in early 1944. The appeal report then declared: "The establishing by the jury court, [that] Gerstein intended to acquire the gas from the start for use for the already long-in-operation destruction action in Auschwitz, may not any longer be maintained."¹⁶⁹ This is supported further by Gerstein's statement to Dr. Ehlers in which he said he had the gas misdirected so that it would not be at one's disposal "in the deciding moments", which suggests it otherwise would have been stored for use until that moment.¹⁷⁰ The other obvious question is why Gerstein would have been asked to acquire gas for the "long-in-operation destruction action" when, as former commandant Höss testified, the entire gassing material was supplied exclusively by the Testa company.¹⁷¹ Another complicating factor was that while Gerstein had specified that the gas be delivered in 500 g cans, no witnesses who had been either interned or employed in Auschwitz could remember ever having seen this size can being used in

the camp.¹⁷² While this is far from definitive proof, when taken in conjunction with the other evidence, the case for a yet unknown purpose for the gas becomes stronger.

Several other pieces of evidence point to the possibility that the gas was never even used against people. The appeal report dated 25 July 1949 quoted Dr. Ehlers' testimony about Gerstein: "Gerstein certainly expressed that through his activity not one person was killed. He said that many times."¹⁷³ He had said similar things to Pastor Rehling.¹⁷⁴ On 24 May 1944 Gerstein addressed a letter to Dr. Peters at Degesch, asking him technical questions about the shelf life of the "special Oranienburg and Auschwitz delivery" since "none at all has been used until now of these quantities." He continued: "On the other hand considerable quantities , that is, actually the entire kept quantity - will suddenly be required".¹⁷⁵ This letter was dismissed by the Frankfurt court as insufficient proof that the gas had not been used at Auschwitz to kill people as it could have been used after the letter was written. This could be true, but the letter itself deserves more consideration. What reason would Gerstein have had to write such a letter if it was not true? If it was an attempt to clear his name, he would not have left open the possibility that the gas could still be used. The letter taken at face value at least supports the idea that the gas Gerstein was asked to acquire was actually not intended for use in the "general" program of destruction that was being carried out in the death and concentration camps. A more generous view of this letter and statements made to friends suggests that he was successful in keeping the gas from being used against people entirely. At the same time, this letter could contradict Gerstein's claims that he had the gas disappear immediately after arrival for disinfection. The wording does not indicate whether it was used up immediately or simply destined for such purposes. Unfortunately, there is insufficient evidence to prove the matter either way.

The final verdict in the Degesch case amounted to an ambivalent legal decision that while there was enough evidence to support suspicion of a crime, there was not

enough to prove the crime had been committed. This had the effect of undercutting the moral implications of the case which had been of much concern in the earlier trials. To leave it at that for Gerstein leaves too much unsaid. Simply because the true outcome of his involvement cannot be known, does not mean the problem of weighing the moral ramifications of his participation (to whatever degree) disappears.

In its verdict against Dr. Peters, the court concluded that if he could not “help” (although it did not explain what “help” would have been), he should have completely removed himself from the situation. Its point is made more explicitly when it stated Dr. Peters should have retired from Degesch rather than involve himself, since one could not participate in any extent without also assuming partial responsibility for the killings. With each appeal, the courts confirmed that whatever the excuse, Dr. Peters’ involvement in the action was simply too great a moral compromise. Gerstein felt he could not escape involvement. His choice was not to comply or to exempt himself completely, but to try and find some other way of resisting within the constraints of his membership in the SS. Pastor Mochalski testified about the conversation he had with Gerstein in which he laid out explicitly the predicament in which he found himself. Gerstein had felt he would be making himself guilty [of murder] if he cooperated with the order. He saw suicide, not resignation from the SS, as the alternative to carrying out this order, but for this too he feared endangering the lives of the two SS men who had vouched for him. He left the Pastor without seeing a way out.¹⁷⁶

Since the court never explored the actual effect the removal of the irritant had on victims exposed to the poison gas and since the court did not explain which acts would have constituted “help”, we cannot know whether it would have accepted Gerstein’s destruction of at least one shipment and the delaying or diverting of subsequent ones as “help” and how far this would have gone in mitigating the criminality of his participation. Regarding Gerstein, the courts only ever went so far as

to validate his good intentions, but avoided the very difficult task of balancing this against the moral compromise that was his involvement in the killing program. It was a problem that even Gerstein had difficulty reconciling himself with.

German penal law is ultimately concerned with an act's consequence when deciding criminal guilt or innocence. The record offers little detail about this time of Gerstein's life, save for Dr. Peters' account of the conversation, which should be read critically and a few witnesses' impressions. The courts up to 1955 believed they knew the final outcome of his participation, which could neither be ignored nor allowed to be overshadowed by whatever personal dilemmas he was faced with at the time. Extenuating circumstances were not exculpatory.

Gerstein was constantly weighing the means against the ends. Whether in his attempts at reinstatement into the Nazi Party, his joining the SS and his carrying out of SS duties and orders, he chose to accommodate morally reprehensible ideals and crimes in the hopes of being in a position to prevent greater ones. The criminal courts that dealt with his actions had to act within the constraints of laws that were never intended to balance these issues. Penal code articles recognized only those crimes that Gerstein allowed himself to commit. The magnitude of the crime he was aiming to prevent was not defined by law. There was no scale, no method to compare the criminality of one to the other. The courts may be presumed to have acted in good faith in applying the laws as they existed, and they could justify their conclusions according to them. To argue they should have proceeded according to a different frame of reference is pointless, for no other was available. Gerstein could have exempted himself from any involvement in the destruction program and there would never have been any debate on the morality of his actions. Indeed, his name would most likely not be known today. His conscious choice to get involved, because of honourable intentions, is what condemned him later. It is doubtful that there was ever the possibility that any institution bound by law could

have absolved him. His case illustrates the very serious flaws in the legal system that had to deal with these issues. Although the judges and juries cannot be faulted for the system's inadequacy, it still raises questions as to the legitimacy of their conclusions. How did a Denazification court, which was not bound to the same criteria for judgment, deal with this issue?

HHAW = Hessisches Hauptstaatsarchiv Wiesbaden

LAB = Landeskirchliches Archiv Bielefeld

ZSL = Zentrale Stelle der Landesjustizverwaltungen Ludwigsburg

¹ The names of the defendants and most of the witnesses mentioned in the trial records were abbreviated to the first letter of the surname. I have filled in the surname and included the first name if I was able to find it in other documents.

² Sagel-Grande, Irene, H.H. Fuchs, C.F. Rüter, *Justiz und NS-Verbrechen: Sammlung Deutscher Strafurteile Wegen Nationalsozialistischer Tötungsverbrechen 1945 - 1966* vol. XIII: Lfd. Nr. 415 Massenvernichtungsverbrechen in Lagern (Amsterdam, 1975), Frankfurt am Main 4 Ks 2/48, p. 11. Hereafter referred to as 415 b

³ *Ibid.*, Frankfurt am Main 4a Ks 1/55, p. 1. Hereafter referred to as 415 a

⁴ 415 b-2.

⁵ 415 b-1.

⁶ Kohlrausch, Dr. Eduard and Dr. Richard Lange, *Strafgesetzbuch mit Erläuterungen und Nebengesetzen* (Berlin, 1950), p. 110.

⁷ *Ibid.*, p. 282.

⁸ 415 b-2.

⁹ 415 b-3-4.

¹⁰ 415 b-6-7. "Several" is a direct translation from the German "mehrere" and indicates the uncertainty at this time about the actual number of victims at Auschwitz

¹¹ 415 b-7.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ 415 b-8.

¹⁵ *Ibid.*

¹⁶ 415 b-9.

¹⁷ 415 b-8.

¹⁸ 415 a-4.

¹⁹ *Ibid.*

²⁰ 415 b-9.

²¹ 415 a-4.

²² 415 b-9.

²³ *Ibid.*

²⁴ 415 b-10.

²⁵ 415 b-13.

²⁶ 415 b-9.

²⁷ 415 b-14.

²⁸ *Ibid.*

²⁹ 415 b-15.

³⁰ 415 b-17.

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- ³¹ 415 b-18.
³² 415 b-19.
³³ Ibid.
³⁴ 415 b-20.
³⁵ 415 b-20. Ellipsis in the original
³⁶ 415 b-20-21.
³⁷ 415 b-21.
³⁸ 415 b-22.
³⁹ 415 b-10.
⁴⁰ 415 b-22.
⁴¹ 415 b-23.
⁴² Ibid.
⁴³ Ibid. and Germany (Territory under Allied Occupation, 1945-1955 U.S. Zone) Military Tribunals, Trials of War Criminals before the Nuremberg Military Tribunals Under Control Council Law # 10 Nuremberg, October 1946- April 1949. Nuremberg Trials Green Series. (Washington DC, 1949 - 1953), p. 10532.
⁴⁴ Ibid., p. 10533.
⁴⁵ 415 b-24.
⁴⁶ 415 b-25.
⁴⁷ 415 b-26.
⁴⁸ Kohlrausch *et al.*, p. 282.
⁴⁹ 415 b-26.
⁵⁰ 415 b-27.
⁵¹ 415 b-29-30.
⁵² 415 b-31.
⁵³ 415 b-19 and 415 b-31.
⁵⁴ 415 b-31.
⁵⁵ Ibid.
⁵⁶ 415 b-32.
⁵⁷ Ibid.
⁵⁸ 415 b-32-33.
⁵⁹ 415 b-33.
⁶⁰ Ibid.
⁶¹ 415 b-34.
⁶² Ibid.
⁶³ 415 b-35.
⁶⁴ 415 b-36.
⁶⁵ 415 b-38.
⁶⁶ 415 b-36.
⁶⁷ 415 b-36-37.
⁶⁸ 415 b-37.
⁶⁹ 415 b-38.
⁷⁰ Ibid.
⁷¹ Ibid.
⁷² Ibid.
⁷³ 415 b-39.
⁷⁴ 415 b-42.
⁷⁵ 415 b-43.
⁷⁶ 415 b-46.
⁷⁷ 415 b-43.
⁷⁸ 415 b-44.
⁷⁹ 415 b-45.
⁸⁰ Ibid.
⁸¹ Ibid.

⁸² Ibid.

⁸³ 415 b-46.

⁸⁴ 415 b-52.

⁸⁵ 415 b-51.

⁸⁶ 415 b-55.

⁸⁷ Ibid.

⁸⁸ 415 b-56.

⁸⁹ 415 b-58.

⁹⁰ 415 b-59.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ 45 b-61.

⁹⁵ Ibid.

⁹⁶ 415 b-62.

⁹⁷ 415 b-63.

⁹⁸ Ibid.

⁹⁹ Sagel-Grande *et al.* Frankfurt am Main Ss 351/49, p. 8. Hereafter referred to as 415 c.

¹⁰⁰ 415 c-10.

¹⁰¹ 415 c-15.

¹⁰² 415 c-16.

¹⁰³ Sagel-Grande *et al.* Frankfurt am Main 4 Ks 2/48, p. 1. Hereafter referred to 415 d.

¹⁰⁴ 415 d-3.

¹⁰⁵ 415 d-4. The “total penalty” refers to the sentence handed down when, because one law was violated several times, the standard “single” punishment for that action is seen as insufficient, and a greater “total” penalty must be calculated to replace it.

¹⁰⁶ Sagel-Grande *et al.* Frankfurt am Main Ss 223/50, p. 1-2. Hereafter referred to as 415 e.

¹⁰⁷ Sagel-Grande *et al.* Wiesbaden 3 Ks 3/51, p. 4. Hereafter referred to as 415 f.

¹⁰⁸ 415 f-5.

¹⁰⁹ Sagel-Grande *et al.* Karlsruhe 3 StR 533/52, p. 2. Hereafter referred to as 415 g.

¹¹⁰ Sagel-Grande *et al.* Wiesbaden 3 Ks 3/51, p. 3. Hereafter referred to as 415 h.

¹¹¹ 415 h-2-3.

¹¹² 415 h-3.

¹¹³ Sagel-Grande *et al.* Frankfurt am Main 4a Ks 1/55, p. 2. Hereafter referred to as 415 a.

¹¹⁴ 415 a-2.

¹¹⁵ 415 a-1.

¹¹⁶ 415 a-6.

¹¹⁷ 415 a-7.

¹¹⁸ 415 a-8.

¹¹⁹ Ibid.

¹²⁰ 415 a-9.

¹²¹ 415 a-10.

¹²² 415 a-12.

¹²³ 415 a-15.

¹²⁴ 415 a-16.

¹²⁵ 415 a-18.

¹²⁶ 415 a-16.

¹²⁷ 415 a-17.

¹²⁸ Ibid.

¹²⁹ 415 a-18.

¹³⁰ 415 a-19.

¹³¹ 415 a-20.

¹³² Ibid.

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- ¹³³ 415 a-21.
¹³⁴ 415 a-22.
¹³⁵ *Ibid.*
¹³⁶ *Ibid.*
¹³⁷ 415 a-23.
¹³⁸ 415 a-23-24.
¹³⁹ 415 a-24.
¹⁴⁰ Drost, appeal report for the provincial and jury courts in Frankfurt am Main 25 July 1949, HHAW.
¹⁴¹ 415 a-24.
¹⁴² Schönke, Dr. Adolf, *Strafgesetzbuch für das deutsche Reich* (Munich, 1944), p. 444. The 1944 edition of the penal code includes the 4 September 1941 version of article 211.
¹⁴³ *Ibid.*, p. 446.
¹⁴⁴ *Ibid.*, p. 450.
¹⁴⁵ Kohlrausch *et al.*, p. 110.
¹⁴⁶ Schwarz, Dr. Otto, *Strafgesetzbuch: Nebengesetze, Verordnungen, Kriegstrafrecht* (Munich, 1943), p. 100.
¹⁴⁷ 415 b-56.
¹⁴⁸ 415 b-58.
¹⁴⁹ 415 b-59.
¹⁵⁰ 415 b-32.
¹⁵¹ Peters, Dr. Gerhard, written statement 9 March 1948, HHAW.
¹⁵² Drost, appeal report 25 July 1949, HHAW.
¹⁵³ *Ibid.*
¹⁵⁴ *Ibid.*
¹⁵⁵ *Ibid.*
¹⁵⁶ 415 b-55.
¹⁵⁷ Gerstein, Kurt, French report 26 April 1945, LAB. Underlining mine. The copy of this report held at the archive in Bielefeld is missing the concluding pages.
¹⁵⁸ Gerstein, Kurt, German report 4 May 1945, ZSL.
¹⁵⁹ Gerstein, Kurt, German report 6 May 1945, excerpt contained in the 27 May 1955 judgment, 415 a-20.
¹⁶⁰ 415 b-29.
¹⁶¹ 415 b-29.
¹⁶² 415 b-32.
¹⁶³ *Ibid.*
¹⁶⁴ 415 b-33.
¹⁶⁵ 415 b-37.
¹⁶⁶ 415 b-39.
¹⁶⁷ 415 b-19.
¹⁶⁸ Buchtal (no first name given), appeal report for the provincial court in Frankfurt am Main 13 January 1955, HHAW.
¹⁶⁹ *Ibid.*
¹⁷⁰ 415 b-33.
¹⁷¹ Drost, appeal report 25 July 1949, HHAW.
¹⁷² *Ibid.* and 415 b-33. Drost, appeal report 25 July 1949, HHAW.
¹⁷³ Drost, appeal report 25 July 1949, HHAW.
¹⁷⁴ 415 b-33.
¹⁷⁵ 415 b-34.
¹⁷⁶ 415 b-19.

Chapter 3 - The Denazification Hearing

To understand more fully Gerstein's Denazification trial, it is helpful to outline the Denazification process in the French zone of occupation (where Gerstein's hearing was held) and review some of the results of these proceedings.

Denazification, not be confused with the prosecution of war criminals, which was carried out by Allied Military Tribunals or by the Advocate-General¹, denotes the series of programs undertaken by the occupying forces of Germany and the German courts to root out all sources of Nazi influence from the public, economic and cultural life of Germany. The basic premise for Denazification was set out in the Potsdam agreement of 5 June 1945, which stated that one of the purposes of occupation was:

[...] the removal from public and semi-public office and from positions of responsibility in important private undertakings all members of the Nazi Party who have been more than nominal participants in its activities, and all other persons hostile to Allied purposes.²

In the beginning the Allies expected it to be an easy task to differentiate between the politically subversive and those who had not been supporters of the regime. However it became apparent that the matter was infinitely more complex than anticipated. Many officials had managed to keep away from the Nazi party and its organizations while colleagues in other ministries had been under far greater pressure to join despite personal convictions to the contrary. Added to this was the complicated matter of assigning responsibility to those, who might not have been party members, but through their occupations, for example as industrialists, factory managers, professors and journalists, had helped the Nazi party in ways many of its members had not. There also had been people who had worked against the regime under the cover of their membership.³

The primary basis for the Denazification process in West Germany was the “law for the liberation from nationalism and militarism” promulgated in the American zone on 5 March 1946. This law devised five categories in which people would be classified according to their level of responsibility and which carried with them corresponding atonement measures. Similar laws came into effect in the other zones, with the same five categories becoming binding in these areas.⁴

French armed forces occupied Württemberg-Hohenzollern in April 1945. The process of “political cleansing” began immediately, but initial measures were temporary and largely improvised. Soon, the main responsibility for this task was shifted to German authorities, when the French military governor established a German administration called the State Secretariat. This body oversaw the Denazification investigation committees in the provincial districts. On 28 May 1946 the State Secretariat promulgated a legal ordinance for the Württemberg-Hohenzollern zone which formally entrusted a State Commissar (appointed by the provincial directorate) with carrying out political cleansing in that zone. His official function was to supervise the Denazification panels, called Spruchkammer in the singular, and ensure that the process was duly followed. On 25 April 1947, the State Secretariat issued a new legal ordinance which established a new “cleansing organ” called the State Commissariat for Political Cleansing. This body, which was dedicated strictly to Denazification allowed for faster and more individual treatment of cases. The former cleansing organs simply stopped functioning and turned the cases still pending over to the new administration.⁵

The actual Denazification process worked in the following way. Questionnaires, called “Fragebogen” in German, had been drawn up by the occupying powers and were to be filled in by the majority of the German population. That is, every official, anyone seeking any but the most modest kind of employment, and anyone owning property or wishing to participate in public life had to complete such a form. These questionnaires

were designed to assess the degree of Nazi affiliation of the person concerned to the utmost detail.⁶ In Gerstein's case, his widow Elfriede filled one in on his behalf on 24 January 1949. The six page questionnaire required information about the subject's personal, educational and employment history, military service, political affiliations including possible financial donations to the Nazi party or any of its organizations as well as membership, and degree thereof, to any of them. There were also questions about possible resistance activities, publications or speeches, and the subject's financial situation.⁷

The questionnaire would then be examined by an investigation committee. If a hearing was deemed necessary, the person concerned was informed of the charge and permitted to take a position and to seek counsel. The case was then put before the Spruchkammer, which was a quasi-judicial body entrusted with full prosecutorial powers, including the right to call witnesses, take evidence and pass judgment. The chairman of the Spruchkammer had legal qualifications, but other members, making up a sort of jury, were taken from various professional groups.⁸ Once the case had been evaluated, a representative of the State Commissariat recommended a judgment. This was then voted on by the "jury", although it appears from Gerstein's case that the chairman did not vote. The judgment was given legal force once the State Commissar officially recognized the Spruchkammer's decision. Appeals of the verdicts were permitted but adjudicated by the same bodies which initially examined the case. In essence, an appeal hearing simply re-considered the evidence, in Gerstein's case, most of the original "jury" decided the appeal. The State Commissar had the authority either to increase or decrease the prescribed atonement measures, and to reject the verdict entirely. Sentences became executable once the verdicts were registered with the State Commissar. Judgments were also published in the official newspaper of the State

Commissariat, and after 31 May 1947, in the supplement to the government newspaper for the Württemberg province.⁹

There were five categories according to which the person concerned could be classified. The first was “main offender” (Hauptschuldiger) and was reserved for leading figures in the Third Reich. The atonement measures associated with this verdict included two to ten years imprisonment in a work camp, fines (with consideration for family responsibilities), the loss of civil rights, and the prohibition from assuming a position of leadership for ten years.¹⁰

The next category was “tainted” (Belastete), which in turn was divided into three sub-categories which all carried the same sentencing options. The first of these sub-categories was “activist” (Aktivisten), which was defined as those who had been executors of the false doctrine, active in the indoctrination against races, religion, art, existing law, against unions, or who had been informants or denouncers. This also included those who had endangered the German people’s freedom after 8 May 1945 through acts for National Socialism or militarism. The second sub-category was “militarist” (Militaristen), which was defined in three ways. One: those who had brought the life of the German people into line with the politics of the military regime. Two: those who had been responsible or who had advocated the control of foreign peoples, their exploitation or abduction. Three: Those who had supported or promoted rearmament for those purposes. The third sub-category was “beneficiary” (Nutznießer), who were described as having been war profiteers, as having obtained office by dubious methods, as having been robbers in the occupied areas, and those who secured personal advantage on the basis of their National Socialist attitude. It also included those who had withdrawn from military service for the same reasons. The punishment for being so classified was imprisonment in a work camp for up to five years, partial confiscation of

assets and property, loss of civil rights, and prohibition from taking a position of leadership for five years.¹¹

“Lesser offender” (Minderbelastete) made up the third category. For these people, mitigating circumstances had been acknowledged, based generally on a judgment of the person’s personality. The atonement measures included one to three years’ prohibition from a leading position, and if the person was not independently employed, the person could only work as a craftsman, farm labourer or in a company with less than ten employees. A one-time or series of contributions to a compensation fund could also be ordered.¹²

The fourth category was called “followers” (Mitläufer), and was defined as nominal participants and payers of political contributions. They could be ordered to contribute to a compensation fund, or in cases of civil servants, could be laid off or demoted.¹³

Those belonging to the last category of “exonerated” (Entlastete) could prove that despite formal membership to the Party or one of its organizations, they had actively resisted the regime. The law recognizing mitigating circumstances cited youth (persons born after 1 September 1919), war injury, disability and proven courage during bombings as bases for decreasing sentences.¹⁴

Denazification had far-reaching and severe repercussions for those concerned and their families, since all atonement measures involved either restrictions on employment and / or loss of property and income.¹⁵ It is obvious that these standards left a lot of room for individual interpretation. By no means was Denazification a uniformly and evenly enforced process. The original enthusiasm which met the great undertaking of reforming society soon gave way to disgust and cynicism among the German people, and in the end, most people brought before the Spruchkammern were exonerated, or their cases were not pursued.¹⁶ If generalizations can be made, the

British were the most accepting of extenuating circumstances to explain a person's involvement with the criminal government, the Americans were the most strict, insisting on definite principles and systematic categorization, and the French were somewhat indifferent, an indifference driven by utilitarian considerations, that is, they were willing to look favourably upon public officials who at the time of the occupation appeared whole-heartedly in favour of the French administration.¹⁷ With the founding of the Federal Republic in 1949, Denazification became entirely the responsibility of the German people. On 15 December 1950, the German parliament announced the law for the uniform ending of political cleansing. In the whole Federal Republic area approximately 6.08 million people had gone through the Denazification process, and 3.66 million cases had been pursued. Following chapter 5 is some statistical information on the outcome of the hearings in the French Zone and in the Federal Republic as a whole.

On 17 August 1950, the Denazification court of the State Commissariat for Political Cleansing of the Württemberg-Hohenzollern province convened in Tübingen to decide the case of Kurt Gerstein. While the reason for Gerstein's Denazification trial was not stated explicitly in any of the related documents or the judgment, it can be presumed to have come about in order to decide whether his widow Elfriede was entitled to a pension from the state.

The evidence considered in the proceeding consisted mainly of witness statements and letters to the Denazification court and the Frankfurt court which dealt with the Degesch case, to other witnesses and to Elfriede, which had been made between April 1946 and November 1950. Most of these eighteen witnesses had been comrades of Gerstein in the resistance activities of the Confessing Church but others such as Baron von Otter, the Swedish diplomat, contacts from the Dutch Resistance and even one of Gerstein's former teachers had also come forward. The court's file on

Gerstein also contained copies of the orders for protective custody, the notice of his dismissal from the Nazi Party, Gerstein's brochures "Um Ehre und Reinheit" and "Was glauben wir denn nun wirklich?" and his German report from 4 May 1945. Despite all the evidence which came from first-hand sources, the Denazification court stated that the most detailed picture of Gerstein actually came from the Degesch trial judgment with reasons. It is not altogether clear how this trial came to the Denazification court's attention, but it appears the representative of the State commissariat knew about Dr. Gerhard Peters' statement about Gerstein made during the IG Farben trial, and this led to his being made aware of the Degesch trial.¹⁸ In any case, in April 1950, the Spruchkammer requested a copy of all the documents pertaining to the March 1949 trial of Peters, Amend and Kaufmann.¹⁹ This request was repeated in July 1950, with an additional request for the results of the May 1950 appeal.²⁰ Later that month, the district attorney of the provincial court in Frankfurt sent copies of the judgments from March 1949 and April 1950, stating that although an appeal of the sentence was underway, the conclusions made in March 1949 should still be regarded as legally valid.²¹ The previous chapter outlined the Frankfurt court's view of Gerstein. The picture presented to the Denazification court by Gerstein's personal friends and contacts is of special interest here.

Almost all of the witnesses mentioned Gerstein's resistance activities for the Confessing Church and Bible circles, particularly his protest against "Wittekind", his arrests and internment for these activities and for having printed and distributed anti-Nazi brochures, which all together attested to Gerstein's long-standing opposition to Nazism. They stressed how he had helped political prisoners and their families by smuggling food and cigarettes, arranging correspondence, even protecting certain people from police persecution. They wrote of his having communicated facts of the mass killing of the Jews and the conditions in the concentration camps to friends in

Germany and to contacts abroad and his smuggling of anti-Nazi literature to the resistance in Germany. While some admitted to initially having been shocked at his decision, the witnesses were agreed that Gerstein had joined the SS with the intention to sabotage their plans, and had remained there even when his position became morally compromising because he had been convinced he could be most effective as a resistor in the SS. Gerstein's contact in the Dutch resistance J.H. Ubbink stated:

[Gerstein] explained to me explicitly that as an ordinary soldier he could do nothing at all and that as an officer he had a much greater possibility to undermine from the inside out with their [the SS'] own means. [...] Again and again he stressed that he only remained at his place in order to sabotage as much as possible. Personally he would have much preferred to walk away, [but] he knew that if another took his place, the result would be an increase in the daily murders.²²

Some considered his joining the SS a personal sacrifice, as the architect Otto Völckers wrote: "I admire Gerstein's courage, with which he took upon himself the terrible blemish of membership to the SS in order to claim the truth"²³ and as Dr. Niemöller stated: "[...] until the last conclusions [he] carried out [his] opposing attitude, for which he was ready to give up honour? family and life[...]"²⁴

Few either did not know of or chose not to mention Gerstein's involvement with the acquisition and delivery of poison gas. Those who did also testified to Gerstein's destruction of this gas. Dr. Klaus Hoegg stated Gerstein had told him he had been successful in destroying the potassium cyanide which had been entrusted to him to be passed on to the concentration camps.²⁵ Pastor Kurt Rehling wrote:

He received orders to acquire large quantities of poison to distribute in the destruction camps and also to establish space in Berlin, in which one could at any moment gas people at once. The purpose of this last measure was certainly not clear to him at the time. From Peters [an engineer with whom Gerstein worked in Berlin] I learned that Gerstein with this own hand drove such wagons with the most dangerous poison in the ditches and overturned them. In other cases he took care with his friends that the gas, which was delivered in tanker trucks, escaped on the way.²⁶

J.H. Ubbink added:

Gerstein reported that Hitler believed the killing was not going fast enough [in the camps] and Gerstein was asked to conduct experiments with poison gas. Months later he told me, that he delayed this task as long as possible, that he even had cans of the poison disappear on the way to the camps, but that he could not hold out much longer.²⁷

Most acknowledged the difficulty in coming to a conclusion about Gerstein, the problem of reconciling his will to resist with his chosen course of resistance. Some suggested that a new frame of reference was required to judge him. Dr. Otto Dibelius stated: "It would make me happy if [...] Herr Gerstein [would] not be measured with the standard which one would normally put on an active member of the SS."²⁸ Otto Wehr went further:

The virtually strange disguising of his inner Christian existence by an outer habit worn for show, for no other purpose than to help, ridicules all normal standards. [...] An assessment which will really do justice to the innermost being and intent of this man will be impossible for all moral, political and psychological attempts.²⁹

Despite the compromises suggested by Gerstein's course of action, all were convinced that Gerstein remained an opponent of National Socialism and its goals until the very end, and for this reason, that he should be exonerated.

Dr. H. Wilhelm was the lawyer representing Gerstein's and his widow's interests at the Denazification hearing. On 3 March 1950 he submitted a report outlining Gerstein's case. It included a summary of Gerstein's personal history, education and employment, his political affiliations and early resistance activities, his arrests and his internment. Regarding his joining the SS, Dr. Wilhelm stated that this was made possible since several higher SS officials, who were secretly opponents of the regime, interceded on his behalf. He went on to outline Gerstein's contacts with the Dutch resistance, his promotion in the SS and his experience at Belzec. He mentioned Gerstein's help to political prisoners and declared that he had given preparatory help to the assassination plot of June 1944. Dr. Wilhelm repeated that Gerstein had tried as much as possible to

hinder the killings, which included getting rid of 8 500 kg of prussic acid which had been ordered by several offices of the SS for unknown purposes, adding this was enough poison to kill 8 million people. He concluded that Gerstein had used all his strength and all possibilities to resist the Nazi regime, and was aware in doing so that he was placing his own life and that of his wife and children in danger.³⁰

On 17 August 1950, the Spruchkammer “jury”, which consisted of a chairman and seven other men and women, met to decide how Gerstein should be classified. The representative of the State Commissariat recommended that Gerstein be found neither a major offender nor tainted, however the jury voted seven to zero (it doesn’t appear as though the chairman voted) that Gerstein be found tainted. His widow and children were denied a pension, charged for the cost of the proceeding (which amounted to 24,000 DM), but not fined.³¹ As part of the reasons for the judgment, the court included a review of Gerstein’s personal history, political affiliations, resistance activities, his entry into the SS and rank and position there, his visit to Belzec and his meeting with Dr. Gerhard Peters in June 1943.³² The court also considered Gerstein’s report from 4 May 1945. The Denazification court relied heavily on the Frankfurt court’s assessment of Gerstein’s personality, motives and views which concluded Gerstein had not been a true SS man and had tried to work against Nazism, had helped prisoners of Concentration camps and their families, and had revealed his experiences to contacts at home and abroad.³³

The Denazification court noted there had been some witnesses who had presented an unfavourable view of Gerstein. For example, a Dr. Münch said he had heard Gerstein was brutal, one of the main perpetrators of the destruction action and a Dr. Rose and a Dr. Reichmuth stated they had considered him a true representative of the SS.³⁴

The Tübingen court repeated the Frankfurt court's conclusion that Gerstein had only succeeded in destroying the first shipment of 100 kg of Zyklon B which he had brought to Belzec in August 1942 and the first delivery of Zyklon B in June 1943, but had not been successful in eliminating subsequent deliveries "in decisive ways".³⁵ The court continued, that on the basis of these facts, it was established Gerstein knew the purpose of the Zyklon B he had ordered and acquired and "cooperated in definitive ways with the most monstrous mass crimes of the Nazi State". It added that Gerstein undoubtedly would have been prosecuted for war crimes by either an occupying power's or German court had he not committed suicide. Gerstein was counted among the few SS functionaries who knew all about the killing program and constituted "an important link in the chain of hereby responsible people".³⁶

Based on this, in the court's opinion, he had to be classified as a main offender. However, this attitude was tempered by Gerstein's resistance activities prior to his entering the SS and during his career there and by the fact that he had been persecuted and arrested for his activities for the Confessing Church.³⁷ The court seemed disturbed by the uncertainty surrounding the question of how Gerstein had managed to be accepted by the SS given his anti-Nazi past. It stated he must have convinced the SS of his total political transformation. It cited letters he wrote to the High Party Court and his father between 1936 and 1938 regarding his reinstatement to the Nazi Party, which the court felt cast doubt on whether Gerstein had been absolutely the uncompromising and irreconcilable opponent of the National Socialist world view.³⁸

The Tübingen court stated it could not be proven that Gerstein had the intention "from the beginning" to spy and to commit sabotage from within the SS.³⁹ The court felt that aside from his pre-1936 activities, he could only be considered a resistor after his experience at Belzec, which it believed was proven by his having spread the truth about this crime to members of the evangelical church and Dutch resistance and others with

the request that it be brought to the public's knowledge and by his having destroyed the two shipments of prussic acid. The court did not consider him an originator of the plan of destruction, and allowed he had been drawn into it against his will and had only carried out the orders given to him.⁴⁰ These facts could not exclude him from responsibility but did justify a milder judgment.⁴¹

The court stated it could have been expected of Gerstein, that following his experiences at Belzec, he would have resisted "with all his strength" to being used "as a handy man for organized mass murder".⁴² It believed he could have found other means by which to remove himself personally from the action. The court declared it was incomprehensible and inexcusable that he, as a convinced Christian who in earlier years had engaged in many courageous acts against the Nazis, later allowed himself to be used by them in such decisive ways, in particular, by bringing the order to Degesch. He must have realized that he was not in the position to hinder the destruction action in concrete ways.⁴³

Dr. Wilhelm submitted his appeal report on 16 October 1950, in which he stated that the Spruchkammer had fundamentally underestimated Gerstein's personality and had incorrectly applied the facts of the case in concluding that despite his resistance activities he was guilty of killing. His main objection was that the Tübingen court had adhered in too strict a way to the Frankfurt judgment. In that case Gerstein was not the primary focus of the trial, he could not defend himself and Dr. Wilhelm did not feel it was right for the case to serve as incriminating material against Gerstein. The lawyer continued that Gerstein was acknowledged as a resistor, and could only have tainted himself if his actions would have been causal in nature for the destruction of human life. The fact that he had been roped into the National Socialist machinery and was then incapable of stopping it could not be equated with this kind of criminal guilt. To be tainted, he would have had to willingly and actively collaborated in the realization of

Nazi goals. This had been refuted by witness testimony. In his report Gerstein stated he only approached National Socialism in order to work against it from the inside. His failure in hindering the realization of their goals could not be equated with willing cooperation. Dr. Wilhelm concluded that Gerstein should be classified in the group of exonerated, as even the State Commissariat representative had requested.⁴⁴

Frau Elfriede Gerstein was granted a new hearing in November 1950. A written statement by Dr. Martin Niemöller was presented which attested that Gerstein had remained a convinced opponent of Nazism until the end of his life.⁴⁵ On 16 November the jury convened. This time the very same representative of the State Commissariat asked that the previous judgment be upheld. Unfortunately, there is nothing in the record to explain this about-face. Of the seven original jurors, only two had been replaced.⁴⁶ Once again, it was a unanimous vote, and the court decided the appeal was unjustified, explaining that the fact that Gerstein had acted under duress (which the court acknowledged in the first proceeding) could not exonerate him politically nor excuse him criminally, but rather could only contribute to a milder judgment, which he had received.⁴⁷ The court restated that his giving of the order for Zyklon B to Dr. Peters amounted to being an accessory to murder, since Gerstein knew in full scale the purpose for the poison gas. The court declared it could have excused him if his refusal to carry out the order would have constituted a clear and present danger to his life or to that of his family. While it accepted that Gerstein's level of knowledge about Nazi and SS crimes would have made it very difficult for him to leave the SS, the court was not convinced that refusing to carry out this particular order would have necessarily put his life in danger.⁴⁸ The court concluded:

What occurred in Auschwitz is such a monstrosity that one could expect from the one concerned to do all that was humanly possible - when he could not hinder it - at least to make his own conscience clean.⁴⁹

This echoed the Frankfurt court's assessment of Dr. Peters, who they believed should have distanced himself as far as possible from a crime of such magnitude, if he was unable to help prevent it. In the Spruchkammer decision the court essentially said that Gerstein, once he was faced with such a monstrous crime, and given the enormous difficulty in preventing it, should have given up trying to resist. This has serious implications for the principle of resistance, for the court is saying that once the likelihood of success appears remote one is justified in not attempting to resist. Not only does this line of reasoning erase the value of the effort, but it also has the dangerous consequence of placing a resistor on the same moral plane as, or lower than someone who never tried to resist. One might argue that the court's classifying Gerstein as tainted was actually the only compromise of which it was capable in order to reconcile the proof of his efforts and the lack of proof of his success. However, as it stated, this judgment was only an acknowledgment of his resistance activities prior to his entering the SS and of part of his activities once he joined (informing foreign contacts, smuggling anti-Nazi literature to Germany, helping political prisoners). His attempts to actively help hinder killings by trying to have the means disappear (as opposed to his help by informing contacts abroad of the killings) was not valued because the court did not believe he had succeeded.

Gerstein's case was to be assessed once more, this time to decide whether he was worthy of political rehabilitation. Would it be able to come to terms with the problem of his involvement in the mass killings as a means to prevent them?

SAS = Staatsarchiv Sigmaringen

¹ Friedmann, W., *The Allied Military Government of Germany*, (London, 1947), p. 118.

² Potsdam agreement point 4. Denazification : Control Council directive no. 24 in appendix of Friedmann, p. 308.

³ *Ibid.*, p. 113.

⁴ Brockhaus Encyclopedia

⁵ Kungl, (no first name provided), State Commissariat for Political Cleansing in Württemberg-Hohenzollern (1949-1952) 1967, SAS.

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- ⁶ Friedmann, p. 114.
- ⁷ France, Military Government in Germany: Fragebogen, filled in by Elfriede Gerstein 24 January 1949, SAS.
- ⁸ Friedmann, p. 117.
- ⁹ Kungl.
- ¹⁰ R.B. (no complete names provided), "Befreiung durch Gesetz", *Die Gegenwart*.
- ¹¹ *Ibid.*
- ¹² *Ibid.*
- ¹³ *Ibid.*
- ¹⁴ *Ibid.*
- ¹⁵ Friedmann, p. 119.
- ¹⁶ *Ibid.*, p. 120.
- ¹⁷ *Ibid.*, p. 122.
- ¹⁸ Hauer, memo 9 February 1950, SAS.
- ¹⁹ Sauter at the State Commissariat for Political Cleansing, letter to the district attorney at the provincial court in Frankfurt 28 April 1950, SAS.
- ²⁰ *Ibid.*, letter to the district attorney at the provincial court in Frankfurt 4 July 1950, SAS.
- ²¹ von Wünsch, Dr. , chief district attorney at the district attorney's office of the provincial court in Frankfurt, letter to the State Commissariat for Political Cleansing 12 July 1950, SAS.
- ²² Ubbink, J.H., letter to Erika Arajs at the U.S. Department of Justice 14 September 1949, SAS.
- ²³ Völckers, Otto, statement 16 February 1949, SAS.
- ²⁴ Niemöller, Dr. Martin, statement for district attorney Erbs at the at the provincial court in Frankfurt 26 April, 1948, SAS. Question mark following "honour" in original.
- ²⁵ Hoegg, Dr. Klaus, Affidavit 31 January 1949, SAS.
- ²⁶ Rehling, Kurt, statement 1 February 1949, SAS.
- ²⁷ Ubbink, J.H., letter to Erika Arajs at the U.S. Department of Justice 14 September 1949, SAS.
- ²⁸ Dibelius, Bishop Dr. Otto, letter to Ernst Küpper 5 July 1946, SAS.
- ²⁹ Wehr, Otto, statement 24 January 1949, SAS.
- ³⁰ Wilhelm, Dr. H., summary of the Kurt Gerstein case for the State Commissariat for Political Cleansing 3 February 1950, SAS.
- ³¹ State Commissariat for Political Cleansing Württemberg-Hohenzollern province Spruchkammer, statement of judgment and penalty 17 August 1950, SAS.
- ³² State Commissariat for Political Cleansing Württemberg-Hohenzollern province Spruchkammer, judgment with reasons 17 August 1950, SAS.
- ³³ *Ibid.*
- ³⁴ *Ibid.*
- ³⁵ *Ibid.*
- ³⁶ *Ibid.*
- ³⁷ *Ibid.*
- ³⁸ *Ibid.*
- ³⁹ *Ibid.*
- ⁴⁰ *Ibid.*
- ⁴¹ *Ibid.*
- ⁴² *Ibid.*
- ⁴³ *Ibid.*
- ⁴⁴ Wilhelm, Dr. H., appeal report for the State Commissariat for Political Cleansing 16 October 1950, SAS.
- ⁴⁵ Niemöller, Dr. Martin, statement 13 November 1950, SAS.
- ⁴⁶ State Commissariat for Political Cleansing Spruchkammer, statement of judgment and penalty 16 November 1950, SAS.
- ⁴⁷ State Commissariat for Political Cleansing Spruchkammer, judgment with reasons 16 November 1950, SAS.
- ⁴⁸ *Ibid.*
- ⁴⁹ *Ibid.*

Chapter 4 ~ The Rehabilitation and Compensation Cases

When Gerstein was finally rehabilitated, Elfriede Gerstein stated that all along her main goal had been to have the risk her husband took recognized¹, but in fact the issue, the resolution of which lasted 20 years, was dominated by the legal wranglings of whether federal or provincial funds could be granted to support the widow and children of a former Nazi Party member and Waffen-SS officer. There were three ways by which the rehabilitation could be achieved. The first and most direct was by a so-called “granting of clemency” by the Minister-President of the Baden-Württemberg province, in this case, a reclassification into the group of exonerated or follower. The second and third ways involved awarding either a pension or compensation to Gerstein’s heirs, the granting of which required by law that Gerstein be recognized as a victim of Nazi persecution. Each of these possibilities involved different sets of laws and were adjudicated by different ministries at the provincial and federal levels. Assessing the claims for rehabilitation, a pension or compensation required evaluating the degree of Gerstein’s complicity in or liability for the Nazi regime’s criminal acts.

Gerstein’s family was not informed of his death until 1948. In October 1949, Elfriede presented a claim for support for surviving relatives at the pension office in Rottweil. This claim is apparently what prompted the Denazification court’s investigation of Gerstein’s pre-war and war-time activities. Its judgment classified Gerstein as tainted and ruled out the possibility of a pension being granted by the state. Elfriede allowed the matter to rest until 5 July 1954, when she re-submitted a claim for a pension for surviving relatives, again at the Rottweil pension office. She was told the awarding of such support required a “granting of clemency”, which in this case meant the reclassification of her husband into the category of exonerated or follower.² In

accordance with these requirements, Elfriede submitted a petition for clemency.³ The matter was now considered a “clemency case”.

A report was prepared for the clemency committee at the Baden-Württemberg Justice Ministry. It relied very heavily on the Denazification judgment, stating “the actual motives behind [Gerstein’s] joining the SS are questionable”. Further, it declared Gerstein had severely tainted himself by his involvement in the acquisition of prussic acid which was intended to be used against people and, quoting the Denazification judgment, noted “he represented an important link in the chain of responsible people”. The report also stated it was reasonable to expect Gerstein to have done more to keep from being involved in these crimes. The Denazification judgment had explicitly excluded Gerstein’s widow from legal claims to a pension or to support from public funds. Elfriede countered this judgment declaring her husband had been brought into the killing program through no fault of his own. The report added to this that because he knew the purpose of the Degesch order for Zyklon B, he was an accessory to murder. The clemency committee agreed that the motion for reclassification as well as the claim for a pension should be rejected.⁴ This proposal was communicated to the Baden-Württemberg Minister-President Gebhard Müller, who officially denied the application for reclassification. However, he did lift the atonement measures set down by the Denazification judgment, which were the legal costs of the proceedings. Müller explained he could not change Gerstein’s classification because the uncertainty surrounding Gerstein’s motives for his actions could no longer be clarified given his death. However, because so many prominent figures had vouched for him, he did not think it just if his family was adversely affected by the Denazification judgment.⁵ This decision was formalized on 2 February 1956.⁶

The matter was re-opened on the suggestion of the Baden-Württemberg Justice Ministry which informed Elfriede that a special granting of clemency was not required

for obtaining a pension according to the federal pension law (Bundesversorgungsgesetz, or BVG), since the law for the uniform ending of political cleansing passed on 13 July 1953 allowed that as of 31 January 1953, Denazification court decisions would no longer place any legal limitations on claims to pensions according to this law, that is, a reclassification was no longer necessary.⁷ Why this law had not been cited earlier is not explained.

In any case, Elfriede submitted a new pension claim according to the federal law, which provided state support to any person (including his or her heirs) who had suffered damage to his or her health or who had died as a result of a damage.⁸ The Rottweil Pension office rejected the new claim on 27 August 1957 with the reason that Gerstein's death could not be considered the result of a damage in the sense of article 1 of the pension law. Elfriede appealed, claiming that if her husband had committed suicide, he could not have chosen this freely or otherwise that it had to have been because of inhuman treatment. She supported this with a statement from Gerstein's war-time doctor who attested to his hypoglycemic condition which he declared caused pre-comatose conditions and "strange reactions". This appeal was rejected by the appellate department of the provincial pension office at Rottweil on 21 November 1957. It concluded Gerstein's death was suicide, and could not be traced back to a damage as outlined in the federal pension law, that is, it could not be sufficiently proven that Gerstein's freedom of choice had been impaired or ruled out. Elfriede appealed again, which prompted a deeper investigation into the conditions of the Cherche-Midi prison. The court heard statements of former prisoners, who described the poor sanitation and malnutrition. The representative of the province contended there was still insufficient evidence to prove inhuman treatment or impairment of free will. The court also considered statements from former friends and contacts of Gerstein, letters he had written to his father, newspaper articles and radio broadcasts which dealt with the case,

the Denazification judgment and the clemency decision. Once more, the pension was denied, but for slightly different reasons. This time, the court stated that Gerstein's death could be considered a damage had he not been interned by the French because of his own National Socialist activity. (On 5 July 1945, after having turned himself in to the French to be used as a witness against Nazi criminals, he was arrested on suspicion of having committed war crimes and charged with murder and for being an accessory to murder. It was at that point that he was brought to the prison in Paris. The case was dropped by a Paris Military Tribunal on 18 October 1945, presumably by reason of his decease.⁹ It appears the welfare court knew only about the indictment, but not the "outcome" of the trial. In any case, it does not seem to have played a significant role in subsequent decisions about the case.¹⁰) The court further stated it could no longer be clarified whether Gerstein had killed himself or had been killed by the French, and, in any case, it continued, if it was a matter of suicide, the issue of free will was inconsequential. The court leaned toward the view that it was indeed suicide, acknowledging there was inhuman treatment and malnutrition, and that this must have affected Gerstein all the more severely given his blood sugar condition. Added to this was the despair Gerstein must have felt at not being able to prove his acts of resistance and for being treated as a criminal. To him, the court asserted, the situation must have appeared hopeless, and he must have seen suicide as the only means of escaping his fate. All of this meant Gerstein's death could have been seen as an immediate effect of the war - if not for his being criminally tainted. The court acknowledged Gerstein's pre-war activities for the Evangelical Church and his war-time informing of foreign and domestic contacts of National Socialist crimes. However, it could not reconcile this with the fact that Gerstein had joined the Waffen-SS willingly and had taken part in the activities of the SS Hygiene Department. In its view, Gerstein must have had a complete change in attitude or at least convinced the SS he had in order to join their ranks.

Against the claim that he had joined the SS in order to resist, the court replied Gerstein must only have experienced a change in attitude once becoming a part of the SS and witnessing their crimes. It recognized his spreading the truth about the mass killings and his destruction of at least some of the gas destined for this purpose, but like the Denazification court had concluded, this court believed Gerstein had made himself guilty of these crimes since he had to have known that he was not in a position to stop the killing program and yet he had remained in the SS. It pointed to Elfriede's own testimony saying that Gerstein could have left several times but had chosen not to. In conclusion the court declared:

It is not to be underestimated that the Gerstein case is not without a certain tragedy, [...] however it cannot be left out of consideration, that Gerstein with his resistance against National Socialism remains stuck in half measures.

Citing the Denazification court judgment and the clemency decision, the court stated the case could not be judged any differently than already done.¹¹

The matter was allowed to rest for several more years, until a Jewish merchant and former concentration camp prisoner from Frankfurt am Main named Issy Wygoda presented himself to the provincial Justice Ministry in 1964 as an authorized representative of Elfriede Gerstein, and asked for a re-examination of the Gerstein case, which he hoped would lead to the recognition of Elfriede and her children as surviving relatives in the sense of article 15 of the federal damages law (Bundesentschädigungsgesetz or BEG), so that money could be granted to the family based on Gerstein's dismissal from the civil service.¹²

The damages law was passed by the federal government on 29 June 1956 and set out the guidelines for the awarding of damages to victims of National Socialist persecution and / or their heirs or relatives.¹³ The articles concerned in this case are:

Article 1:

A victim of National Socialist persecution is he who for reasons of political opposition to National Socialism or for reasons of race, faith, or world view was

persecuted by National Socialist authoritative measures and because of this suffered damage to life, body, health, freedom, property, wealth or in his professional or economic progress.

Article 6:

Section (1) excluded from damages is he who:

1. was a member of the NSDAP or one of their organizations or who gave encouragement to the National Socialist Regime; the nominal membership in the NSDAP or in one of their organizations does not exclude the claim for damages, if the persecuted person under threat to freedom, body or life fought National Socialism for reasons which correspond to article 1, and was persecuted in this way.

The ministry responsible for adjudicating claims according to this law was the provincial Justice Ministry, and specifically, a sub department VIII.

From April to June 1964, the Baden-Württemberg State Ministry conducted a thorough investigation of the entire case. It requested all the records of the Denazification trial, the clemency case¹⁴ and the Degesch trial.¹⁵ The records of the decision of the Evangelical Youth Centre in Hagen-Berchum to rename its facility the Kurt Gerstein House were considered. Wygoda sent copies of five brochures Gerstein published in 1937 and 1938 as well as two issues of the *Frankfurter Hefte* from July 1953 and August 1955 which contained essays about Gerstein.¹⁶ There were some very interesting contributions to the investigation which raised issues not seen in the court setting previously. A former contact of Gerstein, named Klaus Kornelius, who had met him in connection with his mining work in Saarbrücken sent a statement to the State Ministry describing a trip he and Gerstein had taken to Poland in 1944. Gerstein had had some business in Cracow, while Kornelius, who was a personnel manager at the Hermann Goering factory in Lothringen, had been sent to Birkenau to collect approximately 500 Polish women prisoners to work in the factory. Kornelius claimed Gerstein had known about the conditions in this camp and had asked him to choose workers from a certain block. Gerstein also, according to Kornelius, had obtained clothing and other necessities for these women and for prisoners of war.¹⁷ Although this

was not an incriminating statement, it was the first concrete link between Gerstein and Birkenau, and raised questions as to how he had become so familiar with the camp. As testified to in the Degesch case, a couple of former Auschwitz prisoners, a Dr. Strauch who worked in the SS pharmacy, and a Dr. Stock, had vague recollections of a department of “fumigation and decontamination” which possibly existed in Auschwitz, and that there had been gassings to prevent typhus epidemics, with which according to Gerstein’s report, the SS Hygiene Institute would have been concerned.¹⁸ In any case, there was enough material to suggest a connection between these two camps and Gerstein, apart from his Zyklon B order, but nothing verifiable to explain what or how involved this connection was.

The Institute of Contemporary History in Munich was also consulted because it had published Gerstein’s report in 1953, accompanied by an article by Professor Hans Rothfels, who had recognized the document as an authentic, truthful and valuable historical source. In their response letter, the Institute drew special attention to Professor Rothfels’ comments which raised interesting points in Gerstein’s favour. While stating he did not wish in this context to dispute the Denazification court judgment, Professor Rothfels disagreed with the claim that someone who had known so much could have left the SS without danger to his own life. He also held a more generous view regarding the sabotage of the Degesch Zyklon B deliveries, writing:

Also the question remains open, whether Gerstein did not actually withdraw from the orders or sabotage them. That he made two deliveries unusable was also recognized by the Denazification court. What one until now did not attribute importance to is the fact that Gerstein himself submitted twelve bills, which he easily could have had disappear. That gives the reasons, which he quoted for the drafting of his [report] indisputably strong importance. Also the letter from Degesch to him from 9 June 1944 includes the clear hint, that he was looking for arguments against the “storage life” of the stocks and with this for their immediate use only for disinfection purposes or their destruction. Indisputably all this points to a documentation of sabotage under great risk.”¹⁹

On 1 May 1964, Dr. Hendrik Georg van Dam, the General Secretary of the Central Council of Jews on Germany published an article in that organization's journal, the *Allgemeine Wochenzeitung der Juden in Deutschland* which supported Gerstein's rehabilitation. In it, he wrote that he believed the requirements for the granting of a pension to Elfriede appeared to be met. The State Ministry contacted him inquiring whether he had any relevant documents for the case. He did not, but emphasized in his letter of response the subjective element of the Gerstein case regarding the question of his having been an accessory to murder deserved considerable attention, and that it should not depend merely on the objective facts. He ascribed great value to Gerstein's intentions in writing: "The direction of Gerstein's will is of decisive importance for the judgment of his behaviour."²⁰ While he had written this article and this letter as a private citizen, that is, he had not presented these views as those of the Central Council, he had discussed his position with them. On 18 June 1964, the Governing Council of the Central Council released a statement to the South German Radio declaring:

[...] all actions and attempts of serious resistance against the unjust regime are worthy of special attention. The timely informing about the scale of the mass crimes is undoubtedly to be seen as a true act of resistance. In this connection on the basis of the present documents the case of Kurt Gerstein urgently requires a renewed examination.²¹

The results of the State Ministry's investigations were summarized in a comprehensive report dated 24 June 1964. It covered the entire case from Gerstein's birth to the present pension claim, and outlined the information supplied by the various archives and institutions consulted. However, it contained no proposals or decisions.²² Two days later the provincial Labour Ministry informed the State Ministry that the Minister of Labour had decided the pension claim (that is, a pension for surviving relatives according to the federal pension law) should be resolved in a positive way. All that remained before a legally valid decision could be issued was the return of some

records held by the Federal Labour Ministry. No explanation for this decision was provided.²³

Another report was prepared for a television broadcast on 29 June 1964 which outlined the State Ministry's treatment of the Gerstein case and which possibilities existed to obtain Gerstein's rehabilitation. Regarding the investigation into the case, the report expressed doubts over whether it was still possible to obtain as comprehensive a view of the matter as it had been in 1956 when the clemency case had been decided. It went on to outline the three ways in which the rehabilitation could be granted. The first was by the granting of a pension according to the federal pension law; the second was by awarding compensation, which would be adjudicated by the compensation authorities under the provincial Justice Ministry's supervision; and the third was by a granting of clemency by the Minister-President which would classify Gerstein into the group of exonerated or follower. Regarding the first possibility, the Labour Minister had already decided that Elfriede should receive a pension (as shown above). Still, no further explanation was given for this decision. As for the second possibility, Wygoda's letter represented the first explicit application for compensation and was grounded in the fact that Gerstein had been dismissed from his post in the Prussian public service in 1937. The third possibility, that is, the granting of clemency, was entirely within the Minister-President's discretion, and was still under review.²⁴ The difficulties faced in dealing with the case were the same faced by the preceding courts: Gerstein's motives for joining the SS and the question of his success or failure in destroying the Zyklon B destined for Auschwitz.²⁵

Just three days later, Minister-President Georg Kiesinger announced Gerstein's rehabilitation. He stated that he had asked the Labour Minister to grant Elfriede a pension, but added that this was not simply a gesture of mercy, presumably meaning relief of the Gerstein family's financial straits, but full rehabilitation:

Either Kurt Gerstein was as he saw himself, or he was not. If he was, then full justice must be granted to him. He took his secret with him to the grave and the last motives of his behaviour cannot be clarified. Personally I have the impression, that he was that which many Germans, above all also many influential personalities of the Evangelical Church see - a man, who tried to fulfill the command of his conscience.²⁶

With this, Kiesinger acknowledged the intent behind Gerstein's actions, and further gave him the benefit of the doubt regarding his motives, something the courts up to this point had resisted doing. It should be noted that this announcement in no way formalized the rehabilitation, for, as subsequent documents indicate, the controversial issues of Gerstein's case continued to be examined and discussed. The formal statement came only later and, as will be shown, was much more ambiguous.

Yet another comprehensive summary of the case was prepared, covering Gerstein's personal, educational and employment history, his resistance activities, his membership in the NSDAP, SA and SS, the Degesch, Denazification, clemency and welfare proceedings and the Wygoda claim. It was intended only as a reference aid, and did not contain any proposals or conclusions.²⁷

The State Ministry compiled lists of the factors which contributed to a positive and to a negative resolution of the clemency case. In Gerstein's favour were his resistance activities, arrests and the dismissal from the public service, the motives for his joining the SS according to many prominent witnesses, his communication of the facts of the Nazis' crimes to contacts and his hindering the use of at least two shipments of Zyklon B. Against Gerstein were the still unclear matters of how he had managed to enter the SS, the final outcome of the Zyklon B he had ordered and his connection to Birkenau.²⁸

On 14 December 1964 a report was issued stating the pension office at Rottweil had decided on 19, 21, 22 August and 20 November to grant Elfriede and her children a pension according to the federal pension law retroactive to 1 July 1954.²⁹

On 20 January 1965 Minister-President Kiesinger announced Gerstein's formal rehabilitation. The Denazification classification was changed from tainted to exonerated which was defined as one "who despite his formal party membership [...] not only took up a passive attitude, but also achieved active resistance against the National Socialist tyranny and by it suffered disadvantage".³⁰ The legal basis for this act was the law for the uniform ending of political cleansing in the version of 20 May 1957.³¹ The following day Kiesinger stated publicly that Gerstein had actively resisted National Socialist authority and had suffered disadvantages because of it.³²

At long last, Gerstein's political rehabilitation had been achieved. But this was a hollow victory. What "disadvantages" Gerstein had suffered were not defined and the Minister-President's recognition of his resistance went no further than any of the previous courts. It was not clear whether Kiesinger had simply placed less weight on the morally and legally incriminating factors of Gerstein's involvement in the Zyklon B order and deliveries or whether he had placed greater value on Gerstein's intentions than the preceding courts.

The most explicit discussion of the value of Gerstein's intentions versus his provable acts of resistance resulted from the deliberations by the provincial and federal ministries concerned in the issue over whether to grant Elfriede financial compensation. It should be noted that these deliberations were still grounded in law and did not include an evaluation of the complicated moral issues associated with Gerstein's case. However it was closer to a balancing of the tangible and intangible, quantifiable and non-quantifiable factors of the case than any of the courts thus far had come.

The possibility of awarding damages to Elfriede and her children had been raised as early as 1960, but Elfriede had not pursued it apparently because she felt her case was hopeless.³³ In his letter to the Justice Ministry in 1964, Issy Wygoda asked that Elfriede and the children be recognized as surviving relatives in the sense of article 15 of

the federal damages law.³⁴ This possibility was explored at the same time as (and in fact, beyond) the investigations into annulling or changing the Denazification classification and the pension matter.

On 23 June 1964 the State Ministry wrote to the Justice Ministry asking it in view of the Wygoda letter, to examine whether and under which circumstances Elfriede had a claim to compensation, and especially the effect of the Denazification court decision and possible reclassification on such a claim.³⁵ The Justice Ministry prepared a report outlining the relevant facts of Gerstein's history for a compensation claim. The most obvious basis for this kind of claim was the "damage to life" clause, but in fact his death came to be seen as unrelated to the persecution suffered at the hands of the Nazis. From 1936 to 1938 Gerstein could be said to have been persecuted by National Socialists for reasons of his faith and his opposition to the regime, in that he was arrested and lost his job. But these events were not necessarily related to his death. Further, the doubts surrounding his suicide could no longer be clarified, and in any case, suicide did not fit into articles 1 or 2 of the damages law. Since Gerstein died after the collapse, technically, even if he had died at the hands of the Nazis, this could not be termed National Socialist persecution, as there was no precedent for persecution by former officials. Therefore, even if the doubts surrounding Gerstein's death could be removed, his death would not be seen absolutely as persecution. Article 6 of the damages law further complicated the matter, since it called for the exclusion of claims by all people (and relatives thereof) who had been members of the Nazi party or one of its organizations. There was an allowance for excusing nominal membership if it had been taken up for resistance reasons, but anything above nominal membership had to be taken as a negative factor.³⁶ With this report the debate had begun. There was potential in the law for claims to damages based on different reasons, but all required

the balancing of Gerstein's intention to resist (i.e. the reason for his membership) and this membership itself.

On 12 October 1964 another report was prepared (presumably by the Justice Ministry) which outlined all the potential claims for damages presented by the Gerstein case. According to the federal damages law, claims could be made for damage to life, damage to freedom and damage to professional progress. As shown above, the claim for damage to life had already been rejected (albeit informally) since Gerstein's death could not be directly linked to National Socialist persecution. Further deliberations regarding the other claims would have to wait until the pension case was finalized. This report also added the possibility of a claim according to the law for the regulation of compensation for National Socialist injustice for members of the public service (known by its German acronym BWGöD) on the basis of Gerstein's dismissal for political reasons from the Prussian public service.³⁷ The BWGöD is a set of laws which governed the granting of financial compensation to former civil servants. It was directly related to the federal damages law, as it states in section 1, article 1:

Section 1
People Concerned

Article 1 (Principle)

- (1) Compensation according to this law will be received by members of the public service, who in the sense of the federal damages law were persecuted and by this were victimized in their office or work relationship or in their benefit, as well their surviving relatives are entitled.³⁸

The requirements for eligibility are outlined in article 5:

Article 5 (prerequisites)

- (1) Compensation will be granted under the prerequisites indicated in article 1 for the following damages:
1. For civil servants and career soldiers
 - a) Ending of civil servant status by reason of criminal judgment
 - b) removal from office
 - c) dismissal without pension or with shortened pension³⁹

As in the federal damages law, one could be excluded from compensation based on one's former political affiliations:

Article 8 (Exclusion from compensation)

(1) Excluded from compensation are damaged members of the public service and their surviving relatives entitled to a pension, who

1. were members of the NSDAP or one of their member groups
2. supported / promoted National Socialism

For merely nominal membership in the NSDAP or one of their member groups compensation can be granted with exception, if the membership was involved by preceding National Socialist persecution or oppressive measures, or if the damaged person despite the membership actively fought National Socialism and for this reason was persecuted.⁴⁰

However, unlike the federal damages law, there was recourse for one who had been excluded from compensation:

Article 31a (nominal members of the NSDAP excluded from compensation)

(1) To a damaged person, whose civil servant status through the damage was ended or whose pension salary was taken away, to whom for reasons of article 8 section 1 sentence 1 number 1 or number 2 compensation was not granted, so for persons falling under the law for regulation of legal relationships, article 131 of the basic law finds application, provided he without damage would have belonged to the group of people of the named law. Correspondingly this counts for his surviving relatives who are entitled to a pension.⁴¹

The Basic Law article 131 (mentioned in article 31a of the BWGöD) states:

The legal status of people, including refugees and expellees, who on 8 May 1945 were employed in the public service, have left the service for reasons not covered by civil service regulations or collective agreements and have not until now been reinstated or are employed in positions which do not correspond to the ones they held previously shall be regulated by federal legislation. The same shall apply *mutatis mutandis* to people, including refugees and expellees, who, on 8 May 1945, were entitled to but no longer receive a pension or commensurate pension for reasons not covered by civil service regulations or collective agreements. Until the legislation comes into force no legal claims shall be admissible unless Land legislation provides otherwise.⁴²

While the case had to be evaluated independently in view of each of these sets of laws (that is, the damages law, the BWGöD and the Basic Law), there was some concern about coordinating the judgments between ministries, as is shown by the letter of 28 October 1964 from the federal Minister of Finance, who was responsible for assessing

claims according to the BWGöD, to the Justice Ministry of Baden-Württemberg which was responsible for the claims according to the federal damages law. In this letter the Finance Minister asked how the Justice Ministry was dealing with the case particularly in view of article 6 of the federal damages law, since this was of decisive importance regarding the granting of compensation.⁴³

The Justice Ministry replied with a report summarizing the status of the case thus far. It had been decided that Elfriede's claim for a pension according to the federal pension law could also be considered a timely claim for damages. Article 1 of the damages law had been affirmed, that is, Gerstein had suffered a damage. Elfriede was therefore entitled to claims for damages on the basis of damage to freedom for the periods 24 September 1936 to 18 October 1936 and 14 July 1938 to 28 August 1938 (the time of Gerstein's internment in a Gestapo prison and in Welzheim concentration camp), as well as for damage to professional progress until 31 March 1950. The damage to life claim had been rejected since Gerstein's death was not considered to have been a National Socialist measure. On the other hand, there was still the possibility that Elfriede could be granted compensation for social hardship provided for in article 171 of the damages law. Still to be decided however, was whether the nature or level of Gerstein's membership in the NSDAP, SA and SS would exclude his heirs from these claims. A claim for compensation according to the BWGöD could also be grounded in Gerstein's dismissal from the Prussian public service.⁴⁴

Approximately one week later, on 4 November 1964, the Justice Ministry prepared a minute debating the strength of article 6 of the damages law. There had been a meeting with the director of the Baden-Württemberg State Ministry, who while admitting the State Ministry had nothing to do with damages claims, had declared there should at least be some agreement among the responsible authorities before the issuing of the clemency decision. (As mentioned above, examination of the compensation matter

occurred concurrently with the clemency case investigation.) The director had further stated that excluding a claim to damages on the basis of article 6 was unjust, since testimony from so many prominent church leaders had assured Gerstein had joined the SS for resistance reasons. Regarding Gerstein's involvement with Zyklon B, he had pointed out that Gerstein had succeeded in destroying at least two quantities and in any case, it was unreasonable to have expected Gerstein to destroy all of it, since this surely would have revealed his resistance position.⁴⁵ This attitude was not unlike that of Professor Rothfels of the Institute of Contemporary History. As will be shown below, the Justice Ministry did not share this sympathy for Gerstein's predicament. All that was decided for the moment was that the Justice Ministry would prepare an official statement for the State Ministry on its assessment of the case, and it was suggested the federal government do the same vis à vis the BWGöD.⁴⁶ It was becoming clear that the provincial and federal governments wished to present a uniform front.

The Justice Ministry report was presented on 14 December. Regarding article 6 of the damages law, the Ministry allowed that Gerstein's membership in the NSDAP and the SA could be considered nominal as he had resisted the regime during this time. His membership in the SS, however, had to be seen as above-nominal given his responsibilities there and promotion. It remarked that the 28 March 1949 judgment of the Frankfurt court had accepted statements by prominent church figures that Gerstein had only joined the SS in order to resist, but just as it had played such a decisive role in previous decisions, here too, Gerstein's involvement with Zyklon B was definitive. The Justice Ministry decided that despite Gerstein's efforts to render the poison unusable for killing purposes, his having secured the deliveries of the gas had to be considered encouragement (of the regime) in the sense of article 6, paragraph 1, number 1 of the federal damages law. It concluded: "Gerstein's behaviour represents a considerable contribution to the National Socialist intended and also carried out destruction of the

Jews.”⁴⁷ The Justice Ministry did however point to the strong possibility that compensation could be granted on the basis of Gerstein’s dismissal, that is, according to the BWGöD, but added that this law also contained a provision of exclusion for similar reasons in its article 8. ⁴⁸ This report was an indication of future tendencies in deciding the case, that is, the stronger potential of the BWGöD than the federal damages law.

Another report was prepared on 30 December by the Justice Ministry on a conversation between it and the State Ministry. The Justice Ministry had expressed concern over the difficulty in rejecting a damages claim based on Gerstein’s “encouragement” of the Nazi regime if the State Ministry were to pronounce Gerstein exonerated in the clemency proceeding. It may be that this concern over conflicting decisions is what caused the significant toning down of the original rehabilitation statement of June 1964, which had gone much further in acknowledging the value of Gerstein’s intentions and motives. The agreed course of action was therefore as follows: The Justice Ministry would re-examine the possibility of granting a claim according to damage to profession, while the State Ministry would look into the possibility of simply lifting the Denazification court classification. Should this prove unsatisfactory, there was the suggestion of an extra-legal payment to Elfriede by way of a private settlement. ⁴⁹

On 20 January 1965, Minister President Kiesinger announced Gerstein’s reclassification into the category of exonerated, declaring: “Gerstein actively resisted National Socialist authority and by this suffered consequent disadvantage.”⁵⁰ When later asked about the nature of this decision, Kiesinger replied that while he had achieved Gerstein’s political rehabilitation with his clemency decision, for all compensation claims it would have to be proven through a legally regulated proceeding that Gerstein had suffered damage by National Socialist persecution.⁵¹ The present decision would have no legal effect on the compensation case.

With the clemency case now concluded, the deliberations surrounding the claims according to the federal damages law and the BWGöD intensified. On 22 February 1965 the Justice Ministry prepared a summary of the compensation case for the federal Ministry of the Economy. It included an outline of Gerstein's life and activities, the Denazification case and the clemency proceeding. Regarding claims for compensation, the requirements of article 1 of the federal damages law and article 1 of the BWGöD had been met in that Gerstein had been brought into custody for his opposition to the regime and had lost his job as a result. There was the possibility of rejection of the compensation claim according to article 8 of the BWGöD. If it was simply a matter of Gerstein's membership in the NSDAP and the SA, compensation could be granted since he had fought Nazism and was persecuted for it. But once his SS membership was taken into account, this provision could no longer be used. The question became one of whether his resistance (attested to by so many credible witnesses) could remove the above-nominal character of his SS membership. This would require a special judgment. As concluded previously, Gerstein's involvement with Zyklon B was objectively a considerable contribution to the National Socialist plan of destruction. The present authorities did not believe his inner attitude at the time could have any bearing on this. According to a 1960 ruling, to confirm article 8, sentence 1 number 2 (that the activity was a promotion of National Socialism), it had to be proven that the person concerned knew, or had to have known, that the effect of his activity was support or promotion of National Socialism, and further, this was not dependent on whether the effect was also intended.⁵² Once again, those responsible for assessing Gerstein's actions were left no room by the law to place value on intent.

For some undeclared reason, it was decided that the claims according to the BWGöD would have to be decided before those according to the federal damages law.⁵³ As hinted at earlier, the BWGöD was considered to have more potential for success,

perhaps also, the provincial ministry wished to follow the federal government's lead in evaluating the conditions for exclusion.

A report prepared for the compensation matter on 20 November 1967 contained the most elaborate discussion of the problem of whether to accept or refuse Gerstein's heirs' claims to compensation or damages based on Gerstein's activities that had been given to date. It began with an overview of Gerstein's life, resistance activities and SS activities. The Frankfurt judgment of May 1955 was cited which concluded that Gerstein took part in the Nazi regime in order to prevent worse things. More recently, Gerstein had been recognized as a victim of persecution in the sense of article 1, section 1 of the BWGöD and article 1 of the federal damages law. The report postulated that had Gerstein not been dismissed from the public service, it was reasonable to expect he would have been promoted to a higher position, entitling him to a corresponding pension. These circumstances explained why the following debate was taking place.⁵⁴

On the surface, Gerstein (or rather, his heirs) appeared to be excluded from any claim to public funds since he had been a member of the NSDAP and the SA. But the nominal character of these memberships in conjunction with his resistance activity could re-include him in accordance with article 8, section 1, sentence 2 of the BWGöD. This required an examination of the nature of his SS membership. Had Gerstein been drafted, he would not be excluded. But Gerstein had volunteered and was even promoted to SS-Obersturmführer. Generally, rank was not considered in assessing such cases, but here, this obviously meant Gerstein had been more than a nominal member. Also, the reason for membership was not usually taken into account unless this was to the person's disadvantage, for example, in a case where the person had remained only a nominal member but had joined out of enthusiastic support for the regime. There was no precedent for granting compensation in a case where one had become an above-nominal member in order to work against the regime. Gerstein claimed he had joined

the SS in order to find out the truth, and this motive was apparently confirmed by his spreading the news of Nazi crimes to contacts in Germany and abroad and by his writing the reports for the Allies at the end of the war. But as was shown earlier, intent could not be taken into account by the law, and actions had to be evaluated for their potential objective support of the regime. The report questioned whether Gerstein's activity did indeed have a positive or desired effect for National Socialism, and further, whether this effect had been known to him or at least had to have been known to him. The many preceding trials had shown it could not be proven whether Gerstein had succeeded in keeping the gas he ordered from being used against people. This report stated it was unlikely given the powerful, hierarchical organization of the SS. Gerstein was credited for having tried to the best of his abilities and with it accepting personal danger to prevent the use of the gas. All in all however, Gerstein's behaviour was seen as an objective promotion of National Socialism, and therefore he (and his heirs) were excluded from compensation.⁵⁵

But the issue would not end here either. Since Gerstein was excluded on the basis of article 8 BWGöD, article 31a of the BWGöD and consequently Basic Law article 131 came into question. It now had to be decided by the federal Finance Minister whether Gerstein would also be excluded on the basis of article 3 sentence 1 number 3a of the law regulating the application of Basic Law article 131. This new law, passed in 1964, was called article 3 G 131. It dictated that "persons whose activity seen in total above all served the maintenance of the illegal and arbitrary system of National Socialism" are excluded from the privileges of Basic Law article 131.⁵⁶ Gerstein's resistance activity would seemingly keep him from being excluded. But his involvement with the Zyklon B again posed a serious problem in assessing the overall value of his resistance activities and intentions. Since it could not be proven the gas he ordered had been used against people, he would have been acquitted in a criminal proceeding, as

shown by the Degesch case. What therefore became important in the present case however, was Gerstein's potential knowledge of wrongdoing. This was refuted by the accepted witness testimony that attested Gerstein had joined the SS in order to resist and felt obliged, if not duty-bound for religious reasons, to remain in that organization. Possible consciousness of illegality was equally refuted since Gerstein had believed the only way to fight actively the mass destruction was to remain where he was, and furthermore, he did this aware of the great danger to himself. The report acknowledged the apparent contradiction in excluding Gerstein by reason of article 8 BWGöD and consequently re-including him by reason of Basic Law article 131, but pointed out that in such cases, the Basic Law was authoritative. The matter as it now stood indicated that the family could receive a pension since Elfriede was effectively the widow of a civil servant who had been dismissed from his job because of resistance activities.⁵⁷

The wording of article 3 sentence 1 number 3a of the law for the settlement of the legal circumstances of persons falling under Basic Law article 131, i.e., article 3 G 131 ("persons whose activity *seen in total above all* served the maintenance of the illegal and arbitrary system of National Socialism"), allowed the provincial government the greatest latitude in assessing the Gerstein case which had been available so far, for while officially intent was not to be taken into account, the non-quantified phrase "seen in total" did allow for some subjective interpretation. This was one of the few times when Gerstein's motives and intentions had been permitted to mitigate the actions committed in his duty as an SS officer. Echoing the May 1955 Frankfurt judgment, remaining doubt surrounding the case was not held against him.

Two undated⁵⁸ reports prepared by the Federal Ministry of the Interior for the Federal Ministry of Economics continued the debate of Gerstein's case with regard to the BWGöD and in particular, article 31a and the Basic Law article 131. The first simply stated that if using article 31a of the BWGöD, one would accept that Gerstein would

have remained in his job until the collapse and a pension would be calculated accordingly.⁵⁹ The second report revealed far more about the federal government's attitude toward the case. It stated that in view of the BWGöD, Gerstein's dismissal would be grounds for compensation. In the provincial report from November 1967, Gerstein's claim was excluded in accordance with article 8 on the basis of his membership in the SS. Here, the federal authorities based the exclusion on even earlier acts. They declared that because Gerstein had been an influential youth leader at the time "there [could] be no doubt that he through his joining the NSDAP and the SA in 1933 won numerous young people to the Party", thereby promoting the regime. For the compensation matter, it was no longer a question of assessing his activities in the Waffen SS. In fact, his very joining the NSDAP and SA pre-empted any examination of his resistance activities at this time. One has the impression from this report that the federal Ministry of the Interior with this decision was not simply applying a stricter interpretation of the law, but harboured a certain level of antipathy toward the whole issue, for the report continues that with this basis (for exclusion, i.e. the membership to the NSDAP and the SA), "it is prevented, that the claimant and her advisor blow out of proportion the entry and activity of Gerstein in the Waffen SS as a resistance action."⁶⁰ But at the same time the government appeared reluctant to publicize this opinion, since a private settlement regarding the compensation matter was deemed most satisfactory as this would avoid "considerations and explanations about the behaviour of Gerstein".⁶¹

This did not really change very much, since exclusion for whichever reason (membership to the NSDAP, SA or SS) still would have led to the application of article 31a of the BWGöD and Basic Law article 131, shifting responsibility for the decision to the provincial authorities. It simply indicated that if the compensation decision were to be challenged, debate would not center on Gerstein's SS activities as had been the case previously.

A letter between the federal Ministry of Economics and the Baden-Württemberg State Ministry solidified the proposal of a settlement. Whereas the provincial government would have had to decide the case according to the Basic Law article 131 and the federal government according to the BWGöD, the federal government stated it wished to avoid two decisions for “political and objective” reasons and instead to draft a settlement on the basis of the Basic Law article 131.⁶² The Justice Ministry also expressed its wish to be involved in any settlement discussions, so that it too, could finally resolve any remaining claims according to the damages law.⁶³

There was still some doubt on the part of the provincial Finance Ministry over whether it was justified to grant the pension despite article 3 G 131. (Several weeks earlier, during a conversation with the Justice Ministry and the federal Ministry of Economics, the provincial Finance Minister stated he did not believe a pension could be awarded given the precedent set concerning the former vice Chancellor and Reich Commissar von Papen. In his case, he had been denied a mayor’s pension because of his participation in the promulgation of laws in 1933 and 1934 which at the time could have been termed hostile to the rule of law, but which were ultimately harmless.)⁶⁴ The use of article 3 G 131 would be examined one more time and, if no conclusion could be reached, a private settlement would be drafted which would regulate all of Elfriede’s claims.⁶⁵

On 12 March 1969, the Baden-Württemberg Finance Ministry sent a report to nine other federal and provincial ministries outlining its conclusion regarding the payment of a pension to Elfriede Gerstein in accordance with Basic Law article 131. Granting this pension required a final judgment with regard to the provision for exclusion outlined in article 3 G 131. This most recent examination concerned itself with Gerstein’s SS activities. Regarding Gerstein’s first contact with Zyklon B, that is the 100 kg order he brought to Belzec, the report concluded that because Gerstein’s claim

that he had buried the poison could not be refuted, no criminal act could be inferred. More incriminating was his acquisition of Zyklon B without irritant for Auschwitz in 1943 and 1944. The report cited the Frankfurt court's conclusion, that is, that Gerstein knew that the gas he ordered was delivered for the purpose of killing, that Gerstein obtained the gas only on order from the SS and that while Gerstein tried to have the gas used for purposes other than killing, there is insufficient proof for his success. The precedents set for the interpretation of article 3 G 131 were very strict, in that only an act, i.e. "deliberate and conscious participation in offenses against the laws of humanity or against the rule of law", and neither criminal intent, general attitude, nor motive for participation in the illegal act was required for confirmation of this provision. In Gerstein's case there were many contradictions between his official activities and his private resistance. There was little information about his duties in the SS, and by this point it was virtually impossible to clear up lingering uncertainties. It was therefore difficult to establish whether offenses in the sense of this article 3 had indeed been committed. The situation as the Finance Ministry saw it was the following: Gerstein's having had the irritant removed from the gas shows that he knew it would be used against people. He had allowed it to be delivered to places where mass killings were being carried out and where the use of this gas was beyond his control. Yet "his" Zyklon B represented only a fraction of what was actually used there, and it could not be proven that it even had been used against people. The Finance Ministry made special note of the fact that Gerstein had joined the SS willingly in October 1939⁶⁶ and had made no known attempt to remove himself by either sick leave or transfer to keep from being involved in the crimes of the SS. It cited the testimony of Gerstein's widow given before the Tübingen district court in February 1961 that Gerstein's participation was only with a view to sabotage, that in so doing he had placed himself and his family at risk, and further that his remaining with the SS was a deliberate choice. In his report,

Gerstein had declared he used his position to work against National Socialist crimes, and this seemed confirmed by his spreading the truth about these crimes to contacts at home and abroad. However, no one could corroborate his destruction of all of the Zyklon B. The Finance Ministry concluded that the conditions of article 3 G 131 were not necessarily present, and further, that ethical considerations pointed to a settlement in the form of a widow's pension because of Gerstein's former civil servant status.⁶⁷ As in November 1967, Gerstein was given the benefit of the doubt and his resistance intentions were incorporated into the overall view of his activities.

The final settlement proposal was put forward on 29 April 1969 during a meeting of the Ministerial council. It included a complete review of the case and concluded with the suggested pension of 828,46 DM per month, retroactive to 1 April 1964.⁶⁸ The amount from this date until February 1969 was equal to 43 341,26 DM, in comparison with 70 231, 71 DM - the amount to which the Gerstein family would have been entitled had the BWGöD claim been settled positively. The attached comment revealed sensitivity to public opinion in favour of Gerstein. Recriminations were expected because compensation was being denied. The Baden-Württemberg province went on record declaring that the rejection of the compensation claim was on the part of the Republic, and that any complaints should be addressed there.⁶⁹ The Justice Ministry later asked that the settlement also include the resolution of any claims according to the damages law, even though these claims had been repeatedly, though not legally or officially, refuted.⁷⁰

The settlement was finally presented to and accepted by Elfriede Gerstein at the federal Ministry for Economics in Bonn on 13 June 1969 and the meeting was attended by the federal Minister of Economics, and the Baden-Württemberg ministers of Finance and Justice. A widow's pension in accordance with Gerstein's former civil servant status

was granted as allowed by Basic Law article 131. The settlement simultaneously ruled out any further claims according to the BWGöD and the federal damages law.⁷¹

It is extremely important to highlight the difference between the compensation and pension components of the settlement. In practical terms, it may appear unimportant, since what the Gerstein family needed was money and whether it came under the heading of compensation or pension would be irrelevant. But there are two very different connotations attached to these words.

Compensation denotes making amends for an injustice. The injustice contested in the Gerstein case was originally the Denazification court judgment which barred Gerstein's heirs from financial support from the state despite his resistance to the Nazi regime. The Denazification classification was changed, which allowed Elfriede and the children to receive a state pension. The possibility remained that the family could still receive compensation based on the persecution Gerstein had suffered in his personal and professional life at the hands of the Nazis because of his resistance. This shifted the focus of the debate to a comparison of Gerstein's condemned membership in several National Socialist organizations to the Nazi regime's unjust persecution of him in order to decide, in effect, which was worse. In the end claims to compensation were denied because Gerstein's resistance activities were not valued highly enough to mitigate his membership in the NSDAP, SA and SS. The implicit conclusion is that Gerstein was not an entirely innocent victim. The federal government's and provincial Justice Ministry's apparent awareness of this implication is revealed by their reticence to make their conclusion public, in favour of resolving the claims in a settlement tailored to the Gerstein case. This further indicated a feeling that the preceding arguments against the granting of compensation were not entirely defensible.

Pension on the other hand denotes that which is an employee's right. Gerstein's former position in the public service provided sufficient cause for the granting of a

pension. And while it is true that the path which led to the awarding of this pension did indeed include a recognition of Gerstein's motives and resistance activities, this was implicit at best, and was somewhat overshadowed by the more overt resignation to the fact that there was simply insufficient evidence to show why Gerstein's family should not be entitled to it.

SMBWA = Staatsministerium Baden-Württemberg Archive

HAS = Hauptstaatsarchiv Stuttgart

IZM = Institut für Zeitgeschichte, München

BWFM = Baden-Württemberg Finance Ministry

BWJM = Baden-Württemberg Justice Ministry

BWLM = Baden-Württemberg Labour Ministry

BWSM = Baden-Württemberg State Ministry

FFM = Federal Finance Ministry

FME = Federal Ministry of Economics

FMI = Federal Ministry of the Interior

¹ Gerstein, Elfriede, letter to Baden-Württemberg Minister-Präsident Georg Kiesinger 17 February 1965, SMBWA.

² Reutlingen Welfare Court, judgment with reasons in the matter of pension payments to Elfriede, Arnulf, Olaf and Adelheid 25 July 1962, SMBWA.

³ Minister-President Gebhard Müller, letter to Möller 8 May 1956, SMBWA.

⁴ Clemency Committee at the BWJM, report and proposal 20 December 1955, SMBWA.

⁵ BWSM, letter to the BWJM 23 December 1955, SMBWA.

⁶ BWSM, letter to the BWJM 2 February 1956, SMBWA.

⁷ BWJM, letter to the BWSM 1 February 1956, SMBWA.

⁸ articles 1 and 38 of the Bundesentschädigungsgesetz : www.compuserve.de/bc_recht/gesetze/

⁹ L'Officier-Greffier, Chef du Dépôt Central d'Archives de la Justice Militaire, letter to the Ministre des Armes, Direction de la Gendarmerie et de la Justice Militaire in Paris 26 October 1960, IZM.

¹⁰ BWSM, report on the Gerstein case 24 June 1964, SMBWA.

¹¹ Reutlingen Welfare Court, judgment with reasons in the matter of pension payments to Elfriede, Arnulf, Olaf and Adelheid 25 July 1962, SMBWA.

¹² Wygoda, Issy, letter to the BWJM 31 March 1964, SMBWA.

¹³ While damages and financial compensation are essentially the same thing, I will maintain a difference in usage in the interests of clarity. In speaking about the federal damages law, the term damages will be used. In speaking about the BWGöD (a set of laws to be discussed below), the term compensation will be used.

¹⁴ BWSM, request for records from the Ludwigsburg State Archive 15 April 1964, SMBWA.

¹⁵ BWSM, request for records from the office of the district attorney at the provincial court in Frankfurt a.M. 6 May 1964, SMBWA.

¹⁶ Wygoda, Issy, letter to the BWSM 18 May 1964, SMBWA.

¹⁷ Kornelius, Klaus, letter to the BWSM 7 June 1964, SMBWA.

¹⁸ BWSM, report "Unfavourable points of view for a positive decision in the Gerstein case" 10 July 1964, SMBWA.

¹⁹ Institute of Contemporary History, letter to the BWSM 26 June 1964, SMBWA.

²⁰ Van Dam, Dr. Hendrik Georg, letter to Dr. Feuchte at the BWSM 3 July 1964, SMBWA.

²¹ Central Council of Jews in Germany, statement given to the South German radio 18 June 1964, SMBWA.

²² BWSM, report regarding Kurt Gerstein 24 June 1964, SMBWA.

²³ BWLM, letter to the BWSM 26 June 1964, SMBWA.

²⁴ BWSM, report for television broadcast 29 June 1964, SMBWA.

²⁵ *Ibid.*

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- ²⁶ Kiesinger, Minister-President Georg, statement recorded by the South German Radio and Television 29 June 1964, SMBWA.
- ²⁷ BWSM, overview regarding Kurt Gerstein from 6 July 1964, SMBWA.
- ²⁸ BWSM, remarks for the Gerstein case 28 July 1964, SMBWA.
- ²⁹ BWSM, report on the pension for surviving relatives according to the Federal Pension Law 14 December 1964, SMBWA.
- ³⁰ BWSM, report on the Gerstein case 27 January 1965, SMBWA.
- ³¹ Kiesinger, Georg, granting of Rehabilitation 20 January 1965, SMBWA.
- ³² BWJM, note for the Gerstein rehabilitation 20 November 1967, SMBWA.
- ³³ Reutlingen Welfare Court, judgment with reasons in the matter of pension payments to Elfriede, Arnulf, Olaf and Adelheid 25 July 1962, SMBWA.
- ³⁴ Wygoda, Issy, letter to Justice Ministry 31 March 1964, SMBWA.
- ³⁵ BWSM, letter to BWJM 23 June 1964, HAS.
- ³⁶ BWJM, report for the BWJM Department leader 25 June 1964, HAS.
- ³⁷ BWJM, report on the Elfriede Gerstein damages matter 12 October 1964, HAS.
- ³⁸ Germany, excerpts from the Law for the regulation of compensation for National Socialist injustice for members of public office (undated) included in the BWSM Gerstein rehabilitation file, SMBWA.
- ³⁹ *Ibid.*
- ⁴⁰ *Ibid.*
- ⁴¹ *Ibid.*
- ⁴² Germany, Basic Law for the Federal Republic of Germany 23 May 1949, (Bonn, 1994), p. 84.
- ⁴³ FFM, letter to BWJM 28 October 1964, HAS.
- ⁴⁴ BWJM, report of the compensation matter of Elfriede Gerstein for the Federal Minister of Finance 28 October 1964, HAS.
- ⁴⁵ BWJM, minute on Elfriede Gerstein damages matter 4 November 1964, HAS.
- ⁴⁶ BWJM, minute on Elfriede damages matter 4 November 1964, HAS.
- ⁴⁷ BWJM, comment on the damages case for the BWSM 14 December 1964, HAS.
- ⁴⁸ *Ibid.*
- ⁴⁹ BWJM, comment on Elfriede Gerstein damages matter 30 December 1964, HAS.
- ⁵⁰ BWJM, note for the Gerstein rehabilitation 20 November 1967, SMBWA.
- ⁵¹ BWJM, excerpt of BWJM statement of provincial press office from 28 January 1965, HAS.
- ⁵² BWJM, report for the Federal Minister of Economics 22 February 1965, HAS.
- ⁵³ BWJM, letter to the Federal Minister of Economics 25 November 1965, HAS. And BWJM, letter to the Federal Office of the Chancellor 25 January 1967, HAS.
- ⁵⁴ BWJM, note for the Gerstein rehabilitation 20 November 1967, SMBWA.
- ⁵⁵ *Ibid.*
- ⁵⁶ In 1964 the “law for the settlement of the legal circumstances of people falling under Basic Law article 131” was passed. It was repealed in 1994. This law governed the interpretation of the Basic Law for Gerstein’s case.
- ⁵⁷ *Ibid.*
- ⁵⁸ Although no dates of authorship appear on the documents themselves, one refers to a report from 9 January 1968, and they in turn are mentioned in a document from 16 February 1968, therefore these documents must have been produced between 9 January 1968 and 16 February 1968.
- ⁵⁹ FMI, Gerstein case. On the legal position according to Basic Law article 131 in accordance with article 31a BWGöD (no date but after 9 January 1968), HAS.
- ⁶⁰ FMI, judgment of the Gerstein case from the point of view of the BWGöD (no date but after 9 January 1968), HAS.
- ⁶¹ FMI, judgment of the Gerstein case from the point of view of the BWGöD (no date but after 9 January 1968), HAS.
- ⁶² FME, letter to the BWSM 16 February 1968, HAS.
- ⁶³ BWJM, minute regarding the Elfriede Gerstein compensation matter 12 March 1968, HAS.
- ⁶⁴ BWJM, minute regarding the Elfriede Gerstein compensation matter 4 July 1968, HAS.
- ⁶⁵ NWJM, minute regarding the Elfriede Gerstein compensation matter 25 October 1968, HAS.
- ⁶⁶ No reference is given for this date in the document.
- ⁶⁷ BWFM, report regarding the payment of pension amounts according to Basic Law article 131 to Elfriede Gerstein 12 March 1969, HAS.
- ⁶⁸ Why the pension was granted retroactively to 1 April 1964 and not 1945 is not explained. This date is most likely related to the initial date of application for compensation submitted by Issy Wygoda on 31 March 1964. It should be noted that the pension granted to Frau Gerstein on 14 December 1964 (the

pension according to the federal pension law) was also given retroactively to the date of application, that is, July 1954.

⁶⁹ Author unclear, presumably BWFM, report on meeting of ministerial council 29 April 1969, HAS.

⁷⁰ BWJM, letter to BWFM 13 May 1969, HAS.

⁷¹ FME and BWFM, settlement agreement 13 June 1969, HAS.

Chapter 5 - Conclusion

To accommodate evil to prevent evil - is this more or less reprehensible than self-exemption from the problem? The courts and government bodies which deliberated Gerstein's case were charged with passing judgment on how he acted within this dilemma.

The Degesch trials revealed the most about Gerstein's most incriminating act, that is, his ordering of irritant-free Zyklon B apparently for use in the killing program at Auschwitz. (As shown above, other evidence does indicate this may not necessarily have been the intended purpose, but as the courts believed this was the case, the assumption must remain.) In its first judgment, the Frankfurt court concluded Gerstein had failed in keeping the gas from being used against people. Regarding Dr. Peters, it insisted that he should have exempted himself from participation if he could not "help". By the 8th judgment, the Frankfurt court was no longer certain about the outcome of Gerstein's efforts. They acknowledged he had been an anti-Nazi, believed he had acquired the Zyklon B only on order from the SS knowing it would be used against people, and concluded his efforts to keep it from being used as intended could not be proven to have succeeded. While there was no obligation for this court to pronounce final judgment on Gerstein (the trial after all was about Dr. Peters), if this had been the case, there was no longer any need for a debate on the value of his intentions and efforts as opposed to his incriminating activities, since no crime could be proven to have taken place.

The Denazification court relied heavily on the initial Degesch verdicts, which in turn were based on the assumption that Gerstein had failed in keeping the poison from being used for killing. Since this court was strictly focused on Gerstein, it went further with its judgment, stating Gerstein was even more "tainted" because he should have

recognized the futility of his efforts at an earlier stage and exempted himself from participation in the criminal activities of the Waffen-SS. But this conclusion did not acknowledge Gerstein's belief in the potential of his position or his willingness to continue risking his life and that of his family in order possibly to be of help at a later point in time. The court faulted Gerstein for his failure without acknowledging the odds of success. But if the success was doubtful from the start, and he accepted the risk of resisting despite these odds, would that not increase the value of his efforts? Resistance so often failed because it was singular and uncommon. Does this not also increase its value, if it was carried out without wide support (tacit or otherwise)? Admittedly the court was in a difficult position. To ignore the context of resistance altogether would be to undermine the value of resistance because the element of risk is not acknowledged. To admit that these acts had value beyond their practical results would be to open the door to recriminations of all those who never tried to resist. At the same time, to over-emphasize context (the near impossibility of far-reaching results by individual resistance in a totalitarian regime) provides these same people with an excuse for not trying. None of these conclusions would have been desirable in the time of Germany's reconstruction. In its final verdict the Denazification court did ignore the element of risk. It meant that its assessment of Gerstein was incomplete.

In his conversation with Pastor Rehling prior to his joining the Nazi Party Gerstein was warned:

You say that [perhaps it is better to be in the Party if one wishes to resist] because you reckon that you can still have a say in things. With a "Führerprinzip" orders come from above and then it is only: Obey! He who enters this tumbling avalanche only increases the plunging mass.¹

And yet he had consciously accepted this potential for failure. He wrote to his father in the fall of 1944: "It is the fate of all gamblers that they will risk all that they have, even their being, for an uncertain gain."² In his reports he wrote that his having the gas used

for disinfection was “very dangerous”. The excuse he had prepared if confronted with the gas’ disappearance was so easily refuted, that the fact that he was willing to use the excuse shows the desperation of his actions and his acceptance of the risk. Gerstein accepted not only danger, but risked even his conscience for his resistance goals. His friend Helmut Franz wrote of him:

He not only risked his life, in order to be certain of the glory of the next world, no! He sacrificed his honour in this original way, and with it offered a sacrifice of his whole person. He became a sinner to represent God in hell.³

Gerstein’s rehabilitation was an anti-climactic statement that recognized nothing more than the preceding courts about the value of his resistance efforts, what he had risked and sacrificed, or about his involvement with the killing program. The compensation authorities had the most potential for such a statement since the laws involved could excuse the incriminating nature of his membership to the NSDAP and the SS if this had been undertaken for purposes of resistance. Except here again intent was not permitted to play a role in the assessment of Gerstein’s above-nominal SS membership and “criminal activities” there. Since the success of his sabotage efforts was still in doubt, his actions alone (as the court knew them) could not mitigate his membership. The law for the settlement of the legal circumstances of persons falling under Basic Law 131 (article 3 G 131) allowed greater latitude in interpretation since his activity could be seen “in total”. Here however the federal government shifted the focus back to his membership to the NSDAP and the SA as evidence of sufficient promotion of National Socialism, which pre-empted a discussion of resistance versus his involvement in the killing program. This still led to Basic Law article 131 coming into force. The final conclusion echoed the Frankfurt court’s 1955 verdict: Gerstein knew the Zyklon B he ordered was intended to be used against people, he did not order it on his own initiative and it could not be proven that he had been successful in controlling its use. Article 3 G 131 required deliberate and conscious participation in

offenses against the laws of humanity or against the rule of law (criminal intent was not an element however). The responsible authorities could not decide. His acts were very incriminating but they acknowledged his will to resist. Public pressure from the press and particularly Jewish groups and ethical considerations for the Gerstein family's financial state pointed to a private settlement based on Gerstein's former civil servant status. He was denied compensation, but his heirs were granted a pension, again because no crime could be proven to have taken place. But to give Gerstein credit because there was insufficient proof of his criminality, is not nearly the statement of recognition that his efforts deserve.

It was not as if the courts did not recognize the difficulty in pitting the ends against the means, and so chose to avoid this debate, the problem was that except for the Denazification court, they did not know what the "ends" were, and they were left with the incredible task of assessing the implications of Gerstein's "means". But was the courts' inability to come to terms with Gerstein's resistance absolutely the fault of the legal system? The temptation throughout the examination of Gerstein's story is to hold up his good intentions (which cannot be doubted) as supreme. We are presented with a man utterly frustrated by his own will and the very powerful system which rendered the realization of his will virtually impossible. We sympathize with this frustration, the result of which is to place greater and greater value on his intentions and decry the courts' undervaluing of this. But one must acknowledge the danger in placing too high an exculpatory value on intent. In legal terms, moral concerns of a case must be subordinated to the practical outcome (proof or lack of proof of a crime), otherwise there can be no standard against which all defendants are judged. Morals are not absolute, or at least not entirely agreed upon. They are fluid and carry different significance according to the situation in which they become an issue. Not least of all the elements of a person's behaviour such as "intention" and "true feelings" are very

hard to prove and disprove. While this may provide sufficient explanation for why the courts acted as they did, it does not remove the regret over such an unsatisfactory and incomplete reckoning with the individual Kurt Gerstein. What it does indicate is that the courts and government were ill-equipped to deal with his case.

Even Gerstein who most of his life saw the world in extreme terms revealed moments of doubt regarding his own moral position toward the end of his life. The reluctance or inability to deal with the complex question of Gerstein's resistance was not exclusive to the courts and government authorities. Witnesses for him emphasized his intentions but did not balance this against his questionable acts; they defended his membership in the SS, but did not discuss what he did there. Perhaps they too were undecided. As his long time friend and confidant Pastor Rehling remarked: "He was considered by his contemporaries with a shake of the head."⁴

¹ Rehling, Kurt, "Ein Aussenseiter des Widerstandes" *Unsere Kirche* (1964), KGH.

² Gerstein, Kurt, letter to Ludwig from hospital in Berlin fall 1944, LAB.

³ Franz, Helmut, *Kurt Gerstein. Aussenseiter des Widerstandes der Kirche gegen Hitler* (Zürich 1964), p. 37.

⁴ Rehling, Kurt, statement 1 February 1949, SAS.

Post Script

There are still several mysteries surrounding Gerstein's case: his connection to Auschwitz-Birkenau and the circumstances of his death are just two examples. But perhaps most interesting is the question of his plan to assassinate high SS officers, including Heinrich Himmler. Otto Wehr referred to Gerstein's "daring plan of the fall of 1944", but offered no details.¹ In the 1951 appeal report for the Degesch trial, Dr. Peters' attorney indicated there were statements Gerstein had been planning an assassination of High SS leaders with the Zyklon B he ordered.² Armin Peters testified in 1954 that he had made calculations with Gerstein to have some new equipment explode during its display before the SS leadership. He declared the plan had failed because of technical difficulties.³ Obviously none of these snippets of evidence offer concrete proof of such a plan. But it remains that there is still a lot that is unknown about Gerstein's activities during the pivotal years in the SS and how much more he may have been involved in or risked in pursuance of his resistance.

It is a fitting epilogue to Gerstein's story to know that his testimony about Nazism's crimes was indeed used as he intended. His French report served as evidence in the Nuremberg trial of main war criminals, in the so-called Doctors' trial⁴, as well as for the trial of Adolf Eichmann.⁵ His reports are also mentioned in the visitor's guide to Treblinka as evidence of what occurred there.⁶ In 1964, Gerstein was named "righteous among the Godless by the Contemporary Jewish Document Centre in Paris.

¹ Wehr, Otto, statement 24 January 1949, SAS.

² Schmidt-Leichner, Dr. Erich, appeal report for the Hessian Minister of Justice 16 April 1951, HHAW.

³ Peters, Armin, statement for the provincial court in Frankfurt 23 October 1954, SMBWA.

⁴ Rothfels, Hans, "Augenzeugenbericht zu den Massenvergasungen" *Vierteljahrshäfte für Zeitgeschichte* (1953), 177.

⁵ State of Israel, Ministry of Justice, *The Trial of Adolf Eichmann: Record of Proceedings in the District Court of Jerusalem* (Jerusalem: 1993), 1557 - 1559.

⁶ Burba, Dr. Manfred, "Treblinka: Ein NS-Vernichtungslager im Rahmen der 'Aktion Reinhard'", 1995.

Statistical Information on the Denazification Hearings

Results for Württemberg-Hohenzollern until 18 April 1952¹

Total number of cases: 150 194

Main Offenders:.....8 --- 0.005%
 Tainted:80 --- 0.05%
 Lesser Offenders:.....235 --- 0.16%
 Followers and Amnestied:....57 303 --- 38%
 Exonerated:.....2 627 --- 1.75%
 Not Concerned:79 168 --- 52.7 %
 Others:.....10 773 --- 7.15%

Results for the Federal Republic for 1949 - 1950 by zone²

Zone	# of cases	Main Offender	Tainted	Lesser Offenders
American	950 126	1654	22 122	106 422
British	2 041 454	~	~	27 177
French	669 068	13	938	16 826
Total:	3 660 648	1667	23 060	150 425

Zone	Follower	Exonerated	Youth Amnesty	Homecoming and Christmas Amnesty
American	485 057	18 454	89 772	194 738
British	222 028	1 191 930	~	~
French	298 789	3 489	71 899	1 908
Total:	1 005 874	1 213 873	161 671	196 646

Zone	not concerned	other reasons
American	~	31 907
British	512 651	87 668
French	270 152	5 054
Total:	782 803	124 629

¹ Henke, Klaus-Dietmar, *Politische Säuberung unter französischer Besatzung*, (Stuttgart, 1981), p. 122.

² Vollnhals, Clemens and Thomas Schlemmer, *Entnazifizierung: Politische Säuberung und Rehabilitierung in den vier Besatzungszonen 1945 - 1949*, (München, 1991), p. 333.

Directory of Laws important for Gerstein's Rehabilitation and Ministries responsible for their implementation

Federal Pension Law - Bundesversorgungsgesetz (BVG)

Article 1:

He who in the valid area of this law or on a German ship or airplane by reason of an intentional, illegal violent attack against his or another person or through whose legal defense suffered a health damage, receives by reason of the health and economic consequences upon application, support in a corresponding use of the regulations of the federal pension law. The use of this regulation is not excluded, if the attacker acted in mistaken assumption of a justifiable reason.

Article 38:

widows and orphans have claim to a pension for surviving relatives if the (damaged) person died as a result of the damage

Responsible authorities: Provincial jurisdiction; Baden-Württemberg Labour Ministry

Federal Damages Law - Bundesentschädigungsgesetz (BEG)

Article 1:

A victim of National Socialist persecution is he who for reasons of political opposition to National Socialism or for reasons of race, faith, or world view was persecuted by National Socialist authoritative measures and because of this suffered damage to life, body, health, freedom, property, wealth or in his professional or economic progress.

Article 6:

Section (1) excluded from damages is he who:

1. was a member of the NSDAP or one of their organizations or who gave encouragement to the National Socialist Regime; the nominal membership in the NSDAP or in one of their organizations does not exclude the claim for damages, if the persecuted person under threat to freedom, body or life fought National Socialism for reasons which correspond to article 1, and was persecuted in this way.

Responsible authorities: provincial jurisdiction; Baden-Württemberg Justice Ministry, Department VIII

Law for the regulation of compensation for National Socialist injustice for members of the public office - Gesetz zur Regelung der Wiedergutmachung nationalsozialistischen Unrechts für Angehörige des öffentlichen Dienstes (BWGÖD)

Section 1 - Group of People

Article 1 [Grundsatz]

- (1) Compensation according to this law will be received by members of public office, who in the sense of the Federal Damages Law (BEG) were persecuted

and by this were victimized in their office or work relationship or in their benefit, as well their surviving relatives are entitled.

Article 5 [prerequisites]

- (1) Compensation will be granted under the in article 1 indicated prerequisites for the following damages:
 - 1. For civil servants and career soldiers
 - a) Ending of professional condition by reason of criminal judgment
 - b) removal from office
 - c) dismissal without pension or with shortened pension

Article 8 [Exclusion of compensation]

- (1) Excluded from compensation are damaged members of the public office and their surviving relatives entitled to a pension, who
 - 1. were members of the NSDAP or one of their member groups
 - 2. supported / promoted National Socialism
 For merely nominal membership in the NSDAP or one of their member groups compensation can be granted with exception, if the membership was involved by preceding National Socialism persecution or oppressive measures, or if the damaged person despite the membership actively fought National Socialism and for this reason was persecuted.

Article 31a [nominal members of the NSDAP excluded from compensation]

- (1) To a damaged person, whose civil servant status through the damage was ended or whose pension salary was taken away, to whom for reasons of article 8 Section 1 Sentence 1 N. 1 or N. 2 compensation was not granted, so for persons falling under the law for regulation of legal relationships, article 131 of the Basic Law finds application, provided he without damage would have belonged to the group of people of the named law. Correspondingly this counts for his entitled to pension surviving relatives.

Responsible authorities: Federal jurisdiction; primarily Ministry for the Economy, but also Ministry of the Interior

The Basic Law article 131 - Grundgesetz 131 (131 GG)

The legal status of people, including refugees and expellees, who on 8 May 1945 were employed in the public service, have left the service for reasons not covered by civil service regulations or collective agreements and have not until now been reinstated or are employed in positions which do not correspond to the ones they held previously shall be regulated by federal legislation. The same shall apply *mutatis mutandis* to people, including refugees and expellees, who, on 8 May 1945, were entitled to but no longer receive a pension or commensurate pension for reasons not covered by civil service regulations or collective agreements. Until the legislation comes into force no legal claims shall be admissible unless Land legislation provides otherwise.

Law for the settlement of the legal circumstances of persons falling under Basic Law article 131 (article 3 G 131)

Article 3 sentence 1 number 3a:

Persons whose activity seen in total above all served the maintenance of the illegal and arbitrary system of National Socialism do not have employee rights.

Responsible authorities: provincial; Baden-Württemberg Finance Ministry

Directory of Names

Amend, Mr. : functionary in Degesch's Zyklon department

Buchholz, Domkapitular Peter : Catholic chaplain of Plötzensee prison

de Vos, Henk : Dutch friend of Gerstein in Berlin during the war

Dibelius, Generalsuperintendent Dr. Otto : bishop of Berlin, knew Gerstein through common church work

Ebeling, Bertha : sister of Karl Gerstein's wife, killed in Hadamar in February 1941

Eckhardt, Ministerialrat Dr. jur. Walter : former classmate of Gerstein and civil servant

Ehlers, Oberkirchenrat Dr. Hermann : knew Gerstein since 1930 through common church work, later president of the German parliament

Elbau, (no first name or initial given in sources) : with the American Department for the Investigation of War Crimes, questioned Dr. Gerhard Peters in connection with the IG Farben case

Evans, Major Derek Curtis : British officer with the Consolidated Advance Field Team (CAFT) of the Combined Intelligence Objectives Sub-committee (CIOS) with the 6th Army group, met Gerstein along with Mr. John W. Haught at the Hotel Mohren in Rottweil on 5 May 1945

Franz, Vikar Egon : friend of Kurt through common church work

Gädeke, Pastor : knew Gerstein since 1935 through common church work

Gerstein, Adelheid : daughter of Kurt
 Alfred : brother of Kurt
 Annemarie : sister of Kurt
 Arnulf : son of Kurt
 Clara, née Schmemann : mother of Kurt
 Elfriede, née Bensch : wife of Kurt
 Friedrich : brother of Kurt
 Johannes : brother of Kurt
 Karlheinz : brother of Kurt
 Ludwig : father of Kurt
 Ludwig Jr. : brother of Kurt, died at Cambrai, 1918
 Olaf : son of Kurt

Globocnik, SS-Gruppenführer Odilo : head of all extermination camps in Poland during the war, Head of Reich Police in Lublin, founded Belzec, Maidanek, Sobibor and

Treblinka, met Gerstein in August 1942 when he visited Belzec, Treblinka and Maidanek

Günther, SS-Sturmbannführer Rolf : gave the order to Gerstein for the acquisition of prussic acid on at least two occasions in 1942 and 1944, participant in the Wannsee conference

Haught, John W. : American member of the Consolidated Advance Field Team (CAFT) of the Combined Intelligence Objectives Sub-committee (CIOS) with the 6th Army group, met Gerstein along with Major Derek Curtis Evans at the Hotel Mohren in Rottweil on 5 May 1945

Hinz, Leokadia : Gerstein's housekeeper in Berlin

Hochstrasser, Dr. Peter : Press attaché of the Swiss Legation in Berlin

Hoegg, Dr. Klaus : knew Gerstein since the 1920s through common church work

Höss, SS-Hauptsturmführer Rudolf : commandant of Auschwitz 1940 -1945

Kaufmann, Mr. Karl : bookkeeper and correspondence clerk for Degesch

Kiesinger, Georg : Minister-President of the Baden-Württemberg province, granted Gerstein's rehabilitation

Kornelius, Klaus : former personnel manager of the Goering factory in Lothringen, friend of Gerstein during the war

Küpper, Ernst : friend of Gerstein through common church work

Mattei, Major Matthieu : French Officer, interrogated Gerstein in Paris July 1945

Mochalski, Pastor Herbert : minister at Niemöller's former Church of St-Anne in Berlin-Dahlem, met Gerstein in 1942

Mrugowsky, SS-Standartenführer Dr. Joachim : Chief of SS Hygiene Institute, Gerstein's superior

Müller, Gebhard : Minister-President of the Baden-Württemberg province, predecessor of Kiesinger, denied Gerstein's rehabilitation

Niemöller, Dr. Martin : co-founder of the Confessing Church, interned in Dachau from 1937 to 1945, knew Gerstein since 1925 through common church work

Nieuwenhuizen, Miel : Dutch friend of Gerstein in Berlin during the war

Otter, Baron Göran von Otter : Secretary of the Swedish Legation in Berlin, met Gerstein in August 1943

Peters, Armin : friend of Gerstein, engineer assigned to the Luftwaffe and collaborator with Gerstein in disinfection duties

Peters, Dr. Gerhard : manager of Degesch - Deutsche Gesellschaft für Schädlingsbekämpfung in Frankfurt - marketing firm of Zyklon B

Pfannenstiel, Prof. Dr. med. Wilhelm : professor of Hygiene at Marburg-Lahn university, accompanied Gerstein on trip to Belzec in August 1942

Pommer, Robert : uncle of Kurt in America
Robert Jr. : cousin of Kurt in America

Rehling, Pastor Kurt : knew Gerstein since 1928 through common church work

Scharkowski, (no first name appears in sources) : former friend of Gerstein

Schinke, Gerhard : former teacher of Gerstein

Tesch, Dr. Bruno : manager of Hamburg firm Testa, sentenced to death and executed March 1946 for having knowingly delivered poison gas for the purpose of killing

Ubbink, J. H. : friend of Gerstein from Dutch resistance

van Dam, Dr. Hendrik Georg : General Secretary of the Central Council of Jews in Germany, helped achieve Gerstein's rehabilitation

Völckers, Otto : architect, met Gerstein on an Italian steamship in October 1938

von Halle, J. W. : with the American Department for the Investigation of War Crimes, questioned Dr. Gerhard Peters in connection with the IG Farben case

Wehr, Kirchenrat Otto : knew Gerstein since the 1930s through common church work

Weinbacher, Mr. : lawyer for Testa, co-accused and convicted with Tesch

Weisselberg, Pastor Herbert : minister in Hagen-Berchum, family friend of Gerstein, later head of the Evangelical Youth Centre in Hagen-Berchum (the Kurt Gerstein House), collected Gerstein's letters and other related documents for archive

Wirth, Kriminalkommissar Christian : Police leader in Lublin, Poland, commandant of Belzec

Wulle, Reinhold : former Reichstag member, leader of the Gesellschaft Deutsche Freiheit or Wulle-Bewegung which sought a return of the monarchy in Germany

Wygoda, Issy : Frankfurt merchant and former concentration camp prisoner, represented Gerstein in the claim for compensation

Zerrer, K.S. : Gestapo agent charged with Gerstein's case, helped secure his release from Welzheim concentration camp

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