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# Göring's Trial, Stahmer's Duty: A Lawyer's Defense Strategy at the Nuremberg War Crimes Trial, 1945-46

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## **Göring's Trial, Stahmer's Duty:**

### **A Lawyer's Defense Strategy at the Nuremberg War Crimes Trial, 1945-46**

How does a lawyer defend a Nazi in a court of law? Dr. Otto Stahmer was faced with answering this very question in 1945 when he agreed to provide defense counsel at the Nuremberg War Crimes Trial from 1945 to 1946. But he did not choose to defend just any Nazi. His client was Hermann Göring, the Number Two Nazi in the Third Reich, and the highest-ranking Nazi who survived the war.<sup>1</sup> Even though his client was a complex character whose guilt was unassailable, Stahmer mounted a threefold defense strategy: he directly challenged the indictment against Göring, he questioned six witnesses in an attempt to paint a very different picture of Göring than with which most were familiar, and he called Göring himself to the witness stand and allowed the Nazi to use his keen intellect to defend his own actions.

Typically, when historians study the International Military Tribunal (IMT) and the Nuremberg War Crimes Trial of 1945 and 1946, they focus on a variety of things such as the American chief prosecutor, Robert H. Jackson, the verdicts and sentences, or the lasting impact Nuremberg has had on international law. These are all important facets that need to be discussed for there to exist any meaningful understanding of the Nuremberg War Crimes Trial, but no one has placed Stahmer at the center of the discussion of Göring's defense. For example, Drexel Sprecher, who was Assistant Trial Counsel for the US prosecution, provides a detailed account of Göring's testimony in his memoir, but he only discusses Göring's answers, not the questions

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<sup>1</sup> Technically, right before committing suicide, Hitler made Karl Dönitz chancellor and had Göring kicked out of the party and arrested. But for all intents and purposes, Göring was the leading Nazi after the war and during the Trial.

Regarding spelling conventions, I have used the German spellings for people's names (Göring rather than Goering) and for German terms, except where either of these appear in direct quotes.

Stahmer asked that prompted Göring to provide this information.<sup>2</sup> Joseph Persico, author of *Nuremberg: Infamy on Trial*, briefly includes Stahmer in his chapter, “The Defense,” but then quickly shifts all the attention onto Göring.<sup>3</sup> By analyzing Stahmer’s defense strategy, historians can gain valuable insights into various aspects of the trial, rather than just concluding that Göring acted as his own lawyer.

Before the famous “master trial,” or, as it came to be called, the Nuremberg War Crimes Trial, could begin, the Allied powers had to draw up the list of charges. They agreed upon the following four: the common plan, or conspiracy, to wage aggressive war; crimes against peace; war crimes; and crimes against humanity. Even though the Tribunal charged Göring with four counts, it is best for the historian to look at them in the aggregate since all four were closely related. The first count, the common plan, of which every defendant was charged, meant that the Tribunal believed the defendants had conspired to wage aggressive war, which eventually led to their committing crimes against peace, war crimes, and crimes against humanity. Crimes against peace, the second count, meant the defendants had violated international law by going to war, thereby ending the peace that had existed since 1919. The third count, war crimes, encompassed a variety of charges, the most salient of which being the defendants’ unnecessary destruction of Allied buildings and ill-treatment of civilian populations. This latter example was strikingly similar to the fourth and final count, crimes against humanity, which, simply put, referred to the immorality of the Holocaust.

The Nazi defendants received their indictments on 19 October 1945, and the trial was set to begin on 20 November. The trial was initially scheduled to begin in September but had to be

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<sup>2</sup> Drexel A. Sprecher, *Inside the Nuremberg Trial: A Prosecutor's Comprehensive Account*, 2 Vols. (Lanham, MD: University Press of America, 1999), Vol. II, 759-773.

<sup>3</sup> Joseph E. Persico, *Nuremberg: Infamy on Trial* (New York: Viking, 1994), 269-72.

pushed back to November because the defendants had no counsel. All the defendants had to have access to their defense counsel for at least thirty days before their individual trials could commence.<sup>4</sup> The judges were actually shocked to learn that the German war criminals had been held in prison for three months without the benefit of counsel. Such action could have been grounds for a mistrial if the proceedings had occurred in the US.<sup>5</sup>

In order to ensure that the defendants had the opportunity to select counsel, the Allies provided them with a list of approved lawyers from which to choose.<sup>6</sup> The Office of Military Government for the United States (OMGUS) then used its money and resources to find the lawyers that the defendants had requested, but they could only do so much to try and persuade these attorneys to come to Nuremberg.<sup>7</sup> Finding willing attorneys to represent Nazis was arduous to say the least. Various Allies began to suggest ways of finding suitable defense counsel in a timely manner. Airey Neave, a British war hero who was made clerk to the defendants because he was fluent in German, suggested that counsel be forced to appear, but the judges rejected that notion. They instead favored the remarks of Judge John Parker, alternate justice for the US, who believed the Tribunal should “‘regard it as a duty’ for lawyers to provide defence.”<sup>8</sup>

If an individual defendant found none of the attorneys on the list appealing, such as what happened in Göring’s case, he would be allowed to select anyone he wanted—provided he was German.<sup>9</sup> The Tribunal required the German defendants to have German attorneys because, in

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<sup>4</sup> *The New York Times*, “War Trials’ Delay of 2 Months Seen,” (3 Sept. 1945) , p. 9.

<sup>5</sup> Ann and John Tusa, *The Nuremberg Trial* (New York: Atheneum, 1984), 121.

<sup>6</sup> Albert Speer, *Inside the Third Reich: Memoirs by Albert Speer* (New York: Galahad Books, 1970), 511

<sup>7</sup> Quincy Wright, “The Nuremberg Trial,” *Annals of the American Academy of Political and Social Science* 246, Making the United Nations Work. (Jul., 1946), 75.

<sup>8</sup> Tusa, 123.

<sup>9</sup> Telford Taylor. *Final Report to the Secretary of the Army on the Nuernberg War Crimes Trials Under Control Council Law No. 10* (Washington, DC: Government Printing Office, 1949), 30.

the words of Telford Taylor, Associate Trial Counsel for the US prosecution, “[I]t was felt that German counsel could more effectively represent the defendants than those of any other nationality.”<sup>10</sup> No doubt language was another reason for requiring the German defendants to have German attorneys. In addition, the defendants did not have a large pool of non-German attorneys from which to choose. The British Bar Association released a statement on 28 October 1945, stating that British lawyers should not appear as counsel for the German defendants as such an action would be “undesirable.”<sup>11</sup> While no other country’s bar association released a similar statement, it is likely to assume that American, French, and Soviet lawyers tacitly agreed it would be inappropriate for one of their own to defend someone with whom their country had just waged a war.

Göring’s initial reaction to receiving this list was that no German lawyer would want to appear before the Tribunal, implying that the trial itself was a farce.<sup>12</sup> Once Göring decided to accept counsel, he flatly refused to pick anyone from the Allies’ list. Instead, he sent inquiries to several other attorneys he knew asking if they would represent him. Some could not be found. The rest refused. It was after Göring had effectively run out of options that he asked the British prosecutor, Maxwell Fyfe, to help him prepare his case. Fyfe suggested a lawyer from Kiel named Dr. Otto Stahmer, whom Göring ultimately selected on 31 October.<sup>13</sup>

Based on an examination of relevant secondary literature, historians either know very little about Stahmer or choose not to discuss the attorney in any detail. This is most unfortunate

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<sup>10</sup>Ibid.

<sup>11</sup> *The New York Times* (Oct. 28, 1945), p. 2; Tusa, 123.

<sup>12</sup> Tusa, 121; Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Alfred A. Knopf, 1992), 133.

<sup>13</sup> Robert E. Conot. *Justice at Nuremberg* (New York: Harper & Row, Publishers, 1983), 81. Conot says that while it was very uncommon in Anglo-Saxon law for the defense and prosecution to work together, the same was not true in continental jurisprudence where both sides collaborate to find the truth; Tusa, 122; “Goering Selects Counsel,” *The New York Times*, (1 Nov. 1945), p. 4

considering that he did represent the most notorious Nazi who was living after WWII, and historians could better understand the trial by studying this individual and his defense.

Stahmer was born on 5 October 1879, in Hamburg, Altona-Ottensen and there attended secondary school where he studied classical languages and Christianity. Afterward, he spent time in the university taking courses in Tübingen, Rostock, and Kiel. Around this time in his life he married Marie Luise Stahmer, and the couple had two children. After graduating from law school, Stahmer worked for the Leipzig imperial court until 1907 when he became a partner for the firm *Lauprecht Rechtsanwälte Notare*. He then took a break from law and served in the First World War in Sonderburg with the 86<sup>th</sup> Infantry Regiment. After the war's end, he returned to practicing law and was admitted to the bar as a regional lawyer with the Schleswig-Holstein Higher Regional Court on 18 March 1945, a position he held for the rest of his life. In that same year, Stahmer became President of the Schleswig-Holstein Regional Attorney Office. It was then from November 1945 to October 1946 that the sixty-six-year-old attorney served as Göring's defense counsel at Nuremberg.<sup>14</sup> Stahmer died sixteen years later in Kiel on 13 August 1968, and was buried at sea.<sup>15</sup> He had worked as a German lawyer for sixty years but, ironically, probably had no experience with criminal law before the Nuremberg War Crimes Trial.<sup>16</sup>

One of the first questions the historian has to ask is why would Stahmer choose to defend Göring? The most obvious reason was practical. Postwar Germany was in ruins. Food and resources necessary for survival were scarce. In fact, more Germans were interested in where

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<sup>14</sup> Joseph E. Persico, author of *Nuremberg: Infamy on Trial*, erroneously states Stahmer was in his seventies when he represented Göring at Nuremberg. Persico, 140.

<sup>15</sup> He was survived by at least two grandchildren, Tamara and Michael Dackau. The Dackau grandchildren are the ones who donated Stahmer's papers, including documents from the Nuremberg War Crimes Trial, photographs, and correspondence with Emmy and Edda Göring, to the German Federal Archive in 2006. "Einleitung," *Das Bundesarchiv*, <http://www.bundesarchiv.de/foxpublic/6E165EBA0A06221200000000D3D10EA1/findmittelinfo.html>. Accessed on 7 May 2007.

<sup>16</sup> "Kanzleiprofil," *Lauprecht Rechtsanwälte Notare*, <http://www.lauprecht-kiel.de/seiten/kanzleiprofil.html>. Accessed on 7 May 2007; Conot, 81.

they were going to get their next meal than they were in the trial proceedings.<sup>17</sup> The Tribunal agreed to provide German defense counsel with food and Allied rations, such as soap, chocolate, cigarettes, and razor blades.<sup>18</sup> Individuals who possessed such items found survival much easier.

However, as demonstrated by Göring's difficulty in finding counsel, many German attorneys refused to represent Nazi clients, so a desire to have regular meals could not have been the only reason someone like Stahmer would elect to defend Göring. In fact, before the trial began, Stahmer and his fellow attorneys had to take their meals separately from the American troops at Nuremberg because some of the troops had threatened them, and Stahmer reported that one American in particular said he wanted to "bash my head in."<sup>19</sup> Another downside of serving as a member of the defense counsel at Nuremberg was having to endure ridicule from the press, which one defense counselor said contained "violent and intimidating" language.<sup>20</sup>

The more convincing reason Stahmer chose to defend Göring was that Stahmer was a former member of the Nazi party.<sup>21</sup> It was common for German defense attorneys at Nuremberg to be former members of the Nazi Bar Association (*Rechtswahrerbund*), and, in fact, it would have been unusual if they had not been members.<sup>22</sup> Most likely, Stahmer viewed it as an honor and a duty to represent Göring, the former Speaker of the Reichstag. As one reporter accounted, Stahmer was cognizant of the fact that "his name will go down in legal history as the defender of

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<sup>17</sup> "War-Crimes Trial Dull to Germans: On Eve of its Resumption Most Cling to Self-Pity Attitude, U.S. Survey Shows," *The New York Times* (Jan 2, 1946), p. 6

<sup>18</sup> The OMGUS also paid counsel in deutschmarks. The exact is disputed, though. One source says they were paid 4,000 marks upfront and then 2,500 a month afterwards (Conot, 83). Another states they were simply paid 3,500 a month. Tusa, 124.

<sup>19</sup> "Prosecution Adds Procedural Staff for Nuremberg War-Crimes Trial," *The New York Times* (7 Nov. 1945), p. 10.

<sup>20</sup> Bradley F. Smith, *Reaching Judgment at Nuremberg* (New York: Basic Books, 1981), 100. This complaint came from Dr. Hanns Marx who had read an article in the *Berliner Zeitung*. Sprecher, Vol 2., 746. The article appeared on 2 February 1946, and Dix informed the court of it on 5 March 1946.

<sup>21</sup> Persico, 94.

<sup>22</sup> Taylor, *Final Report*, 48.

the chief defendant at Nuremberg.”<sup>23</sup> He believed representing Göring would be a benefit to his career, and he was unwilling to allow the opportunity to pass him by.<sup>24</sup>

It is clear that Göring and Stahmer had more than just an attorney-client relationship. The two got along so well, in fact, that Stahmer became very close to Göring’s wife, Emmy, and daughter, Edda, and before Göring’s death, he gave Stahmer his blue briefcase as a gift.<sup>25</sup> Stahmer fought for his client to the bitter end as well. After the Tribunal had found Göring guilty and sentenced him to death, Stahmer filed an appeal on his client’s behalf even though Göring did not desire this.<sup>26</sup> Stahmer asked that either Göring’s sentence be reduced to life in prison or that the method of execution be changed to shooting rather than hanging.<sup>27</sup> The Tribunal refused, just as Göring had expected, but Stahmer’s unsolicited effort demonstrates his loyalty for his compatriot.<sup>28</sup>

The Nuremberg War Crimes Trial began on 20 November 1945. The Tribunal indicted Göring on all four counts.<sup>29</sup> Stahmer’s defense strategy was made up of three parts. First, he challenged the indictment itself, arguing over its validity. Second, he called six witnesses to the stand in an attempt to paint a very different portrait of Göring than most would have imagined. And third, he placed Göring on the witness stand and allowed the *Reichmarschall*, in effect, to defend himself, knowing that Göring was an articulate speaker with a detailed memory and

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<sup>23</sup> Tusa, 122, quoted from Rhona Churchill, *Daily Mail*, November 19, 1945.

<sup>24</sup> The Tribunal knew that Stahmer was a Nazi, yet they allowed him to defend Göring anyway. Persico, 94. The IMT Charter did not deny Nazis the right to defend other Nazis, and members of the Tribunal understood that if they refused to allow the war criminals to choose their own counsel, they would be giving the public, and the defendants themselves, a reason to find the trial unfair. The Tribunal did not, however, provide the defendants with the names of lawyers whom they knew to be members of the Nazi party, so in their own way, they voiced their disapproval. Taylor, *Final Report*, 47.

<sup>25</sup> Persico, 408.

<sup>26</sup> *Ibid.*, 409.

<sup>27</sup> Taylor, *Anatomy*, 601.

<sup>28</sup> “Ribbentrop Breaks Down,” *The Washington Post* (12 Oct. 1946), p. 2.

<sup>29</sup> Robert H. Jackson, *The Case Against the Nazi War Criminals: Opening Statement for the United States of America* (New York: Alfred A. Knopf, 1949), 179.

hoping that the best defense would be a combination of his clever arguments and Göring's defiant confidence.

Beginning with Stahmer's first defense strategy, he issued three challenges against the indictment. The first was not exclusively his doing, but he was the attorney who brought the motion before the Tribunal. On 19 November 1945, before the trial began, all of the defense lawyers came together, elected Stahmer to be their official representative, and filed a motion with the court concerning the charge of crimes against humanity. The grounds for their motion were based on the issues of *nulla poena sine lege* ("no penalty without a law") and *ex post facto* law. They made the general argument that "any defendant must needs [sic] consider himself unjustly treated if he is punished under an *ex post facto* law."<sup>30</sup> Before he committed suicide, one of the defendants, Robert Ley, responded to this charge by saying, "Even God first made the Ten Commandments and judged people by them afterward."<sup>31</sup> Stahmer also argued that the defendants could not be charged with crimes against peace because it had not existed as valid international law. The Kellogg-Briand Pact of 1928, which Germany, the US, and at least two dozen other countries had signed, clearly stated that war was a condemnable course of action in settling international conflict.<sup>32</sup> But according to the way Stahmer interpreted this treaty, it was immoral, not illegal, for one country to go to war with another. In the strictest sense, Stahmer's interpretation was valid, but the Allies did not view it that way, believing the document

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<sup>30</sup> International Military Tribunal. Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945 - 1 October 1946, 42 Vols. (Nuremberg, Germany: International Military Tribunal, 1947-1949), 19 November 1945, "Motion Adopted by All Defense Counsel." <http://www.yale.edu/lawweb/avalon/imt/proc/v1-30.htm>. Accessed 5 May 2007. (Source henceforth referred to as IMT.)

<sup>31</sup> "Jackson Declares War Charge Legal," *The New York Times* (21 Oct. 1945), p. 13.

<sup>32</sup> Michael R. Marrus, *The Nuremberg War Crimes Trial, 1945-46: A Documentary History* (Boston: Bedford/St. Martin's, 1997), 14-5.

represented a landmark in international law that would pave the way for future peace.<sup>33</sup> The prosecution referenced the Kellogg-Briand Pact to argue that the German government had agreed not to wage war because war was illegal. Willis Smith of Raleigh, NC, who was president of the American Bar Association at the time of the trial, supported the prosecution's argument, saying that the IMT had jurisdiction to convict the Nazis based on several international laws, such as the League of Nations, the Treaty of Versailles, and the Kellogg-Briand Pact.<sup>34</sup>

Stahmer's second challenge voiced objections over the fact that only judges from each of the Allied powers were the ones sitting on the bench. These men represented the countries that created the IMT Charter, and their compatriots acted as the prosecution. Stahmer argued there were no neutral parties involved in this trial. The Tribunal responded swiftly to both challenges by referencing Article 3 of the IMT Charter, which stated, "Neither the Tribunal, its members nor their alternates can be challenged by the prosecution, or by the Defendants or their Counsel."<sup>35</sup> The Tribunal's jurisdiction could not be questioned, and Jackson and the Tribunal held throughout the trial that the IMT Charter was based on international law, which allowed them to decide the charges.<sup>36</sup>

The third argument Stahmer made against the indictment occurred during his opening defense statement on 8 March 1946. The prosecution claimed that the defendants had violated the Treaty of Versailles by rearming Germany during the interwar period. Such actions were illegal and gave the prosecution evidence to indict all of the defendants on the first count, the common plan. However, Stahmer argued before the Tribunal that Germany was no longer bound

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<sup>33</sup> Ibid., 16.

<sup>34</sup> "Lawyers Defend Nuremberg Trial," *The New York Times* (10 Oct. 1946), p. 8. For more information on how the Treaty of Versailles defined war crimes, look at James F. Willis, *Prologue to Nuremberg: The Politics of Punishing War Criminals of the First World War* (Westport, CT: Greenwood Press, 1982).

<sup>35</sup> IMT, vol. 1, "Charter of the International Military Tribunal," <http://www.yale.edu/lawweb/avalon/imt/proc/imtconst.htm#art3>. Accessed 5 May 2007.

<sup>36</sup> "Jackson Declares War Charge Legal," *The New York Times* (21 Oct. 1945), p. 13.

by the Treaty of Versailles.<sup>37</sup> He quoted the following section from the Treaty: “In order to render possible the introduction of a general limitation of the armaments of all nations, Germany undertakes strictly to observe the military, naval, and air clauses which follow.”<sup>38</sup> He then stated that this paragraph inferred Germany was not the only power required to disarm but that all of them were. Since Germany was the only country that did disarm, it was no longer bound by the Treaty of Versailles because the Allies had violated it. However, neither the prosecution nor the judges ever responded to this claim, and whether or not Stahmer’s contention had any kind of impact on the judges is uncertain.

After arguing that Germany was no longer bound by the Treaty of Versailles, Stahmer began calling his witnesses, which was the second part of his defense. Stahmer called six men: Air Force General Karl Bodenschatz, Field Marshall Erhard Milch, Luftwaffe Colonel Bern von Brauchitsch, State Secretary Paul Korner, Field Marshall Albert Kesselring, and Civil Engineer Birger Dahlerus. Stahmer’s inquiries wove together three basic lines of inquiry, all of which were designed to present Göring in a more favorable light. The first intended to place distance between Göring and Hitler by emphasizing the fact that Göring often disagreed with the Führer and eventually lost influence with him around 1943. For example, Stahmer asked Bodenschatz, who had served with Göring in the Air Force, “From what time onwards did Reich Marshal Goering lose his influence with Hitler?”<sup>39</sup> Bodenschatz answered with a list of four “outward symptoms” indicating the Führer’s relationship with Göring was deteriorating:

First, the Fuehrer criticized Goering most severely. Secondly, the eternal conversations between Adolf Hitler and Hermann Goering became shorter, less frequent, and finally ceased altogether. Thirdly, as far as important conferences were concerned, the Reich Marshal was not called in. Fourthly, during the last

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<sup>37</sup> IMT, vol. 9, p. 3.

<sup>38</sup> Ibid., 4.

<sup>39</sup> Ibid., 8.

months and weeks the tension between Adolf Hitler and Hermann Goering increased to such a degree that he was finally arrested.<sup>40</sup>

Obviously, Stahmer could not deny that Göring had been a member of the Nazi party or that Göring and Hitler had worked together to advance the party's goals, but he could demonstrate that these two men had experienced a falling out, and maybe that would plant seeds of doubt that would make the judges think these two men were not of identical mentalities.

The second of Stahmer's inquiries attempted to establish that there existed within the Third Reich a general lack of communication and wide-ranging ignorance of events, making it impossible for Göring to be guilty of crimes of which he had no knowledge or involvement. While questioning Bodenschatz, Stahmer asked if Göring had any knowledge of the atrocities committed against the Jews during the *Kristallnacht*, to which the witness answered, "Goering had no previous knowledge of these incidents."<sup>41</sup> Bodenschatz continued under oath that Göring actually called together the *Gauleiter* and condemned these "individual acts of barbarism."<sup>42</sup> Stahmer continued this argument while questioning Milch, his second witness, who testified that communication was very restricted within the Nazi regime, saying, "Nobody should tell anybody anything he need not know; that nothing should ever be told sooner than was necessary; and that only just as much should be told as was necessary for the other person to know."<sup>43</sup> Stahmer hoped to convince the Tribunal that Göring could not have been guilty of all the things of which he had been accused because he was unaware of everything that went on under the Third Reich.

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<sup>40</sup> Ibid., 8-9.

<sup>41</sup> Ibid., 9.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid., 47.

Finally, Stahmer's third line of inquiry was designed to make Göring appear compassionate and pacifistic, as a German patriot who served his country admirably.<sup>44</sup> This was no doubt a challenging task, especially since the *Reichmarschall* created the first concentration camps, places of unimaginable cruelty. Nevertheless, Stahmer asked Bodenschatz, "Do you know whether people turned to the Reich Marshal with the request that their relatives should be freed from concentration camps or to help them in their difficulties with the Gestapo?"<sup>45</sup> Bodenschatz maintained that Göring would occasionally release individuals from concentration camps whenever he received such requests. Stahmer asked his fourth witness, Korner, how inmates were treated while in the concentration campus, to which the response came "the treatment was always good."<sup>46</sup> Then Stahmer asked Korner about unauthorized concentration camps, and the witness testified that Göring "had them instantly disbanded because they were established without his permission."<sup>47</sup> No doubt Stahmer wanted to show the court that the camps Göring had established were humane and had a legitimate purpose—i.e. preventing hostility towards the state—whereas he could not be blamed for any inhumane treatment that might have occurred in unauthorized camps. And when Göring did learn of inhumane treatment, he took decisive action to put an end to it.

The third and final part of Stahmer's defense strategy came into effect on the afternoon of Wednesday, 13 March 1946, when Stahmer called Göring to the stand and received his testimony for three days. On the first day of questioning, Stahmer dealt with the first and fourth

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<sup>44</sup> Richard Overy claims this was Stahmer's main defense argument for Göring. Richard J. Overy, *Goering: The 'Iron Man'* (London: Routledge & Kegan Paul, 1984), 76; "Goering Pictured as Just A Slave to Hitler," *The Washington Post* (5 July 1946), p. 3.

<sup>45</sup> IMT, vol. 9, p. 12.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., 149.

counts, the common plan and crimes against humanity.<sup>48</sup> On the second day, Stahmer continued in his attempts to debunk the charge of conspiracy to wage aggressive war. On the third and final day, he focused on the third count, war crimes, as well as crimes against peace, and he revisited crimes against humanity.<sup>49</sup>

Stahmer's questions during day one and two most frequently provoked Göring to attack the indictment's first count. On one occasion, Stahmer asked, "In the Indictment it says that the destruction of the Jewish race was part of the planning of aggressive wars," to which Göring swiftly responded, "That has nothing to do with the planning of aggressive wars; also, the destruction of the Jewish race was not planned in advance."<sup>50</sup> Later, Göring responded again to this charge of conspiracy without even being prompted when Stahmer asked, "During the period from 1935 to 1938 you made many state visits to Poland. What was the purpose of these visits?"<sup>51</sup> Göring responded, "It was never the case, that from the very beginning, as has often been represented here, we got together and, conspiring, laid down every point of our plans for decades to come."<sup>52</sup>

Since rearmament, the reoccupation of the Rhineland, and the annexations of Austria and Czechoslovakia were all included under the indictment as examples of the common plan, Stahmer addressed these as well. He asked Göring, "Why did Hitler decide to rearm and reintroduce compulsory service?"<sup>53</sup> Göring replied, "[I]t became necessary for us, in order to safeguard the most vital interests of the German people, their life and their security, to free ourselves from all ties and to rearm to such an extent as was now necessary for the interests and

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<sup>48</sup> Ibid., 248-9, 256-260.

<sup>49</sup> Ibid., en *passim*.

<sup>50</sup> Ibid., 275.

<sup>51</sup> Ibid., 308.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid., 278.

security of the Reich.”<sup>54</sup> When Stahmer asked, “What was the aim of the Four Year Plan?”, Göring insisted it was merely designed to protect Germany’s economy.<sup>55</sup> Stahmer’s follow-up question directly addressed the first count: “Was the purpose of carrying out these plans that of preparing for aggressive war?”<sup>56</sup> Obviously, Göring said no.<sup>57</sup> Immediately after discussing the motivations for rearmament, Stahmer then broached the reoccupation of the Rhineland, to which Göring stated bluntly, “The occupation of the Rhineland was not, as has been asserted here, a long-prepared affair.”<sup>58</sup> Finally Stahmer asked Göring about the *Anschluss* and the incorporation of the Sudetenland into the Reich. He asked Göring, “What reasons did Hitler have for that decision, and to what extent did you play a part in those measures?”<sup>59</sup> Göring began with a sentimental statement, “...I personally felt a great affinity for Austria,” and then he referred to the *Anschluss* as a “union of the two brother nations of purely German blood and origin ....”<sup>60</sup> When Stahmer asked about Czechoslovakia, Göring said, “The incorporation of the Sudeten Germans, or, better said, the solution of the Sudeten German problem I had always emphasized as being something that was necessary.”<sup>61</sup> He later stated that after Germany had taken the Sudetenland, Czechoslovakia’s economy was aligned with Germany’s to boost armament potential.<sup>62</sup>

Although Göring was an intelligent orator, each time he attempted to defend himself from any of the four charges, he made one or more incriminating statements, many of which the

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<sup>54</sup> Ibid.

<sup>55</sup> Ibid., 282.

<sup>56</sup> Ibid., 283.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid., 283-4.

<sup>59</sup> Ibid., 292.

<sup>60</sup> Ibid.

<sup>61</sup> Ibid., 290.

<sup>62</sup> Ibid., 304.

Tribunal referenced or quoted when they announced their verdict.<sup>63</sup> For example, when Stahmer asked if the Nazi seizure of power in 1933 was legitimate, Göring responded, “Of course the Party had come to power in an entirely legal way . . . The Party gained strength and came to power only by way of normal elections and the franchise law then valid . . . [W]e needed power and governmental authority in order to make Germany free and great.”<sup>64</sup> While Göring probably intended for this testimony to illustrate how much he hated the Weimar Republic and wanted to see Germany become a great nation again, the Tribunal did not view it in that manner.

Regarding his role in the *Anschluss*, Göring frankly admitted his enthusiasm over taking Austria, accepting “100 percent responsibility for all further happenings, because it was not the Fuehrer so much as I myself who set the pace and, even overruling the Fuehrer's misgivings, brought everything to its final development.”<sup>65</sup>

Stahmer mostly dealt with the charge of crimes against peace when he questioned his witnesses on day three, emphasizing that Göring was a man of peace and that the Four Year Plan was simply a necessary tool for collaborating with other countries and providing for Germany's survival.<sup>66</sup> Stahmer inquired, “In your military and economic measures in the occupied territories did you take into consideration whether these measures were in keeping with the Hague Convention on land warfare?”<sup>67</sup> Göring admitted that he was unfamiliar with international laws dictated by the Hague Convention.<sup>68</sup> He then offered his interpretation for why he believed Germany had not violated the Hague Convention, saying that it only applied to

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<sup>63</sup> IMT, vol. 22, pp. 523-6.

<sup>64</sup> IMT, vol. 9, pp. 248-9.

<sup>65</sup> *Ibid.*, 295.

<sup>66</sup> *Ibid.*, 10-12.

<sup>67</sup> *Ibid.*, 360-1.

<sup>68</sup> *Ibid.*, 361.

land warfare, not aerial warfare.<sup>69</sup> That was Göring's only direct response to crimes against peace during Stahmer's questioning.

Another of Göring's incriminating statements came when Stahmer asked him, "What was your attitude toward an attack on Russia at that time [1940]?" and Göring replied, "I urged [Hitler] most particularly not to start a war against Russia at that moment, or even a short time after; *not that I was moved by considerations of international law or similar reasons*; my point of view was decided by political and military reasons only" [emphasis added].<sup>70</sup> Regardless of his reason for emphasizing that he did not base his objection on international law, Göring provided the Tribunal with yet more evidence of his guilt.

The rest of day three Stahmer spent questioning Göring about the war crimes charge and crimes against humanity. He addressed the issue of unnecessary military action and destruction and asked, "During the last days we have heard repeatedly about the aerial attacks on Warsaw, Coventry, and Rotterdam. Were these attacks carried out beyond military necessity?"<sup>71</sup> Göring had an understandable, though completely subjective response for Stahmer, saying that he was "in a position to view the whole picture ... and according to my orders and my point of view the chiefs of the fleets received their instructions and directives as to what they had to do."<sup>72</sup> In Göring's opinion, the attacks were in no way carried out beyond military necessity.

When Stahmer began to ask Göring about the ill-treatment of civilians, Stahmer did not attempt to deny that such treatment occurred, but instead suggested that understanding the Nazis' motives for committing these acts was more important than the acts themselves. Stahmer asked Göring to explain why relations between the Germans and the French in occupied France "took

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid., 343.

<sup>71</sup> Ibid., 336.

<sup>72</sup> Ibid.

on such a bitter character” in 1940?<sup>73</sup> Göring placed the blame on the French resistance.<sup>74</sup> Chief US Prosecutor Jackson objected to this question because he felt it was irrelevant. He believed Stahmer was trying to invoke the doctrine of reprisal, a practice in international law of resorting to force out of retaliation.<sup>75</sup> In Jackson’s mind, reprisal did not excuse the Nazis’ actions, but if Stahmer was going to use reprisal as part of his defense, he first needed to have Göring admit what those specific actions were. Stahmer insisted that it was necessary to establish the Nazis’ motives for executing French resisters:

The defendants are accused of the fact that hostages were taken in large numbers and shot and it is maintained that this was not justified; at any rate, the motives which led to the taking of hostages have not, up to now, been discussed, at least not sufficiently. To clarify this question, which is so important for the decisions in this Trial, it is in my opinion absolutely necessary to make it clear that these decrees concerning the arrest and the treatment of hostages were called for by the attitude of the resistance movements. Therefore, in my opinion it could be said with justification that the actions of the resistance movement were the cause for the measures which had to be taken later by the German military authorities, much to their regret.<sup>76</sup>

This was the first time since his opening defense statement that Stahmer had spoken more than a few lines, and when he asked questions, they never amounted to more than one or two sentences. Stahmer’s choice of words must have been compelling, though, as the Tribunal disagreed with Jackson, saying they preferred to hear Stahmer’s evidence.<sup>77</sup> Unfortunately for Stahmer, his clever strategy backfired on him as Göring provided a motive that was too honest and was his most incriminating statement regarding war crimes:

I do not in any way deny that things happened which may be hotly debatable as far as international law is concerned. Also other things occurred which under any circumstances must be considered as excesses. I wanted only to explain how it

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<sup>73</sup> Ibid., 320.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid., 321.

<sup>76</sup> Ibid., 322.

<sup>77</sup> Ibid., 323-5.

happened, not from the point of view of international law as regards reprisals, but considering it only from the feeling of the threatened soldier, who was constantly hindered in the execution of his task, not by regular troops in open combat, but by partisans at his back.<sup>78</sup>

Stahmer moved on to the German invasion of Russia and how the Germans, by taking the Russians' food to feed themselves, caused the Russians to starve.<sup>79</sup> Göring stated that, as far as he was aware, only Leningrad faced famine, and even then he argued that he was not aware of any example in history in which “the besieger generously supplies the besieged with food in order that they can resist longer; rather I know only of evidence in the history of wars that the besiegers do everything to force the surrender of the fortress by cutting off the food supply.”<sup>80</sup>

When asked about the concentration camps, Göring referred to them euphemistically as “protective custody,” and he called the POWs forced to work there “auxiliary volunteers.”<sup>81</sup> But if the Tribunal did not view these euphemisms as evidence enough that Göring was responsible for condemnatory actions, Göring provided yet another incriminating statement when he tried to defend why the concentration camps were necessary:

We ... had to consider the removal especially of those who had no work in their own country and represented a danger in the growth of the underground resistance arising against us. If these age groups were drafted into Germany for work, it was because of basic considerations of security, in order that they should not be left idle in their own country—and thus be made available for the work and the struggle against us—but should be used to our advantage in economic war.<sup>82</sup>

Stahmer's principal defense of Göring was over after seven days of questioning witnesses and Göring himself. Although Stahmer did cover each of the indictment's four charges in his

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<sup>78</sup> Ibid., 325.

<sup>79</sup> Ibid., 349-350.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid., 256, 354.

<sup>82</sup> Ibid., 362-3.

questions, his defense was overshadowed by the sheer amount of testimony he allowed Göring to present, testimony that the Tribunal ultimately used against Göring.<sup>83</sup>

On the two hundred and eighteenth day of the trial, 1 October 1946, the Tribunal reached its verdict and convicted Göring of all four counts.<sup>84</sup> Göring smiled a few times while his verdict was being read, but he showed no guilt or remorse over the crimes he had committed.<sup>85</sup>

The Tribunal's official statement regarding Goring's guilt was blatantly honest:

Goering was often, indeed almost always, the moving force, second only to his leader. He was the leading war aggressor . . . he was the director of the slave labor program and the creator of the oppressive program against the Jews . . . All of these crimes he has frankly admitted . . . His guilt is unique in its enormity. The record discloses no excuses for this man.<sup>86</sup>

The Tribunal sentenced Göring to be hanged on 30 September 1946.<sup>87</sup> He chose his own means of execution, though, by swallowing a cyanide pill just a couple of hours before the execution was to begin, thereby robbing the gallows of its first intended victim.<sup>88</sup>

Of all the lawyers who acted as defense counsel for the Nazi defendants at Nuremberg, Stahmer had perhaps the most difficult job because his client was the highest-ranking Nazi who survived the war, was indicted on all four counts, and was most likely judged guilty before he ever arrived at Nuremberg. Yet historians have devoted little ink towards discussing Stahmer, other than the fact that he was Göring's defense lawyer. Michael Marrus has said Stahmer did

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<sup>83</sup> After Göring's testimony was complete, Tribunal President Lawrence informed the defense that defendants would no longer be allowed to make speeches in their responses to questions and that it was the responsibility of the defendant's counsel to prevent such behavior from occurring. IMT, vol. 10, pp. 229-230.

<sup>84</sup> IMT, vol. 22, pp. 523-6.

<sup>85</sup> "Germans Haggard Awaiting Fate; Only Goering Can Muster a Smile," *The New York Times* (1 Oct. 1946), p. 11.

<sup>86</sup> IMT, vol. 22, p. 526; "Verdicts Are In," *The New York Times* (1 Oct. 1946), p. 1.

<sup>87</sup> The executions took place from 1:01 a.m. to 2:45 a.m. German time, which would have been 7:01 p.m. Tuesday Eastern Standard Time.

<sup>88</sup> Interestingly, the *Wall Street Journal* included a report on the executions that stated Göring had in fact been hanged with the others, but corrected itself the following day by reporting Göring had ingested poison. "What's News," *The Wall Street Journal* (16 October 1946), p. 1.; "What's News," *The Wall Street Journal* (17 October 1946), p. 1.

little more than provide Göring with a soapbox.<sup>89</sup> Taylor stated that Stahmer did not provide a very favorable defense for Göring at all, saying, “If it may truly be said that no lawyer, however brilliant, could have done much to exculpate Goering, it may likewise be observed that a more sensitive writer could have made the script more palatable.”<sup>90</sup>

One historian offers insight into why the attention is placed on the Number Two Nazi rather than on his lawyer: “Goering wanted to use the Nuremberg trial as the first step in creating a legendary image of the Hitler era.”<sup>91</sup> If historians tend to believe Göring just wanted to use the trial as a final opportunity to create his lasting legacy, and that Stahmer acted as Göring’s facilitator, providing him with the spotlight he so adamantly desired, then Stahmer would naturally be forced into the background. However, it is clear that Stahmer was actively engaged in the proceedings given the three main arguments he made on behalf of his client. He was the one who presented the petition against the Tribunal arguing that the proceedings should not be based on *ex post facto* law, he called six witnesses to the stand in an attempt to portray Göring in a different light, and he filed the appeal on behalf of his client even when Göring did not want one to be filed. Stahmer may not have created a place for himself in the history books by representing Göring, but he did his duty by mounting an adroit defense, even though the evidence against his client, including his client’s self-incriminating testimony, was insuperable.

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<sup>89</sup> Marrus, 117.

<sup>90</sup> Taylor, *Anatomy*, 476.

<sup>91</sup> Michael Biddis, “The Nuremberg Trial: Two Exercises in Judgement,” *Journal of Contemporary History* 16, no. 3, The Second World War: Part 2 (July, 1981), 602-3.

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