

THE LIMITS OF WEST GERMAN JUSTICE IN THE 1960S: THE POST-WAR INVESTIGATION OF WALTER GIESEKE (OBERSTLEUTNANT OF THE GENDARMERIE AND SS)

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Abstract

This article uses a micro-historical methodology to examine some of the complex problems of bringing to justice Nazi-era war criminals in West Germany in the 1960s. It takes as its focus the failure to bring a case against Walter Gieseke, Oberstleutnant of the Gendarmerie and SS. One of the 'middle managers' of the Nazi state Gieseke headed a road building project across the Ukraine which resulted in the murder of substantial numbers of Jewish forced labourers. Under questioning he pursued strategies which maximised the difficulties facing the investigating authorities in West Germany.

Keywords: War Crime, Police, SS, Soviet Union, DGIV, West Germany.

Introduction

As the operations and evolution of the International Criminal Court (ICC) continue to demonstrate, the timing, nature and procedure for pursuing war crimes suspects have been the subject of on-going debate since 1945. The literature on the punishment of war crimes continues to be dominated by the trial of the major war criminals before the International Military Tribunal at Nuremberg, and the 12 subsequent Nuremberg Trials from December 1946 to April 1949 in which a further 177 lower ranking Nazis were tried and convicted.² There is a smaller caucus of work dealing with trials held by the Allies after 1945 as part of the process of

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² See for example Airey Neave, *Nuremberg: A Personal Record of the Trial of the Major War Criminals* (Grafton, 1989); Arieh Kochavi, *Prelude to Nuremberg* (University of North Carolina Press, 1998); Bradley F. Smith, *The Road to Nuremberg* (Basic Books, 1981); Shlomo Aronson, "Preparations for the Nuremberg Trial: The OSS, Charles Dwork, and the Holocaust," *Holocaust and Genocide Studies* 12 (1998) 257–81; Bradley F. Smith, *Reaching Judgment at Nuremberg* (Basic Books, 1977); Telford Taylor, *The Anatomy of the Nuremberg Trials* (Little, Brown & Co, London, 1993); Richard E. Conot, *Justice at Nuremberg* (Carroll & Graf, 1984); Eugene Davidson, *The Trial of the Germans: An Account of the Twenty-two Defendants before the International Military Tribunal at Nuremberg* (Macmillan, 1969); Whitney R. Harris, *Tyranny on Trial: The Trial of the Major German War Criminals at the End of World War II at Nuremberg, Germany, 1945–1946* (Southern Methodist University Press, 2007); Joseph Persico, *Nuremberg: Infamy on Trial* (Penguin Putnam, New York, 1995); Ann and John Tusa, *The Nuremberg Trial* (Skyhorse, 2010); George Ginsburg, *Moscow's Road to Nuremberg: The Soviet Background to the Trial* (Springer, 1995); Horst H. Freyhofer, *The Nuremberg Medical Trial: The Holocaust and the Origin of the Nuremberg Medical Code* (Peter Lang Publishing, 2005); Paul Julian Weindling, *Nazi Medicine and the Nuremberg Trials: From Medical War Crimes to Informed Consent* (Palgrave, 2005).

denazification.³ Smaller again, is the body of work produced by academics such as David Fraser who have provided case studies of the workings of different systems of national justice when faced with 'the presence of alleged Nazi war criminals'.⁴ The consensus of academic opinion about the Nazi-era trials beyond Nuremberg is characterized by an overall perception of failure. As Lorie Charlesworth has observed 'there is a growing body of literature concerned with and critiquing the failure of post World War II war crimes trials'.⁵ Some of the concerns are not wholly about criminal justice. Donald Bloxham, for example, has charted the way in which the nature of the trials tended to obscure and colour early understandings of the Holocaust against the Jews.⁶

Certainly, the efforts of the Allied powers left much to be desired. As Henry Friedlander has demonstrated, the number of convictions (just over 5,000) was disappointing given the tens of thousands of people responsible for Nazi-era crimes. There were also issues with the sentencing.⁷ Although 800 of the convictions were capital, around 300 were later commuted. Those sentenced to life imprisonment were generally released from prison by the end of the 1950s. As Donald Bloxham has noted in respect of British punishment of war criminals, at every turn justice was compromised as a result of inter-Allied wrangling, the political imperatives of the cold war and the perceived impossibility of bringing to justice thousands of potential defendants: 'Many leads were not followed up by British investigators, screening of suspects was inadequate, many of the criminals who fell into British hands were not tried, many who were tried were not punished severely enough'.⁸ By the late 1940s, as Rogers and Jones have shown, the British occupation authorities increasingly

³ See for example, Tom Bower, *Blind Eye to Murder: Britain, America and the Purging of Nazi Germany—a Pledge Betrayed* (Little, Brown & Co, 1995); Frank M. Buscher, *The U.S. War Crimes Trials Program in Germany, 1945–1949* (Greenwood Press, 1989); Lutz Niethammer, *Entnazifizierung in Bayern: Säuberung und Rehabilitierung unter amerikanische Besatzung* (Fischer S. Verlag GmbH, 1972).

⁴ David Fraser, *Daviborshch's Cart: Narrating the Holocaust in Australian War Crimes Trials* (University of Nebraska Press, 2010) p.7. See also on the case of Anthony Sawoniuk in the UK, David Hirsh, 'The Trial of Andrei Sawoniuk: Holocaust Testimony Under Cross-Examination', *Social Legal Studies* 10 (2001) 529–545.

⁵ Lorie Charlesworth, 'Forgotten justice: forgetting law's history and victims' justice in British "minor" war crime trials in Germany 1945-8', *Amicus Curiae Issue*, 74 (2008) 2-10, p.4.

⁶ Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford University Press, 2001).

⁷ H. Friedlander, 'The Judiciary and Nazi Crimes in Postwar Germany', *Simon Wiesenthal Center Annual*, Vol. 1, ch. 2, from <http://motic.wiesenthal.com/site/pp.asp?c=gKVluG&b=394973> accessed 10 October 2009.

⁸ Donald Bloxham, 'British War Crimes Trial Policy in Germany, 1945–1957: Implementation and Collapse,' *Journal of British Studies*, 42 (2003) 91-118; Donald Bloxham, "'The Trial That Never Was": Why There Was No Second International Trial of Major War Criminals at Nuremberg,' *History*, 87 (2002) 41–60.

concerned themselves only with crimes against British nationals.⁹ The failure of justice perceived by legal historians is considered to have extended into the 1950s and 1960s. As Franz Neumann observed in an article in *World Politics* in 1949 the post-war trials by the Allies had 'raised as many problems as they had solved'.¹⁰

The German courts took over responsibility for investigating Nazi-era crimes on the formation of West Germany in 1949. Between 1945 and 1997 the courts of West Germany, and the successor Federal Republic, held 912 trials relating to homicides committed during the era of National Socialism. They resulted in 1,006 convictions (14 death sentences, 150 life sentences and 842 sentenced to jail) out of a total number of 1,875 defendants.¹¹ The disappointing number of trials and convictions further hides a large number of cases where investigations were simply dropped. Our attempt to understand the investigation and punishment of Nazi-era war crimes is complicated by divisions in the literature arising from the different disciplinary backgrounds and traditions (historians versus legal practitioners) of those who work in the field. For example, the historian Devin Pendas in his review article for the *Journal of Modern History* in 2009 identified both the revival of scholarship in the field and what he described as the 'presentism' which colours much of it.¹² He considered that the scholarship was dominated by 'practitioners' (lawyers and legal scholars) and 'public intellectuals' commenting on current issues in works that 'tended toward the polemical'.¹³ Pendas commented that this made it 'all but impossible to understand post-war Nazi trials as a truly historical phenomenon'.¹⁴

Let us accept, for one moment, Pendas's assertion and accept the need to examine the pursuit of justice in the absence of a post-cold war agenda suffused by contemporary issues of international justice and atrocity. From a more narrowly historical perspective, how do we explain the failure of justice (in particular the low number of convictions) relating to National Socialist homicides? Was this a problem

⁹ See A. P. V. Rogers, "War Crimes Trials under the Royal Warrant: British Practice, 1945–1949," *International and Comparative Law Quarterly*, 39 (1990), 780–800. Priscilla Dale Jones, 'Nazi Atrocities against Allied Airmen: Stalag Luft III and the End of British War Crimes Trials', *The Historical Journal*, 41 (1998) 543-565.

¹⁰ Franz Neumann, 'The War Crimes,' *World Politics*, 2 (1949), 135-147, p.135.

¹¹ C.F. Rüter, Dr. D.W. de Mildt, *Die westdeutschen Strafverfahren wegen nationalsozialistischer Tötungsverbrechen 1945-1997: Eine systematische Verfahrensbeschreibung mit Karten und Registern* (APA-Holland Press, 1998) p.316ff.

¹² Devin O. Pendas, 'Seeking Justice, Finding Law: Nazi Trials in Postwar Europe,' *The Journal of Modern History* 81 (2009) 347–368., p.349.

¹³ Pendas, 'Seeking'. See for example Heiner Lichtenstein, *Im Namen des Volkes? Eine persönliche Bilanz der NS-Prozesse* (Bund Verlag, 1984).

¹⁴ Pendas, 'Seeking' p.349.

of policing and investigation or that of the law and the operation of the courts? How did individual accused respond to homicide accusations many years after the collapse of the Third Reich in 1945? Why did investigations break down or fail to result in a conviction? In examining the process of investigation, rather than post-war trials and their outcomes, this article seeks to widen the parameters of the debate. A micro-historical methodology will be employed to focus on the investigation of one particular individual, Walter Gieseke, between 1960 and 1968. In doing this let us also, at the same time, introduce in a rather different form a little of the 'presentism' that Pendas so dislikes.

Gieseke's significance lies in the fact that he was one of the middle managers of the Nazi state: vital to the implementation of policy but sufficiently lowly and anonymous to escape the attention of prosecutors in the immediate post-war period. In the 1950s and 1960s the West German justice system would face particular difficulties in coming to terms with the alleged guilt of such men. Gieseke's investigation was part of a wider inquiry into crimes committed by the men of his command in the Ukraine between March 1942 and the end of 1943. He was able to employ shifting defensive strategies which meant that prosecutors were unable to bring a case against him. Those defensive strategies would be recognised by modern criminal psychologists and criminologists as fairly standard in the case of an accused facing a charge of homicide. In defence of 'presentism' this article will use current understandings on interrogation strategies and the behaviour of suspects as part of an inter-disciplinary examination of the surviving documentary record relating to the investigation of Walter Gieseke.

That documentary record does have its limitations. It does not allow us, for example, to appreciate the procedural limitations/rules under which Gieseke was investigated, the extent to which he had access to legal counsel, or the identity and strategies of the individuals who questioned him. The documentary record does, however, allow us to identify Gieseke's strategies which were to prove highly effective in the context of the West German legal system at the end of the 1950s, and an investigative context in which the crime scene (and many potential witnesses) lay beyond the reach of investigators behind the cold war divide of the iron curtain. This case study will demonstrate the fundamental issues standing in the way of prosecuting many German war criminals in the 1950s and 1960s, together with the wider applicability of contemporary understandings about the behaviour of suspects to historic cases.

1 Contexts and Contextualizations

1.1 *The Context of the Suspect's Actions*

In early 1960 the police called at the Kelle Tavern, No. 6 the Market Place, Burgdorf. They were acting in response to an investigation which had been launched by the Department of Public Prosecution in Hildesheim. A pleasant dormitory town east of Hannover, Burgdorf had become home to retired Oberstleutnant of the Gendarmerie Walter Gieseke who after the war had married Helene Kelle. Burgdorf was not far from Gieseke's birthplace at Hohenhameln. Born on 26 November 1901 he had joined the Army on 15 April 1919. Returning to civilian life on 14 April 1931, Gieseke had drifted into the Nazi party becoming a member on 1 May 1933. Gieseke was very much the 'ordinary German' (party member 1,853,472). In October 1933 Gieseke had joined the stormtroopers of the *Sturm Abteilung* [SA]. Concerns over the loyalty to the party of that organisation had led to the 'night of the long knives' on 30 June 1934 during which leading members of the SA were murdered. Probably sensing that the SA no longer offered good prospects for career progression, Gieseke left the stormtroopers to join the police on 1 December 1934. The police were under the control of Himmler and were in the process of being transformed into one of the more radical and loyal agencies of the Nazi state. Gieseke's party membership perhaps helps to explain his comparatively rapid rise through the ranks (Oberleutnant – 11 April 1935; Hauptmann – 26 January 1937; Major – 1 October 1940).¹⁵ In 1939 Gieseke had been recalled to the Army to serve in the military police, and in March 1942 Walter Gieseke had been placed in charge of an *Einsatzstab* (task force) charged with building a road across the Ukraine.¹⁶ He headed this unit until the end of 1943.

Gieseke in 1960 was like hundreds of other German ex-servicemen. He had been a member of the National Socialist German Worker's Party [NSDAP], joining at a time when it was clear that career progression might depend on membership. He had risen to the ranks of middle management of the Nazi state. While the senior

¹⁵ Reichsrangliste (RRL) Der Offiziere der Ordnungspolizei, 2 Teil, Oberstleutnant, stand vom 1 October 1943, Archiv Polizeiakademie Niedersachsen.

¹⁶ Born on 26 November 1901, Hohenhameln, Germany. Joined the German Army April 1919, left Army in April 1931. Joined the Nazi party on 1 May 1933, six months later he became a storm trooper: a member of the *Sturm Abteilung* (SA), left SA in the aftermath of the 'Night of the Long Knives' on 30 June 1934. Joined police force on 1 December 1934, serving for 5 years until being recalled to the Army on the outbreak of war: oberleutnant (11 April 1935); hauptmann (26 January 1937); major (1 October 1940).¹⁶ Serving in the military police from 1939 until 1942, he was appointed head of taskforce March 1942. See also Walter Gieseke, SS-Personalakte, U.S. National Archives, Berlin Document Center Records, A-3343. RG242, National Archives and Records Administration. United States of America, National Archives II.

leadership of the Nazi state were killed at its end, or brought to justice in Allied courts, the middle management layers had usually escaped serious investigation. Gieseke was just one man but he also represented hundreds of other former functionaries of the Hitler state. The tasks that many of them had undertaken were often ostensibly clean of any implication of war crimes or other forms of criminality, but rather deeper probing could swiftly reveal that even the most mundane of tasks (such as building a road) were an integral to the development of the Nazi racial state.

The construction of *Durchgangstrasse IV* (Highway 4), which was to run over 1,000km from Lemberg to Stalino, was vital to the German military. The transport infrastructure of the Soviet Union was poor. In the summer roads turned into dustbowls and into mud lakes during the winter. It was on these roads that the German logistical train to the Eastern Front depended. DGIV was especially significant since it pointed in the direction of Stalingrad and the bitterly contested frontline in South Russia. It ran through central Ukraine via Tarnopol, Uman, Kirovograd, Krivoi-Rog and Dnepropetrovsk. The road was essential to that section of the front and it was also essential to German hopes of developing the Ukraine into the cradle for a new Aryan civilisation. Thus the road was often referred to as the 'street of the SS' and it was Heinrich Himmler who personally ordered its improvement to 'European' standards.¹⁷ The road would be widened and tarmacked. Later this was changed to something more temporary and rustic.¹⁸ This meant constructing a paved road using large flat stones to form a surface.

Constructing the road would involve the use of slave labour - 50,000 Ukrainians pressed to work on a daily basis, 50,000 Soviet Prisoners of War and around 25,000 Jews.¹⁹ The Jews would be housed in special slave labour camps, the first of which

¹⁷ Reichsführer SS to Alle Hauptamtschefs, 7 February 1942, Hans Adolf Prützmann, SS-Personalakte, U.S. National Archives, Berlin Document Center Records, A-3343. RG242, National Archives and Records Administration. See also [Heinrich Himmler], *Der Dienstkalender Heinrich Himmlers 1941/42* (Christians, 1999), p.355 for evidence of a key meeting concerning the road in Berlin on the afternoon of 19 February 1942. Present were Paul Geibel, Hans-Adolf Prützmann, Dr Frank, Oberführer Hans Kammler and Arnold Adam for the Organization Todt

¹⁸ A. Angrick, 'Forced Labor along the "Strasse der SS"', in Center for Advanced Holocaust Studies, *Forced and Slave Labor in Nazi-Dominated Europe* (Washington DC, 2004), p.84.

¹⁹ See A. Angrick, 'Annihilation and Labor: Jews and Thoroughfare IV', in R. Brandon and W. Lower, *The Shoah in the Ukraine: History, Testimony, Memorialisation*, (University of Indiana Press, 2008) pp.190-223; Sussex University Library, Arnold Daghani Collection, 'Investigations versus Friese and others for Murder', Lubeck Public Prosecutor's Report, 3 Js 1428/65 StA Itzhoe (FM268), p.81. See also H. Kaienburg, 'Jüdische Arbeitslager an der "Strasse der SS"', in *Zeitschrift für Sozialgeschichte des 20 und 21 Jahrhunderts*, 11 (1996), 13-39, p.38.

were constructed during September 1941.²⁰ The camps and sub-camps spread out along the route of the road, and each morning slave labourers would be marched out to unfinished sections of the road and to the network of quarries which provided stone to the project. The camps were run by the SS. Jews were to be worked to death in line with the decision at the Wannsee Conference on 20 January 1942 to use forced labour as a means of murder.²¹ By the end of 1941 large sections of the Ukraine had been declared 'Juden Frei' as *Einsatzgruppe D* murdered its way through Jewish population centres across its area of operations. The Jews in the ghettos and forced labour camps were the survivors of their murderous sweep through the Ukraine. In the camps rations were poor, medical care unavailable and, in addition to random sadistic acts of murder, any outbreak of infectious disease would usually result in mass ('preventative') killings. Jews unable to work would be shot singularly or in whole groups. On the road project specialist construction skills and equipment would be provided by German construction firms such as Firma Teeras of Munich who were contracted to Organisation Todt. Paramilitary units of the German police, together around 12,000 men from non-German auxiliary units (*Schutzmannschaften*), would provide security along the route of the road.²² Given overall responsibility for co-ordinating the activities of the different agencies was Oberstleutnant of the Gendarmerie, Walter Gieseke, with a task force composed of police and *Schutzmannschaft* units and a headquarters in Dnepropetrovsk. Working with him on the project were four SS-run Senior Construction Offices (*oberbauabschnittsleitungen*) who dealt with the construction plan in their sector.

By the summer of 1942 the project was in full swing. As one observer noted: 'Everywhere along our street...work is going on at full speed.... In terms of quality, the Jews are in first place.... They know what's at stake now.'²³ By the following year the SS and Police Leader for Stalino was able to reflect on considerable progress: 'Despite all conceivable difficulties that turned up on this project, about 160 km. have

²⁰ Wendy Lower, *Nazi Empire Building and the Holocaust in the Ukraine* (University of North Carolina Press, 2005) p.144.

²¹ C. Gerlach, 'The Wannsee Conference, the Fate of German Jews, and Hitler's Decision in Principle to Exterminate All European Jews,' *Journal of Modern History*, 70 (1998) 759-812. See also *Trials of War Criminals Before the Nuremberg Military Tribunals* (Washington DC, 1952), XIII, pp.210-17, Document NG-2586-G.

²² Richard Breitman, 'Himmler's Police Auxiliaries in the Occupied Soviet Territories', Museum of Tolerance Multimedia Learning Center, Simon Wiesenthal Center, <http://motlc.wiesenthal.com/site/pp.asp?c=gvKVLcMVIuG&b=395183> accessed 5 June 2008. See also Christopher Browning, *The Origins of the Final Solution: The Evolution of Nazi Jewish Policy, September 1939-March 1942* (University of Nebraska Press, 2004), p.509.

²³ Angrick, 'Forced', pp.87-8.

now been completed'.²⁴ As work progressed camps were closed and their inmates murdered. The remaining camps were closed in late 1943 as the Red Army began to overrun the route of the road. Mass graves were all that would remain as Gieseke retreated westwards from the Ukraine along with the remains of his command. They would spend the remaining months of the war retreating westwards and hoping to avoid the clutches of the Russians. Ultimately he would make a new life for himself with a new wife in Burgdorf.

1.2 *The Investigative Context*

Gieseke would have been surprised by the visit of war crimes investigators in January 1960. DGIV and the crimes committed along its route had been almost totally forgotten. It was not until the late 1990s that the first academic article appeared on the development of DGIV and until 2004-5 for its story to become firmly embedded in the growing literature on the Holocaust in the Ukraine.²⁵ From the perspective of Burgdorf in 1960, Germany had moved on considerably in the 15 years since the end of the war: the division of the country and continuing cold war had created fresh landmarks on the human memory. Following the Nuremberg trials before the International Military Tribunal the demand for justice before Allied or German courts had cooled steadily. Between 1945 and 1952 there were approximately 343 trials in the German courts relating to National Socialist era crimes. The defendants were largely senior officers, and over 51% of the crimes involved the killing of German nationals. At the end of the war the Allies had cautioned against German courts trying cases related to non-German nationals and the difficulty of conducting investigations outside of Germany was considerable. Especially important was the fact that a majority of war crimes had been committed in the Baltic States, Eastern Europe and the Western Areas of the Soviet Union: areas which now lay firmly behind the iron curtain. From the end of the Korean War in 1953, and the start of German re-armament and international rehabilitation, the number of war crimes trials decreased throughout the 1950s.²⁶ Amongst the West German political elite there was a desire to pull a discrete veil over the past so that

²⁴ From the Final Report on the solution of the Jewish problem in Galicia by Katzmann, Commander of the SS and Police in the District Of Galicia, accessed www1.yadvashem.org/search/index_search.html, accessed 12 October 2007.

²⁵ Kaienburg, 'Jüdische Arbeitslager'; Lower, *Nazi Empire*; Angrick, 'Forced Labor'; Angrick, 'Annihilation'.

²⁶ See Mitchell G. Paige, 'Article 29 of the Rome Statute as a Crystallization of Customary International Law', in Sienho Yee (ed.) *International Crimes and Punishment, Selected Issues*, vol. 2 (University Press of America, 2004) pp.1-53, pp.7-8. See also Justiz und NS-Verbrechen <http://www.junsv.nl/brd?lang=en> accessed 4 July 2013.

the nation could move on.²⁷ Investigators pursued only the most significant perpetrators directly involved in killings. They were reluctant to go after the policy makers and administrators responsible for setting the institutional frameworks which resulted in mass murder.

By 1958 it was apparent that the West German police, and the network of justice ministries in the individual German states, were not sufficient to bring to justice the Nazi-era criminals still at large. As Annette Weinke's recent work has shown the critical factor was pressure from East Germany (where far larger numbers of Nazi era criminals were being tracked down and prosecuted).²⁸ Thus in December 1958 the justice ministries of the 11 German States agreed to form the *Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung Nationalsozialistischer Verbrechen* (Central Office of the State Justice Administration for the Investigation of Crimes Committed during the National Socialist Period). The Ludwigsburg based *Zentrale Stelle*, would take over responsibility for investigating crimes committed beyond Germany's borders but its remit was later extended to domestic cases. The *Zentrale Stelle* would initiate investigations and carry out initial research before sending significant cases to the justice ministries in the West German Lander. The investigation into DGIV and Task Force Gieseke was as a result of the formation of the new *Zentrale Stelle*.

However, there were further problems in terms of the make-up of both the *Zentrale Stelle* and the post-war German Police forces. The records of Gieseke's investigation do not allow the researcher to establish the identity of the officers who interrogated him, but the personnel of both the *Zentrale Stelle* and the post-war German Police forces included people who had been intimately involved in the Nazi party, SS and other arms of the Hitler state. For example, a post-war enquiry into the Hannover police force found numerous officers with questionable pasts. The British occupation authorities felt that they had no choice but to accept the situation. A 1946 report concluded: 'It is fairly clear that if denazification of the police is carried to extremes there would be no police force left.'²⁹ In 1960 the police, the legal profession and judiciary contained men who would in all probability look sympathetically on an old comrade like Gieseke facing charges relating to a war that

²⁷ See Robert Moeller, *War Stories: The Search for a Useable Past in the Federal Republic of Germany* (University of California, 2001).

²⁸ Annette Weinke, *Die Verfolgung von NS-Tätern im Geteilten Deutschland: Vergangenheitsbewältigungen 1949–1969 oder; Eine Deutsch-Deutsche Beziehungsgeschichte im Kalten Krieg* (Ferdinand Schöningh, 2002).

²⁹ Bower, *Blind Eye* p.195.

had been over for 15 years.³⁰ As Gerald Steinacher identifies the 'loose associations' formed by wartime service were powerful and long lived.³¹ In the extreme they could grow (or at least appear to grow) into more tangible 'bonds and support networks' to help out old comrades in financial or legal difficulties.³² At the lowest levels, they could very easily encompass a fairly gentle ride in interrogation for a retired former police officer living a respectable life.

On top of this, it also did not help that in the early years of its existence the *Zentrale Stelle* found itself caught up in thousands of enquiries. In the first 12 months of its existence the *Zentrale Stelle*, under its first director Erwin Schüle (who had served with the *Wehrmacht* on the Eastern Front), initiated over 400 investigations.³³ During the 1960s the *Zentrale Stelle* had 600 investigations on-going at any moment in time. The *Zentrale Stelle* was chasing hundreds of targets and many of them were intimately more involved in the process of murder than the administrators and managers who had overseen the Holocaust from offices far removed from the killing sites. The crimes of the trigger men were easier to investigate and document than those who had done the killing with a pen behind a desk.

1.3 The Legal Context

In understanding the escape from prosecution of men like Gieseke the legal context also has to be appreciated. Following the initial wave of post-war trials there was a growing desire in West Germany in the late 1940s to bring closure to the war years. Many felt that they only served to stir up memories of a terrible past and were not helpful to the kind of future that West Germany was trying to make for itself. One expression of this was the re-introduction of the statute of limitations on crimes which had been part of the German Penal Code of 1871 (*s78 Verjährungsfrist Strafgesetzbuch*).³⁴ The statute had been repealed by the Nazis in 1943 but in May 1950 the limitation was re-applied to those crimes potentially punishable by a gaol sentence of up to five years. In 1955 the limitation was extended to crimes involving 10 year gaol terms, and by 1960 only cases of outright murder remained outside the provision of the statute.³⁵ It was widely anticipated by 1965 the Statute of Limitations

³⁰ *Ibid* pp.197ff.

³¹ Gerald Steinacher, *Nazis on the Run: How Hitler's Henchmen Fled Justice* (Oxford University Press, 2012) p.5ff.

³² Steinacher, *Nazis*, p.5ff.

³³ *Time Magazine*, 9 November 1962, p.28.

³⁴ Robert A. Monson, 'The West German Statute of Limitations on Murder: A Political, Legal and Historical Exposition', *American Journal of Comparative Law*, 30 (1982) 605-610.

³⁵ *Time Magazine*, 9 November 1962, p.28.

would bar prosecution of all Nazi era offences. However, the sensational arrest and trial of Adolf Eichmann in 1960, together with the operations of the *Zentrale Stelle*, meant that there was public and international pressure to continue the prosecution of Nazi-era crimes. By the time of Gieseke's investigation in 1960 investigators could pursue him on one crime and one crime only: that of outright murder - yet under German law the charge of murder held further complications.

The Federal German State refused to recognize the idea of 'crimes against humanity' employed by the International Military Tribunal at Nuremberg in 1945. War criminals and others would have to be tried under the criminal law statutes of the Nazi era and there were issues with the German definition of murder which was more tightly drawn than in the British and American legal systems. Under the German legal system an individual could only be convicted of murder if they killed as a result of certain motives or involved certain behavioural characteristics: love of killing; sexual motives; covetousness; desire to conceal another crime; treachery; cruelty; endangering the community; base motives. An individual could not be convicted of murder if they were operating under the orders of a superior or carrying out the policy of the German Government. Nor did the crime of murder extend to murder by neglect or mistreatment. The German Supreme Court (*Bundesgerichtshof*) did affirm that anti-Semitism constituted 'base motives' but this potentially conflicted with the defence of 'obeying orders'.

The implications of this legal defence must be understood. As early as 1944 Jacob Berger in the *American Political Science Review* had pointed out that even within Allied ranks there was a great degree of confusion on whether 'superior orders' represented a defence in law:

While the American and British war manuals... recognize "superior command" as a full defense, Anglo-American practice, expressed in numerous decisions and supported by many authorities, refuses to ascribe to it any exculpating effect.³⁶

As Lorie Charlesworth has noted in her work on post-war British trials, belief in the legal defence of 'obeying orders' was deeply embedded in German society:

Close readings of statements and trial transcripts reveal a consistent pattern of bafflement, beyond "normal" denials of guilt, expressed by those accused. Many clearly do not understand why they are on trial for performing duties "authorised" by the German bureaucratic State.³⁷

³⁶ Jacob Berger, 'The Legal Nature of War Crimes and the Problem of Superior Command,' *The American Political Science Review*, 38 (1944) 1203-1208, p.1203.

³⁷ Charlesworth, 'Forgotten justice', p.9.

The cultural convention of 'obeying orders' was deeply enshrined in early twentieth century German society, consciously and unconsciously influencing the behaviour of all parties involved in war crimes investigations within the Federal Republic. This was particularly important in those cases involving the middle-management of the Holocaust. Not committing murder directly they could seek some justification (and they hoped legal protection) in the orders of those above them.

1.4 The Intellectual and Academic Context

While the International Military Tribunal at Nuremberg had been willing to label the SS as a criminal organization, with the implication that its members were therefore criminals, West German law operated on the basis of individual responsibility for crimes committed during the National Socialist era. As Sanford Levinson has argued: the Nuremberg trial 'raised very sharply [but did not resolve] the problems involved in trying to assess the responsibility of a given individual relative to a very complex scheme of organizational behavior'.³⁸ To what extent could a leader be held responsible for the criminal actions of individuals operating under their command, influence, nominal authority or temporary control? By the 1960s, given impetus by academic fascination with the decision-making process in the Kennedy administration, this was being further complicated by philosophical debates on collective psychology and the role of leaders. Murray Edelman argued in 1964:

Because it is apparently intolerable for men to admit the key role of accident, of ignorance, and of unplanned processes in their affairs, the leader serves a vital function by personifying and reifying the processes. As an individual, he can be praised and blamed and given "responsibility" in a way that processes cannot. Incumbents of high public office therefore become objects of acclaim for the satisfied, scapegoats for the unsatisfied, and symbols of aspirations or of whatever is opposed. To them are constantly ascribed careful weighing of alternatives and soul-searching decisions. That the premises for the decisions are largely supplied and screened by others and the decision itself frequently predetermined by a succession of subordinates' decisions is not publicized. Decision-making at the highest levels is not so much literal policy-making as dramaturgy.³⁹

This process of problematizing the role of the leader added a further set of potential doubts about the specific guilt of any individual within an organization involved in criminal activity like *Einsatzstab* Gieseke. Just how far could a leader be held responsible for the actions of their subordinates?

³⁸ Sanford Levinson, 'Responsibility for Crimes of War,' *Philosophy & Public Affairs*, 2 (1973) 244-273.

³⁹ Murray Edelman, *The Symbolic Uses of Politics* (University of Illinois, 1964) p.78.

2 Responding to the Accusation

2.1 Gieseke's First Statement

In dealing with war crimes investigators Gieseke held a number of significant advantages. Whatever his activities in respect of DGIV, he had formerly been a police officer well used to the process of interrogation, and the intricacies of criminal procedure. He knew how to behave under pressure and how to make life difficult for investigators. Darko Maver, amongst others, has argued that when faced with an accusation of homicide individuals typically resort to one or more of four defensive strategies. The typical strategies of defence in these cases are: to deny the offence in general; to deny the criminal element (self-defence); to confess the act but minimise the guilt (provocation of the victim, being drunk), to confess one act but deny the other.⁴⁰

Although he would later refer to it as an interrogation, Gieseke's first session with the police appears to have taken the form of an 'investigative interview' similar to that used in modern British criminal investigations.⁴¹ One particular area of interest to investigators were the atrocities committed in the vicinity of *Rowno* which had been the rallying point for the troops of Gieseke's command when they were forced out of the Ukraine. The specific interest of investigators in *Rowno* probably suggested to Gieseke that their knowledge about other activities connected to his command was at best sketchy. He was happy to encourage this and to blur dates. In a sworn affidavit taken after the interview Gieseke related how he had been appointed to command of the *Einsatzstab*:

only at the end of 1942 or start of 1943.... Back then Prützmann was the Higher SS and Police Leader. Part of my official position involved participation in numerous meetings. The building of the road demanded that meetings were held with the Wehrmacht, the OT [Organization Todt] and other units. I would have taken part in meetings, which would have been led by Prützmann. I cannot recall if I took part in the...meeting (May or June 1942). It is also possible that the meeting in question was a senior management meeting.

⁴⁰ Darko Maver, 'Defence Strategies and Techniques of Interrogation: Results of Empirical Research', in Milan Pagon (ed.) *Policing in Central and Eastern Europe: Comparing Firsthand Knowledge with Experience from the West* (College of Police and Security Studies, 1996) available at National Criminal Justice Reference Service, U.S. Department of Justice, <https://www.ncjrs.gov/policing/def331.htm> accessed 10/10/12.

⁴¹ Saul M. Kassin, Sara C. Appleby, Jennifer Torkildson Perillo, 'Interviewing Suspects: Practice, Science, and Future Directions,' *Legal and Criminological Psychology*, 15 (2010) 39–55.

Beyond this Gieseke was willing to confirm unthreatening minor facts. He was careful to ensure that memory lapses safeguarded other members of his former command. He was willing to give investigators one name, presumably out of a calculation that they were unlikely to believe total memory failure on his part. In providing that name, and his current occupation, Gieseke highlighted the difficulty of an investigative context in which officialdom in post-war West Germany contained a large number of men connected with the worst excesses of Nazi Germany:

To carry out the security tasks, a police battalion was subordinate to me....This battalion was called the security battalion... I do not know another name for it....Apart from this battalion, several units of Ukrainians and Cossacks were used, each of which had a German link officer. I cannot recall the name of these officers, they also changed frequently. I can also recall that there was a Lithuanian and an Estonian battalion. These units were used for security at DG IV, and for no other tasks. I can only recall by name, of my former officers, my former 1A and later link officer with a Cossack battalion, Hauptmann Moldenhauer. At the moment he is Major with the border control in Bonn....I do not know the names read out to me. I do not know what the local SD leader or the commander of the POW camp in Rowno were called.⁴²

Questioned generally about the murder of Jews in the East Gieseke denied all knowledge:

I neither saw nor heard about Jew executions during my appointment from April 1942....I cannot make a statement in response to whom I would hold responsible for the Jewish executions, since, as I told you, during my being stationed there, none were carried out. I want to mention that Rowno was not my [base quarters], which was in Dneperpetrovsk. The stay in Rowno was forced by the thaw period. I cannot make any further statements on this subject.⁴³

Following Gieseke's interview, and that of other members of his command, the *Zentrale Stelle* handed over his case to the Department of Public Prosecution in Hildesheim. On 4 May they instituted formal legal proceedings against Gieseke. The investigation was further spurred by the publication in Germany of the wartime diary *Lasst mich Leben (Let me Live)*. It had first been published in Romania in 1947 and its author was Arnold Dagahni a former Jewish slave labourer who had worked on DGIV from 1942 to 1943. Like tens of thousands of Romanian Jews Dagahni, and his wife, had been deported to the region of Transnistria (Ukrainian territory given to Romania by Germany) where brutal treatment, murder and neglect at the hands of

⁴² Bundesarchiv, Aussenstelle der Landjustizverwaltungen, Ludwigsburg, B162/1813 (Bl. 3-4), Record of Interrogation, Walter Gieseke, 11 January 1960.

⁴³ Bundesarchiv, Aussenstelle der Landjustizverwaltungen, Ludwigsburg, B162/1813 (Bl. 3-4), Record of Interrogation, Walter Gieseke, 11 January 1960.

the authorities were intended to permanently remove the Jews from the life of the nation. Transnistria was to be the graveyard of the Jews of Romania. Daghani and his wife, and several hundred other deported Jews, were taken across the border into the German occupied Ukraine where they were put to work on DGIV. In 1943 Daghani and his wife had escaped detention and they had evaded capture until the Ukraine was liberated by the Red Army. Daghani's diary detailed the inhuman conditions of the Mikhailowka work camp, the sadistic brutality of camp guards and incidents of single and multiple homicide. Moreover, the diary identified specific individuals in both the SS and amongst the Schuma security battalions (which were at least notionally under Gieseke's command). As Edward Timms has observed about Daghani's diary: 'In place of the impersonal machinery of 'the holocaust', we are presented with the names and ranks of individual perpetrators, the individual characteristics of their victims, and the identities of the bystanders'.⁴⁴ In May 1960 Daghani was asked to give a statement by the *Zentrale Stelle*.⁴⁵

2.2 Gieseke's Second Statement

When the police returned to the home of Walter Gieseke in June 1960 they had substantially more evidence at their disposal than at the time of their first visit. Gieseke was confronted with documentary evidence on the operation of the task force including his signature on documents relating to the performance of SS men. The use of documentary evidence appears to have been a strategic move on the part of investigators.⁴⁶ The documents did not point directly, or indirectly to his guilt, but they did provide a physical means to suggest that the investigators were well prepared. Gieseke had to assume a good deal of knowledge on the part of his questioners and he had no means of knowing whether they had discovered significant evidence that might suggest his guilt.

The retired police officer was therefore forced to shift his ground. Implicitly he accepted that the building of DGIV had involved crimes against Jews and others, while styling himself as a desk jockey far removed from the sites of mistreatment and murder. In Michael Bryant's terminology Gieseke was representing himself as an

⁴⁴ Edward Timms, *Memories of Mikhailowka: Labour Camp Testimonies in the Arnold Daghani Archive*, Centre for German-Jewish Studies, Research Paper, 4 (2000) pp.12-13.

⁴⁵ Timms, *Memories*, p. 23.

⁴⁶ M. Hartwig, P. A. Granhag, L. A., Strömwall, & O. Kronkvist, 'Strategic use of evidence during police interviews: When training to detect deception works,' *Law and Human Behavior*, 30 (2006) 603–619.

'operational perpetrator' as opposed to a 'direct perpetrator'.⁴⁷ Gieseke's initial tactic was to provide an overview of his career and the construction of the road. He then turned to the relationship between his command and the Organisation Todt:

The leadership of the O[rganisation] T[odt] was also in Dneperpetrovsk and was subordinate to Professor Bruckmann. Back then, the organization Sauckel was engaged in recruiting workers from the Ukraine for work in Germany. But since the Organization Todt now also needed local workers for the organization's tasks, an agreement was reached that Sauckel's organization was not to operate within 50km either side of the new road. The whole road was divided into sections.... Viniza [Vinnitsa], Kirovograd [Kirovograd], Kriwoi-Rog [Krivoi-Rog], Dneperpetrovsk and Stalino.... In each of the named locations there was a section leader of the OT and in addition a higher SS leader. The workers...needed by the OT were now gathered by the section leader of the OT together with the SS leader.⁴⁸

Turning to the security forces under his command Gieseke emphasised that their primary role was to protect camps and installations against attack by partisans. Once deployed they were under the local control of the SS:

Subordinate to our Einsatzstab were so called security forces. As the name states, they were responsible for securing the work of the Organization Todt against external influences (partisans, sabotage). To my knowledge, the presence of the security forces was enough, so that their deployment was not needed, sabotage especially did not happen...The security forces, which I made available for a particular construction section, were led...by the SS leader responsible for this section. This SS leader was appointed by the Higher SS and Police Leader in Kiev. In each case it was a SS-Brigade or Oberführer. They were by nature not subject to my orders. Rather, the leader of the security forces unit in question was subordinate to the responsible SS section leader. I was not involved with the work of the security forces in the construction sections. Considering the huge distances, it would have been impossible to carry out such duty. My task was limited to making available the requested security forces and keep them ready for deployment (equipment, food, clothing etc.).⁴⁹

On the forced employment, mistreatment and murder of Jews Gieseke suggested that he had little knowledge and that in any case the SS had jurisdiction on the supply of labour. He went to some pains to emphasise that security units under his direct control were not involved in the murder of Jews. In addition, he made incriminatory references to his aide de camp SS Untersturmführer Jaeger:

⁴⁷ See Nathan Stoltzfus, 'Nazi Crimes and the Law', *German Historical Institute Bulletin*, 34 (2004) 158.

⁴⁸ Bundesarchiv, Aussenstelle Ludwigsburg, B162/6150 (Bl. 17-20), Record of Interrogation, Walter Gieseke, 2 June 1960.

⁴⁹ Ibid.

I am aware that, among others, Jews were used as workers, and I know that from one location in the section Winiza [Vinnitsa]. I can't recall who told me and how. Officially, I was not, as I said, involved with that. I just heard about that occasionally. During the whole time I never heard about Jew shootings (executions). I can't therefore comment on who ordered these shootings. I had, as I stated, nothing to do with the deployment and treatment of the workers and would have had, therefore, no possibility to influence events. As I said, 3 organisations were active at the same time, the OT, the SS and our security forces. I am stressing again, that in the construction areas in question the responsible SS leader also had to handle the work of our security teams. I had nothing to do with that. I did not take care of, and could not have taken care of, the work of the individual [security forces]. I am distinctly stressing that I did not know anything about the deployment or involvement of security forces in Jew shootings... I only knew that workers were used for the work and that in one case Jewish workers were also used. Even if I had known everything, I would not have had an opportunity to change anything. But I am stressing again strongly, that I did not know about this. In my Stab was just one SS leader, an Untersturmführer. Why he was appointed to me, I can't say... I don't know about work camps in Mikhailowka, Braslaw, Tarrasiwka, Krasnapolka, Kublicz and Nemirow. As I said, I did not even know that there were camps at the construction sites.⁵⁰

To convince investigators of his good faith on his second interrogation Gieseke proved willing to provide further names.

Already, after my police interrogation I named Hauptmann Moldenhauer, who at the time was part of my Stab. In the meantime I remembered:

1. Hauptmann Hensel, who then led a company and is today with the police;
 2. Oberleutnant Stender, who then led the communications train, I am sure he is on police service again, since he visited me some years ago. His address I do not know;
 3. Brigade leader von Alrensdorf or similar, section leader in Viniza [Vinnitsa];
 4. Brigade leader Strob, section Kirowograd [Kirovograd].
- Further names I cannot at the moment recall.⁵¹

However, there were issues with some of the names that Gieseke put forward so helpfully in his interview: 'von Alrensdorf' was in fact SS and police leader Ludolf von Alvensleben; Brigade leader Strob was SS Brigadeführer Jurgen Stroop⁵²; and Professor Bruckmann (mentioned earlier) was in reality Walter Brugmann, architect and manager of Organization Todt in South Russia. Gieseke's careful attempt to conceal their identities, while appearing helpful, was significant because even correct identification of the names would not have mattered. Alvensleben had been safe in

⁵⁰ Bundesarchiv, Aussenstelle Ludwigsburg, B162/6150 (Bl. 17-20), Record of Interrogation, Walter Gieseke, 2 June 1960.

⁵¹ Ibid.

⁵² C. Hamilton, *Leaders and Personalities of the Third Reich*, vol.2 (R. James Bender Publishing, 1996), pp.173-6. Convicted by a Polish court Stroop was eventually executed on 6 March 1952.

South America since 1946 and Strop had been executed, after conviction by a Polish court, on 6 March 1952. Both Jaeger and Walter Brugmann had been killed during the war (Jaeger in action in 1943 and Brugmann in a 1944 aircraft crash). That Gieseke was willing to venture the names of former associates who he thought were still in the police force is also revealing. He seems to have been trying to utilise their apparent respectability to suggest his own, and to foster a sense of shared identity with his investigators.

2.3 Gieseke's Third and Final Statement

On 10 August 1964 the Department of Public Prosecution in Hildesheim reluctantly decided that it did not have enough evidence to charge Gieseke:

It is not possible to sustain the allegation against the accused Gieseke, despite his influential position as leader of the Einsatzstab Gieseke, which was responsible for DGIV... that he directly or indirectly participated in the killing of Jewish slave labourers through the giving of related extermination orders. Therefore the proceedings against Walter Giesecke are to be dropped.⁵³

This was in spite of the fact that the prosecutor recognised that, at best, Gieseke was being economical with the truth:

The accused Gieseke due to his official position not only knew about the use of Jewish slave labourers, as he admits himself, but also knew about the measures directed against them. The testimonies do not, however, contain sufficient concrete evidence that Gieseke actively participated in the killing of Jewish slave labourers by giving related orders....The alleged phrase from Gieseke: 'who does not work gets shot' does not mean that Gieseke himself gave the order for the shooting; it may have been solely a statement of facts...on which the accused had no influence.⁵⁴

However, the investigations into Gieseke's subordinates continued during the 1960s and in 1968 he was questioned again by the Luebeck public prosecutor's office. Three of his subordinates ventured testimony that confirmed that Gieseke was aware of mass shootings of Jews. The 1968 interrogation revolved around Gieseke's relationship with the SS and his command responsibility for the SS men in his

⁵³ Sussex University Library, Arnold Daghani Collection, 'Investigations versus Friese and others for Murder', Lubeck Public Prosecutors Report, 3 Js 1428/65 StA Itzhoe (FM268), unpublished MSS, p.612.

⁵⁴ Ibid, p.606.

command.⁵⁵ Over three and a half hours his interrogators suggested to Gieseke that he had a far greater influence with the SS than he had previously admitted. His role in appraising the performance of SS men was held up as evidence of Gieseke's authority with that organisation. To counter, Gieseke put forward a subtle argument that his role in the appraisal of SS men was under delegated authority from the Higher SS and Police Führer for South Russia:

If I did their appraisals... these appraisals were done on order of the HSSPF. It follows from practical necessity that I did these appraisals since I was in contact with these people at the DGIV. I could only report any complaints to the HSSPF, who then had the possibility for disciplinary action.

Things were different for the area of 'giving orders'. I was put in place by the HSSPF as the responsible officer for the construction of the DGIV. To fulfil this task, I necessarily had to be in a commanding position. I therefore could give orders, within the framework of the tasks of the DGIV, to the administration of the main construction zones [*Oberbauabschnitte*] and their leaders. These main construction leaders now had to carry out these orders and instructions within their main construction section and within their discretion/judgement. In other words, I only gave framework orders.

I did not have any direct influence on the construction section administrations. That also follows the military hierarchy, that as leader of the Stab you turn to the next lower office and only in special circumstances contact directly the offices concerned. It is correct that I visited on my inspection rounds also the construction section administrations and the bases of my police officers, to enquire about the general situation and the provision; and to check the relationship between the police and the OT on the one hand, and between the police and the SS on the other hand.

It is also correct, that the main construction zones sent reports on the progress of the work to my Stab at certain intervals, which I then summarized with my Stab and sent on to the HSSPF. This way of reporting was not, however, planned from the beginning. At first the main construction zones were to report directly to the HSSPF....When I am asked about the Jew executions in the main construction zone Winniza [Vinnitsa], I can only say, that I did not know anything about such measures. I did know, due to the incoming reports, that Jewish workers were used there, and I also glimpsed such a camp along the road while driving past on inspection round. I cannot recall today anything about the strength of these Jewish workers.

I have heard today for the first time, to what an extent Jews were shot in this area and that members of the 1 Company and members of the construction section administration took part in such measures. I assure you that I never heard about this, either in private or officially. I cannot explain on which order Ettenhuber and his men had to take part in such measures. Partly, I explain it,

⁵⁵ Bundesarchiv, Aussenstelle Ludwigsburg, B162/6165 (Bl. 2554-2556), Record of Interrogation, Walter Gieseke, 10 September 1968.

that the orders of the higher SS leaders in the eyes of my people seemed binding, since they were instructionally subordinate to them. Even as a higher leader of a Stab, you hardly had an insight into the internal command hierarchy of the SS. It is possible that these measures were ordered directly by the security police, thus by-passing the responsible Stab; and our people were simply presented with a fait accompli.

Even shown the statements given by witnesses Mannhaupt, Moser and Schenck, according to which I knew about the Jew executions, I have to insist on my description of events.⁵⁶

Gieseke's central goal in his third examination was to trace a set of responsibilities, procedures and practices that would place the guilt for the murder of Jewish slave labourers squarely on the shoulders of the SS. At the same time he was careful to detail the set of relationships involved in such a way as to make it impossible for investigators to contradict his account with a document or statement from another interrogation. In the vastness of the Ukraine, and the overlapping spheres of responsibility and competition that marked the administrative chaos of the Third Reich ('authoritarian anarchy' as Klaus Hildebrand would label it), the precise level of Gieseke's responsibility for what took place on DGIV could not be determined by a simple set of managerial hierarchies and line management responsibilities.⁵⁷ The picture which Gieseke put forward about German rule in the East was perhaps not that unfamiliar to investigators in the 1960s. Franz Neumann writing in 1942 had identified German rule as chaotic and by the 1960s academics such as Gerald Reitlinger were confirming that conclusion through their research.⁵⁸ Their conclusions would be further supported by later historians of German occupation policy such as Timothy Mulligan, Jonathan Steinberg and Simone Bellezza.⁵⁹ Gieseke presented his interrogators with a set of 'in practice' relationships that would be hard to confirm and behind which he could maintain the guilt of others. Hans Adolf Prützmann, the Higher SS and Police Leader for South Russia, was the only other man who knew the nuanced realities of Gieseke's command between 1942 and 1943 and

⁵⁶ Bundesarchiv, Aussenstelle Ludwigsburg, B162/6165 (Bl. 2554-2556), Record of Interrogation, Walter Gieseke, 10 September 1968.

⁵⁷ Klaus Hildebrand, *The Third Reich* (George Allen and Unwin, 1984) p.109

⁵⁸ Franz L. Neumann, *Behemoth: Structure and Practice of National Socialism* (Oxford University Press, 1942); Gerald Reitlinger, *The House Built on Sand: The Conflicts of German Policy in Russia 1939-1945* (Weidenfeld, 1960).

⁵⁹ Timothy P. Mulligan, *The Politics of Illusion and Empire: German Occupation Policy in the Soviet Union* (Praeger, 1988). See also Jonathan Steinberg, 'The Third Reich Reflected: German Civil Administration in the Occupied Soviet Union, 1941-44,' *English Historical Review*, 110 (1995) 620-51; Simone A. Bellezza, 'The Discourse over the Nationality Question in Nazi-Occupied Ukraine: The Generalbezirk Dnjepropetrowsk, 1941-3', *Journal of Contemporary History*, 43 (2008) 573-596.

Prützmann had been dead since 1945. By invoking his name and authority Gieseke was implicitly invoking the defence of 'obeying orders'.

3 Investigative Outcome: Luebeck Public Prosecutor's Enquiries

Gieseke was not charged as a result of his third interrogation, although by now the investigating authorities knew a very great deal about the operations of Einsatzstab Gieseke. Investigators were willing to accept Gieseke's claim that the Higher SS and Police Leader (HSSPF) for South Russia bore ultimate responsibility for the building of DGIV. They were also willing to accept that it was probably on the orders of the HSSPF that mass killings of Jews, and camp closures, took place. The dead HSSPF Hans Adolf Prützmann would take the blame instead of Walter Gieseke. Although they could not tie Gieseke to them, investigators through interview were able to establish a set of operational orders governing the handling of Jewish slave labourers:

1. Jews unable to work are to be shot. [This included the elderly, sick and very young.]
2. Captured Jews are to be shot.
3. For each escaped Jew, every tenth Jew of his/her working gang, or ten hostages of his/her home village, are to be shot.
4. Escaping Jews to be shot without warning.⁶⁰

The clearest insight into the operations of the *Einsatzstab* was provided by SS officer Franz Christoffel.⁶¹ He claimed that Gieseke and Prützmann were both involved in drafting orders, but the prosecutor's office decided that the only thing that they could be certain about was that Gieseke was aware of orders detailing mass killings of Jews. Although some of Gieseke's subordinates stated that the killing of Jews was openly talked about in the command this was not enough to establish his personal responsibility.

⁶⁰ Bellaza, 'Discourse', pp.603-5.

⁶¹ Ibid, p.605ff.

Conclusion

Gieseke was never brought to trial and Daghani would eventually conclude that the West German investigations into the crimes committed along DGIV were 'merely a farce, a meaningless gesture'.⁶² Based on the findings of Omar Bartov's research into the German Federal Courts, if the case against Gieseke had reached court the chances of a successful conviction were always going to be slim.⁶³ While post-war Federal German courts were willing to convict psychopaths and ethnic Germans from beyond the boundaries of the old Reich they were more hesitant in dealing with men like Gieseke: an individual of 'sound stock' from the German heartland. Contrary to Daghani's concerns there were some successful prosecutions in respect of crimes committed along DGIV. Two cases relating to crimes committed at Tarnopol were brought before the court in 1966 by the Stuttgart Public Prosecutor's Office. The first involved 10 men, resulting in 7 convictions (two were given life sentences). The second involved 15 men, with nine men being sentenced to prison terms between 30 and 60 months. However, it was a poor return on a set of investigations which had lasted over a decade, involving 1,500 interviews.⁶⁴ The overall failure of the investigations into DGIV mirrors the wider pattern of performance of the *Zentrale Stelle* mapped by Dutch researcher Dick de Mildt:

Up to 1992, 755 persons stood trial for their war-time involvement in the systematic persecution and killing of Jews. In 283 instances, these trials ended with the acquittal of the defendants, the dismissal of charges for other reasons, or because no punishment was imposed....In one case a death sentence was imposed, while 113 others received life imprisonment, and 358 were punished with a temporary sentence running up to a maximum of 15 years. Assuming... a total of 100,000 persons originally involved in....[Holocaust] crimes, slightly more than 7 out of 1,000 saw the inside of a courtroom, while not even 5 of them eventually met with a punishment. From a quantitative point of view, then, the record of West Germany's prosecution of its most serious Nazi offenders does not look particularly impressive. In fact, as the above statistics reveal, the German judiciary hardly scratched the surface in this respect.⁶⁵

For the historian, as for the criminologist, the attempt to reconstruct the failed prosecution of Walter Gieseke highlights the central importance of the record of the investigation. A significant proportion of the evidence relating to the decision not to

⁶² M. Bohm-Duchen, *Arnold Daghani* (Diptych, 1987) p.43.

⁶³ O. Bartov, 'Guilt and Accountability in the Postwar Courtroom: The Holocaust in Czortków and Buczacz, East Galicia, as Seen in West German Legal Discourse,' Proceedings of the Seventh Annual Gilder Lehrman Center International Conference at Yale University, www.yale.edu/glc/justice/bartov.pdf accessed 10.3.12

⁶⁴ *Jewish Chronicle*, 7 April 1967, p.3.

⁶⁵ Dick De Mildt, *In the Name of the People: Perpetrators of Genocide in the Reflection of their Post-War Prosecution in West Germany* (Brill, 1996) p.21

bring Gieseke before a court cannot be reconstructed from affidavits and records of interrogations. The documentary record does not allow us to understand the identity, behaviour, strategies of the investigating team or to understand the procedural rules and limitations that they operated under. Likewise, the 'behavioural cues' exhibited by Gieseke cannot be reconstructed from the paper record.⁶⁶ What the documents do suggest, however, is that in response to the questions of investigators between 1960 and 1968 Gieseke pursued a systematic and responsive strategy designed to confuse ('I cannot recall'), misdirect (Willi Jaeger and the SS) and minimize his personal guilt (the desk jockey). That strategy points towards Gieseke's likely guilt. As Maria Hartwig's research has shown, in interrogations the guilty are more likely (60.5% of individuals) to pursue a conscious strategy than the innocent who tend to reject a conscious strategy in the belief that the truth will out (62.5% of individuals).⁶⁷ Gieseke's terse first statement is particularly interesting in view of Hartwig's research findings on the varying amounts of information ventured by the guilty (as little as possible) and the innocent (the reverse) in investigations.⁶⁸

The investigation of Walter Gieseke highlights the problems in the 1950s and 1960s of securing justice for crimes committed during the war. The processes of investigating and prosecuting of German war criminals in the context of West German justice in the 1950s and 1960s were not likely to result in a conviction. Gieseke's defensive strategies maximized the problems facing investigators which resulted from the set of legal, political, social and investigative contexts that made a trial difficult and, in the eyes of many West Germans, unwanted and unwarranted. Like the majority of the 100,000 Germans identified by Dick de Mildt as having some responsibility for the Holocaust, Gieseke would not be called before a court to account for his actions. As Pendas notes rather coldly, 95,000 Germans and Austrians were convicted of Nazi era crimes after 1945: but only 6,495 of these convictions would be before the courts in the Western occupation zones and the Federal German state.⁶⁹ In the case of Walter Gieseke can be glimpsed many of the

⁶⁶ Saul M. Kassin, Sara C. Appleby and Jennifer Torkildson Perillo 'Interviewing suspects: Practice, science, and future directions,' *Legal and Criminological Psychology*, 15 (2010) 39–55.

⁶⁷ Maria Hartwig, *Interrogating to detect deception and truth: Effects of strategic use of evidence*, Doctoral Dissertation, Department of Psychology, Göteborg University, Sweden, 2005. Available at <https://gupea.ub.gu.se/bitstream/2077/191/1/Hartwig2005.pdf> p.43. accessed 31 October 2012.

⁶⁸ Hartwig, 'Interrogating' p.42.

⁶⁹ Pendas, 'Seeking' p.354. Western European Courts: 2,890; Courts of the Allied Powers 8,812; East Germany and Soviet Occupation Courts 12,776; Western Occupation Zones/Federal Republic 6,495; Eastern European Courts beyond Germany 52,721.

complexities that protected the guilty men and women of post-war Germany. Moreover, study of this case hopefully demonstrates the need to discount concerns about 'practitioners' trespassing onto the territory of historians. In studying post-war German justice, and indeed most aspects of legal history, there is ample scope for practitioners and historians to pool their skills and approaches to the mutual benefit of truly interdisciplinary scholarship. There is much to be learned from each other and little to be feared.