

Judicial Independence Track

How the Courts Failed Germany

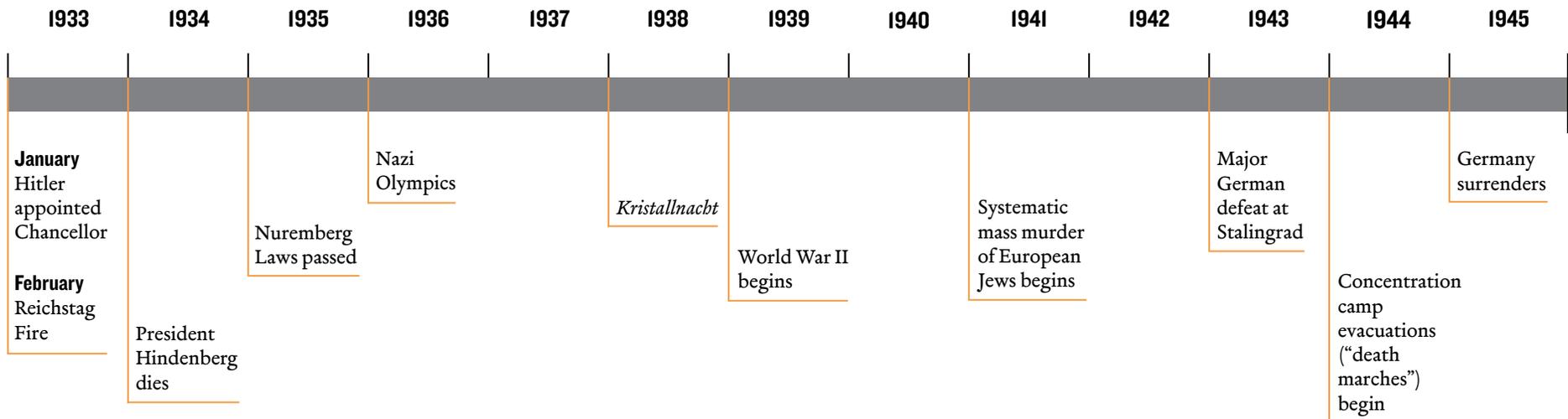
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NAZI GERMANY TIME LINE

1933–1945



HOW THE COURTS FAILED GERMANY



Criminal court judges display their loyalty to the Nazi state. Berlin, Germany, October 1936. Ullstein bild/The Granger Collection, NY

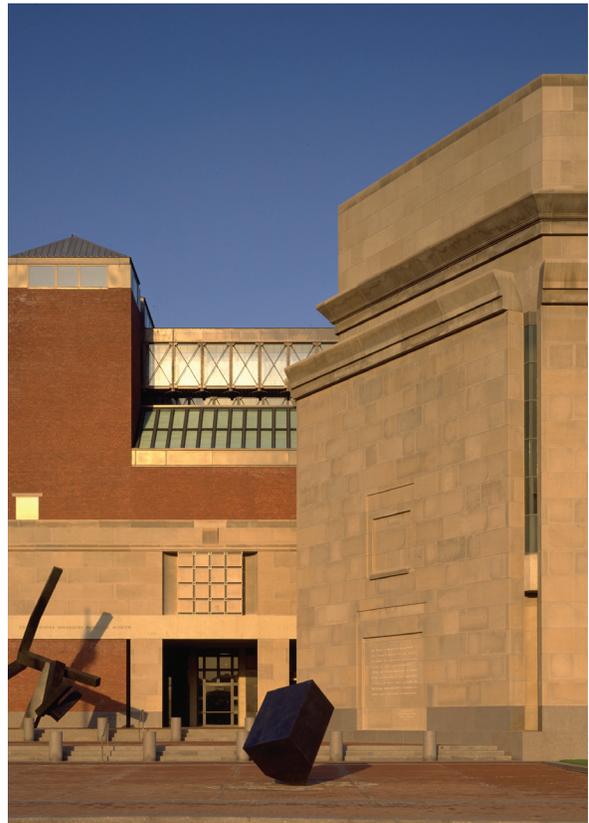
UNITED STATES
HOLOCAUST
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MUSEUM

The **UNITED STATES HOLOCAUST MEMORIAL MUSEUM** is America’s national institution for the documentation, study, and interpretation of Holocaust history, and serves as its memorial to the millions of people killed during the Holocaust.

The Holocaust was the state-sponsored, systematic persecution and annihilation of European Jewry by Nazi Germany and its collaborators between 1933 and 1945. Jews were the primary victims—six million were murdered. Gypsies, the handicapped, and Poles were also targeted for destruction or decimation for racial, ethnic, or national reasons. Millions more, including homosexuals, Jehovah’s Witnesses, Soviet prisoners of war, and political dissidents, also suffered grievous oppression and death under Nazi tyranny.

A living memorial to the Holocaust, the Museum strives to inspire leaders and citizens to confront hatred, prevent genocide, and promote human dignity. Its primary mission is to advance and disseminate knowledge about this unprecedented tragedy, to preserve the memory of those who suffered, and to encourage all people to reflect upon the moral questions raised by the events of the Holocaust as well as their own responsibilities as citizens of a global society.

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INTRODUCTION

Between 1933 and 1945, Germany's government, led by Adolf Hitler and the National Socialist (Nazi) party, carried out a deliberate, calculated attack on European Jewry. Basing their actions on racist beliefs that Germans were a superior people and on an antisemitic ideology, and using World War II as a primary means to achieve their goals, the Nazis targeted Jews as the main enemy, killing six million Jewish men, women, and children by the time the war ended in 1945. This act of genocide is now known as the Holocaust. As part of their wide-reaching efforts to remove from German territory all those whom they considered racially, biologically, or socially unfit, the Nazis targeted many other groups as well, including Germans with mental and physical disabilities, Roma (also known as Gypsies), Soviet prisoners of war, Poles, homosexuals, and Jehovah's Witnesses. In the course of this state-sponsored tyranny, the Nazis left countless lives shattered and millions dead.

The most significant perpetrators of these crimes are well known: Hitler, Adolf Eichmann, Heinrich Himmler, and Reinhard Heydrich, as well as the SS,¹ among others. But less known are the contributions of "ordinary" people—doctors, lawyers, teachers, civil servants, officers, and other professionals throughout German society—whose individual actions, when taken together, resulted in dire consequences. Put simply, the Holocaust could not have happened without them.

The role of those in the legal profession in general and the actions of judges in particular were critical. Many senior jurists in Nazi Germany had been on the bench throughout the years of the Weimar Republic (1918–1933)

and, before that, during the Imperial regime of Kaiser Wilhelm II (1888–1918). Coming from a longstanding authoritarian, conservative, and nationalist tradition, judges believed deeply in reinforcing government authority, ensuring public respect for the law, and guaranteeing that state actions had a legal basis (*Rechtsstaat*²). At the same time, they valued judicial independence in the form of protection from arbitrary or punitive removal from the bench and freedom from dictates regarding decision making. Above all, they rendered judgment based on such fundamental Western legal principles as the equality of all citizens, the right of an accused person to a fair trial, and the concept that there could be no crime or penalty without prior law.

In spite of these values, political democracy presented serious challenges to the judiciary. Many judges rejected the legitimacy of the democratic Weimar Republic, since it had come about through revolution, which they considered, by definition, a violation of the law. This attitude had long-term consequences for the republic. Judges routinely imposed harsh verdicts on left-wing defendants, whom they regarded with suspicion as revolutionary agents of various foreign powers, while acting leniently toward right-wing defendants, whose nationalist sentiments typically echoed their own. As a result, in the mid-1920s, supporters of the republic proclaimed a "crisis of trust," demanding the temporary suspension of judicial independence and the removal of reactionary and antidemocratic judges from the bench. Judges regarded these developments with alarm, rejecting proposals for reform as a perversion of justice. Many were

¹ The SS (Schutzstaffel), also known as the "Black Shirts," served as the elite guard of the Nazi Reich.

² *Rechtsstaat*, a German term meaning "state of law," is an important concept in continental European legal thinking, deriving from German jurisprudence. In a *Rechtsstaat*, the exercise of governmental power is constrained by the law to protect citizens from the arbitrary exercise of authority.

convinced that the criticism leveled upon them, which had come from the political left and from parliament, undermined the authority of the state.

When Hitler came to power, he promised to restore judges' authority and shield them from criticism even as he curtailed their independence and instituted reeducation programs designed to indoctrinate jurists in the ideological goals of the party. The Nazi leadership used a series of legal mechanisms—which, in contrast to the revolutionary overthrow of power in 1918, judges tended to consider legitimate—to gradually assume and consolidate Hitler's power. Then, step by step, and always under the guise of safeguarding the state, the Nazi leadership imposed legislation that fulfilled its ideological goals of rearmament, military expansion, and racial purification. Throughout the 1930s and especially after the Nazi regime began World War II in 1939, the judiciary typically rendered verdicts according to the principles of Nazi ideology and the wishes of the Führer.

In reality, judges were among those inside Germany who might have effectively challenged Hitler's authority, the legitimacy of the Nazi regime, and the hundreds of laws that restricted political freedoms, civil rights, and guarantees of property and security. And yet the overwhelming majority did not. Instead, over the 12 years of Nazi rule, during which time judges heard countless cases, most not only upheld the law but also interpreted it in broad and far-reaching ways that facilitated, rather than hindered, the Nazis' ability to carry out their agenda.

How was this possible? Why did it happen? It seems clear that the Nazi period presented individual judges—as it did so many others—with intense personal and ethical dilemmas. And while it is all too easy to condemn them in retrospect, oversimplifying their circumstances and declaring moral absolutes from a safe historical distance, it is more difficult and, ultimately, more useful to examine critically and objectively the pressures they faced. Moreover, it is neither the outright heroes nor the obvious villains whose stories are the most deeply challenging. Rather, it is through studying the actions of the ambivalent, conflicted, and ordinary individuals that the realities of ethical struggle become accessible.

The attached is a decision written by Dr. Oswald Rothaug, Senior Judge of the Special Court for the district of the Court of Appeals in Nuremberg, Germany, in March 1942. The findings provide details of the defendants' experience that illuminate the nature and scope of the failures of the Nazi system of "justice" and raise questions about how these failures were possible in an educated society based on Western values and traditions.

Katzenberger Case

March 13, 1942

Leo Katzenberger was a prominent Jewish businessman in Nuremberg who owned a wholesale shoe business and a number of stores throughout southern Germany and who was a leading figure in the Nuremberg Jewish community. Beginning in 1932, he rented an apartment and a small storefront in his building at 19 Spittlertorgraben to Irene Seiler, the daughter of a non-Jewish friend. Although his business was “Aryanized” in 1938, he was still considered well-off and continued to own his building and rent space to Seiler.

In the spring of 1941, Katzenberger, who was 76, and Seiler, who was 30, were accused of having a sexual affair and arrested on charges of race defilement (*Rassenschande*). Under interrogation they steadfastly denied that there was any sexual element to their relationship and asserted that it was merely a long-standing friendship in which Katzenberger helped Seiler as a father would help a daughter. The judge who initially investigated the case was unable to find sufficient evidence that sexual intercourse between Katzenberger and Seiler had occurred and delayed bringing the case to trial until further investigation. Then, in March 1942, following a sworn statement by Irene Seiler in which she also denied the charges, the case was brought before the Nuremberg Special Court and presided over by the notorious Nazi judge Dr. Oswald Rothaug.

There was great public interest in the proceedings and the court was crowded both days. In what was a deliberately orchestrated show trial, Rothaug referred to Katzenberger several times as a “syphilitic Jew” and an “agent of world Jewry.” There was no question of the outcome. The court convicted Katzenberger of race defilement and imposed the death penalty by applying not just the Law for the Protection of German Blood and German Honor, but also the Ordinance against Public Enemies (also called the Folk Pest Law) of 1939. The latter law—which permitted the death penalty if the accused exploited wartime conditions to further his or her crime—was used against Katzenberger on the grounds that he secretly visited Seiler “after dark.”

The written findings of the case reveal a series of inconsistencies and perversions allowed under the Nazi system of justice. The accused were arrested on the basis of rumors and innuendo; their sworn statements were twisted and used against them to further the aims of the prosecution; and the verdict was written to meet a predetermined outcome of guilt. It was a public demonstration designed to inflame antisemitic feeling and justify the extraordinary measures put in place to persecute Jews and other so-called enemies of the regime.

Irene Seiler was found guilty of perjury and sentenced to two years of hard labor. Leo Katzenberger was beheaded on June 2, 1942, at Stadelheim Prison in Munich.

Document translated from the German:

Decision of the Nuremberg Special Court of March 13, 1942, in the Katzenberger Race Defilement Case¹

Verdict:

In the Name of the German People

The Special Court for the district of the Court of Appeals in Nuremberg at the District Court Nuremberg-Fürth pronounced its verdict in the proceedings against Lehmann Israel Katzenberger, commonly called Leo, merchant and head of the Jewish religious community in Nuremberg, and Irene Seiler, owner of a photographic shop in Nuremberg. At present, both are being held on charges of racial pollution and perjury. They were tried in a public session on March 13, 1942, in the presence of:

The President—Dr. Rothaug, Senior Judge of the District Court;
Associate Judges—Dr. Ferber and Dr. Hoffmann, Judges of the District Court;
Public Prosecutor for the Special Court—Markl; and
Official Registrar—Raisin, clerk.

Lehmann Israel Katzenberger, commonly called Leo, Jewish by race and religion, born November 25, 1873, at Massbach, married, merchant in Nuremberg; and Irene Seiler, née Scheffler, born April 26, 1910, at Guben, married, owner of a photographic shop in Nuremberg, both at present in arrest pending trial have been found guilty and sentenced as follows:

Lehmann Israel Katzenberger for the offense of racial pollution as defined under Article 2, legally identical with an offense under Article 4 of the Decree against Public Enemies, is hereby sentenced to death and to loss of his civil rights for life according to Sections 32–34 of the Criminal (Penal) Code.

Irene Seiler for the offense of committing perjury while a witness is hereby sentenced to two years of hard labor and to loss of her civil rights for the duration of that time.

The three months the defendant Seiler spent in arrest pending trial will be taken into consideration in her sentence.

Costs will be charged to the defendants.

Findings

I.

I. The defendant Katzenberger is fully Jewish and a German national; he is a member of the Jewish religious community.

As far as his descent is concerned, extracts from the birth registers of the Jewish community at Massbach show that the defendant was born on November 25, 1873, as the son of Louis David Katzenberger, merchant, and his wife, Helene née Adelberg. The defendant's father, born on June 30, 1838, at Massbach, was, according to an extract from the Jewish registers at Thundorf, the legitimate son of David Katzenberger, weaver, and his wife, Karoline [née] Lippig. The defendant's mother, Lena Adelberg, born on June 14, 1847, at Aschbach, was, according to extracts from the birth register of the Jewish religious community of Aschbach, the legitimate daughter of Lehmann Adelberg, merchant, and his wife, [Bela-] Lea [née Seemann]. According to the Thundorf register, the

¹ Documentation of the State Superior Court Nuremberg: The Destruction of Leo Katzenberger by the Special Court Nuremberg.

defendant's parents were married on December 3, 1867, by the district rabbi in Schweinfurt. The defendant's grandparents on his father's side were married, according to extracts from the Thundorf register, on April 3, 1832; those on his mother's side were married, according to an extract from the register of marriages of the Jewish religious community of Aschbach, on August 14, 1836.

Concerning the marriage of the maternal grandparents, the extracts from the register of marriages of the Jewish religious community at Aschbach show that Bela-Lea [née] Seemann, born at Aschbach in 1809, was a member of the Jewish religious community. Otherwise the documents mentioned give no further information so far as confessional affiliations are concerned that parents or grandparents were of Jewish faith.

The defendant himself has stated that he is certain that all four grandparents were members of the Jewish faith. He knew his grandmothers when they were alive, and both grandfathers were buried in Jewish cemeteries. Both his parents belonged to the Jewish religious community, as he does himself.

The court sees no reason to doubt the correctness of these statements, which are fully corroborated by the available extracts from exclusively Jewish registers. Should it be true that all four grandparents belonged to the Jewish faith, the grandparents would be regarded as fully Jewish according to the Regulation to Facilitate the Producing of Evidence in Section 5, Paragraph 1, together with Section 2, Paragraph 2, Page 2 of the Ordinance to the Reich Civil Code of November 14, 1935, *Reichsgesetzblatt*, Page 1333. The defendant therefore is fully Jewish in the sense of the Law for the Protection of German Blood and German Honor. His own admissions show that he himself shared that view.

The defendant Katzenberger came to Nuremberg in 1912. Together with his brothers, David and Max, he ran a shoe shop until November 1938. The defendant married in 1906, and there are two children, ages 30 and 34.

Up to 1938 the defendant and his brothers, David and Max, owned the property of 19 Spittlertorgraben in Nuremberg. There were offices and storerooms in the rear building, whereas the main building facing the street was an apartment house with several apartments.

The co-defendant Irene Seiler arrived in 1932 to take a flat in 19 Spittlertorgraben, and the defendant Katzenberger has been acquainted with her since that date.

2. Irene Seiler, née Scheffler, is a German citizen of German blood.

Her descent is proved by documents relating to all four grandparents. She herself, her parents, and all her grandparents belong to the Protestant Lutheran faith. This finding of the religious background is based on available birth and marriage certificates of the Scheffler family that were made part of the trial. As far as descent is concerned, therefore, there can be no doubt about Irene Seiler, née Scheffler, being of German blood.

The defendant Katzenberger was fully cognizant of the fact that Irene Seiler was of German blood and of German nationality.

On July 29, 1939, Irene Scheffler married Johann Seiler, a commercial agent. There have been no children so far.

In her native city, Guben, the defendant attended secondary school and high school up to *Unterprima* [eighth grade], and after that, for one year, she attended the Leipzig State Academy of Art and Book Craft.

She went to Nuremberg in 1932 where she worked in the photographic laboratory of her sister Hertha, which the latter had managed since 1928 as a tenant of 19 Spittlertorgraben. On January 1, 1938, she took over her sister's business at her own expense. On February 24, 1938, she passed her professional examination.

3. The defendant Katzenberger is charged with having had continual extramarital sexual intercourse with Irene Seiler, née Scheffler, a German national of German blood.

He is said to have visited Seiler frequently in her apartment at 19 Spittlertorgraben up to March 1940, while Seiler visited him frequently, up to autumn 1938, in his offices in the rear of the building. Seiler, who is alleged to have gotten herself in a dependent position by accepting gifts of money from the defendant Katzenberger and by being allowed delay in paying her rent, was sexually amenable to Katzenberger. Thus, their acquaintance is said to have become of a sexual nature, and, in particular, sexual intercourse occurred. They are both said to have exchanged kisses, sometimes in Seiler's flat and sometimes in Katzenberger's offices. Seiler is alleged to have often sat on Katzenberger's lap. On these occasions, Katzenberger, in order to achieve sexual satisfaction, is said to have caressed and patted Seiler on her thighs through her clothes, clinging closely to Seiler and resting his head on her bosom.

The defendant Katzenberger is charged with having taken advantage of wartime conditions to commit this act of racial pollution. Lack of supervision was in his favor, especially as he is said to have visited Seiler during the blackout periods. Moreover, Seiler's husband had been called up, and consequently Katzenberger did not need to fear surprise appearances of her husband.

On the occasion of her interrogation by the investigating judge of the local Nuremberg Court on July 9, 1941, the defendant Irene Seiler is charged with having made deliberately untrue statements and affirmed under oath that this contact was without sexual motives and that she believed that to apply to Katzenberger as well. It is therefore alleged that Irene Seiler has become guilty of perjury.

The defendants have said the following in their defense:

According to the defendant Irene Seiler:

When she arrived in the photographic laboratory of her sister in Nuremberg in 1932, she was thrown completely on her own resources. Her sister returned to Guben, where she opened a studio as a photographer. Her father had recommended her to the landlord, the defendant Katzenberger, asking him to look after her and to assist her with advice and support. This was how she became closely acquainted with the Jew Katzenberger.

As time went on, Katzenberger did indeed become her adviser, helping her, in particular, with her financial difficulties. Delighted by the friendship and kindness shown her by Katzenberger, she came to regard him gradually as nothing but a fatherly friend, and it never occurred to her to look upon him as a Jew. It was true that she called regularly in the storerooms of the rear of the house. She did so after office hours, because it was easier then to pick out shoes. It also happened that during these visits, and during those paid by Katzenberger to her flat, she kissed Katzenberger now and then and allowed him to kiss her. On these occasions she frequently would sit on Katzenberger's lap, which was quite natural to her and she had no ulterior motive. In no way should sexual motives be regarded as the cause of her actions. She always believed that Katzenberger's feelings for her were purely those of a concerned father.

Based on this view, Seiler made the statement to the investigating judge on July 9, 1941, and affirmed under oath that, when exchanging those caresses, neither she nor Katzenberger did so because of any erotic emotions.

According to the defendant Katzenberger:

He denies having committed an offense. It is his defense claim that his relationship with Mrs. Seiler was of a purely friendly nature. The Scheffler family in Guben had likewise looked upon his relationship with Mrs. Seiler only from this point of view. He continued his association with Mrs. Seiler after 1933, 1935, 1938, and beyond;

which might be illegal according to the Nazi party [NSDAP] but the fact that the relationship continued only signified his good intentions.

Moreover, their meetings became less frequent after the action against Jews in 1938 [*Kristallnacht*]. After Mrs. Seiler got married in 1939, the husband often came in unexpectedly when he, Katzenberger, was with Mrs. Seiler in her flat. Never, however, did the husband surprise them in an ambiguous situation. In January or February 1940, at the request of the husband, Katzenberger went to the Seilers' apartment twice to help them fill in their tax declarations. The last talk he ever had in the Seiler apartment took place in March 1940. On that occasion Mrs. Seiler suggested to him that he discontinue his visits because of the representations made to her by the NSDAP, and she gave him a farewell kiss in the presence of her husband.

He never had any amorous intentions toward Mrs. Seiler and therefore could not have taken advantage of wartime conditions and the blackout periods.

II.

The court has evaluated the excuses of defendant Katzenberger and the attempts of defendant Seiler to present her admissions as harmless as follows:

In 1932, when the defendant Seiler came to settle in Nuremberg, she was 22 years old, a fully grown and sexually mature young woman. According to her own statements, which are in this respect at least credible, she was not above engaging in sexual activities with her friends.

In Nuremberg, when she took over her sister's photography laboratory at 19 Spittlertorgraben, she entered the immediate sphere of the defendant Katzenberger. During their acquaintance, she gradually, over a period of almost ten years, became willing to exchange caresses and, according to the confessions of both defendants, situations arose that in no way could be regarded as the results of only fatherly affection. When she met Katzenberger in his offices in the rear building or in her flat, she sat often on his lap and, without a doubt, kissed his lips and cheeks. On these occasions Katzenberger, as he admitted himself, responded to these caresses by returning the kisses, putting his head on her bosom, and patting her thighs through her clothes.

Katzenberger's portrayal of the exchange of caresses—as the expression of fatherly feelings—and that of Seiler—as the tender caress to a child arising from the immediate situation—defy common sense. The subterfuge used by the defendant in this respect is, in the view of the court, simply a crude attempt to disguise his actions, which have a strong sexual bias, as fatherly affection free of sexual lust. In view of the character of the two defendants and on the basis of the evidence submitted, the court is firmly convinced that sexual motives were the primary cause for the caresses exchanged by the two defendants.

Seiler was usually in financial difficulties. Katzenberger took the opportunity and availed himself of this fact to make her frequent gifts of money and repeatedly gave her sums from one to ten reichsmarks. In his capacity as administrator of the property on which Seiler lived and which was owned by the firm in which he was a partner, Katzenberger often allowed her long delays in paying her rental debts. He often gave Seiler cigarettes, flowers, and shoes.

The defendant Seiler admits that she was anxious to remain in Katzenberger's favor. They addressed each other in the second-person singular.

According to the facts established in the trial, the two defendants gave the impression to those in their immediate surroundings and, in particular, to the community of the house of 19 Spittlertorgraben that they were having an intimate love affair.

The witnesses Paul and Babette Kleylein, Johann Maesel, Johann Heilmann, and Georg Leibner frequently observed that Katzenberger and Seiler waved to each other when Seiler saw Katzenberger in his offices through one of the rear windows of her flat. The witnesses' attention was drawn particularly to the frequent visits paid by Seiler to Katzenberger's offices after business hours and on Sundays, as well as to the length of these visits. Everyone in the house eventually came to know that Seiler repeatedly asked Katzenberger for money, and they all became convinced that Katzenberger, as the Jewish creditor, sexually exploited the dire financial situation of the German-blooded woman Seiler. The witness Johann Heilmann, in a conversation with the witness Paul Kleylein, expressed his opinion of the matter to the effect that the Jew was getting a good return for the money he gave Seiler.

Nor did the two defendants themselves regard these mutual calls and exchanges of caresses as being merely casual happenings of daily life, beyond reproach. According to statements made by the witnesses Babette and Paul Kleylein, they observed Katzenberger showing definite signs of fright when he saw that they had discovered his visits to Seiler's flat as late as 1940. The witnesses also observed that during the later period Katzenberger sneaked into Seiler's flat rather than walking in openly.

In August 1940 defendant Seiler accepted [the accusation] when she addressed Oestreicher in the air raid shelter, in the presence of the other residents of the house, and he answered, "You Jewish hussy, I'll get you good!" Seiler did not do anything to defend herself against this reproach, and all she did was to tell Katzenberger of this incident shortly after it had happened. Seiler has been unable to give an even remotely credible explanation for why she showed this remarkable restraint in the face of so strong an expression of suspicion. Although she simply pointed out that her father, who is over 70, had advised her not to take any steps against Oestreicher, this is not a plausible explanation for the restraint she showed.

According to the testimony of the witness, Assistant Inspector of the Criminal Police Hans Zeuschel, it is also untrue that both defendants portrayed the existence of their sexual situation as harmless from the start. The fact that Seiler admitted the caresses she bestowed on Katzenberger only after having been earnestly admonished, and the additional fact that Katzenberger, when interrogated by the police, confessed only when Seiler's statements were being shown to him, forces the conclusion that they both deemed it advisable to keep secret the actions for which they have been put on trial. This being so, the court is convinced that the two defendants made these statements with the opportunistic intention of minimizing and rendering harmless the situation that has been established by witnesses' testimony.

Seiler has also admitted that she did not tell her husband about the caresses exchanged with Katzenberger prior to her marriage—all she told him was that in the past Katzenberger had helped her a good deal. After getting married in July 1939 she gave Katzenberger a "friendly kiss" on the cheek in the presence of her husband on only one occasion; otherwise they avoided kissing each other when the husband was present.

In view of the behavior of the defendants toward each other, as repeatedly described, the court has become convinced that the relations between Seiler and Katzenberger which extended over a period of ten years were of a purely sexual nature. This is the only possible explanation of the intimacy of their acquaintance. As there were a large number of circumstances favoring seduction, there can be no doubt that the defendant Katzenberger maintained a continuous sexual intercourse relationship with Seiler. The court considers as untrue Katzenberger's statement to the contrary that Seiler did not interest him sexually; and further, the court considers the statements made by the defendant Seiler in support of Katzenberger's defense as incompatible with all practical experience. They were obviously made with the purpose of saving Katzenberger from his punishment.

The court is therefore convinced that Katzenberger, after the Nuremberg Laws had come into effect, had repeated sexual intercourse with Seiler up to March 1940. It is not possible to say on what days and how often this took place.

Under the provisions of the Nuremberg Law for the Protection of German Blood and German Honor, extramarital sexual relations are to be understood as—in addition to intercourse—any act with a member of the opposite sex that satisfies the sexual urges of at least one of the partners engaging in that act. The conduct to which the defendants admitted and which in the case of Katzenberger consisted of his drawing Seiler close to him, kissing her, and patting and caressing her thighs over her clothes, makes it clear that in a crude manner Katzenberger did to Seiler what is popularly called “*Abschmieren*” [petting]. It is obvious that such actions are motivated only by sexual impulses. Even if the Jew had only done these so-called “*Ersatzhandlungen*” [sexual acts in lieu of actual intercourse] to Seiler, it would have been sufficient to charge him with race defilement in the full sense of the law.

The court, however, is convinced over and above this that Katzenberger, who admits that he is still capable of having sexual intercourse, had intercourse with Seiler throughout the duration of their affair. According to general experiences it is impossible to assume that in the ten years of his meetings with Seiler, which often lasted up to an hour, Katzenberger would have been satisfied with the “*Ersatzhandlungen*,” which nevertheless in themselves warranted the application of the law.

III.

Thus, the defendant Katzenberger has been convicted of having had, as a Jew, extramarital sexual intercourse with a German citizen of German blood after the Law for the Protection of German Blood and German Honor came into force, which, according to Section 7 of the law, means after September 17, 1935. He acted on the basis of a comprehensive plan designed from the very beginning to include repeated violations of the law. He is therefore guilty of a continuous crime of racial pollution according to Articles 2 and 5, Paragraph 11 of the Law for the Protection of German Blood and German Honor of September 15, 1935.

A legal analysis of the established facts shows that in his polluting activities, the defendant Katzenberger, moreover, generally exploited the exceptional conditions arising from wartime circumstances. Men have largely vanished from towns and villages because they have been called up [for military service] or are doing other work for the armed forces that prevents them from remaining at home and maintaining order. It was these general conditions and wartime changes that the defendant exploited. As he continued his visits to Seiler through the spring of 1940, the defendant took into account the complete lack of any kind of measures that might have revealed his activities. Even the induction of Seiler’s husband into the armed forces and the thereby altered circumstances of the household only facilitated his nefarious activities.

Looked at from this point of view, Katzenberger’s conduct is particularly contemptible. Together with his offense of racial pollution he is also guilty of an offense under Article 4 of the Decree against Public Enemies. It should be noted here that the national community is in need of increased legal protection from all crimes attempting to destroy or undermine its inner solidarity.

On several occasions since the outbreak of war, the defendant Katzenberger sneaked into Seiler’s flat after dark. In these cases, the defendant acted by exploiting the measures taken for protection during air raids and by taking advantage of the blackouts. His chances were further improved by the absence of the bright street lighting that exists in the street along Spittlertorgraben in peacetime. In each case, he exploited this fact, being fully aware of its significance, and thus during his excursions he instinctively escaped observation by people in the street.

The visits Katzenberger paid to Seiler under the cover of the blackouts served, at the very least, to keep relations going. It does not matter what they did during these visits—whether sexual relations occurred or, as Katzenberger claimed, that they only conversed with the husband present. The motion to have the husband called as a witness was therefore overruled.

The court holds the view that the defendant's actions were deliberately performed as part of a consistent plan and amount to a crime against the body according to Article 2 of the Decree against Public Enemies. The law of September 15, 1935, was promulgated to protect German blood and German honor. The Jew's racial pollution amounts to a grave attack on the purity of German blood, the object of the attack being the body of a German woman. The public's requirement for protection permits—as far as it concerns the party participating in race defilement but not liable for prosecution—no action to be taken. It is clear from statements made by the witness Zeuschel to whom the defendant [Seiler] repeatedly and consistently admitted the fact that racial pollution occurred. At least up to 1939–1940, she was in the habit of sitting on the Jew's lap and exchanging caresses as described above. Thus, the defendant [Katzenberger] also committed an offense under Article 2 of the Decree against Public Enemies. The personal character of the defendant likewise stamps him as a public enemy. His practice of racial pollution grew by his exploitation of wartime conditions over many years into an attitude inimical to the nation, constituting an attack on the security of the national community during an emergency.

This was why the defendant Katzenberger had to be sentenced, both on a crime of racial pollution and on an offense under Articles 2 and 4 of the Decree against Public Enemies, the two charges being taken in conjunction according to Paragraph 73 of the Penal Code.

In the view of the court, the defendant Seiler realized that the contact that Katzenberger continuously had with her was of a sexual nature. The court has no doubt that Seiler actually had sexual intercourse with Katzenberger. Accordingly, the oath given by her as a witness was, to her knowledge and intention, a false one, and she became guilty of perjury under Paragraphs 154 and 153 of the Penal Code.

IV.

In passing sentence the court was guided by the following considerations:

The political form of life of the German people under National Socialism is based on the community. One fundamental factor of the life of the national community is the racial problem. If a Jew commits racial pollution with a German woman, this amounts to polluting the German race and, by polluting a German woman, to a grave attack on the purity of German blood. The need for protection is particularly strong.

Katzenberger practiced pollution for years. He was well acquainted with the point of view taken by patriotic German men and women as regards racial problems and he knew that his conduct was a slap in the face to the patriotic feelings of the German people. Neither the National Socialist Revolution of 1933, nor the passing of the Law for the Protection of German Blood and German Honor in 1935, neither the action against the Jews in 1938, nor the outbreak of war in 1939, made him abandon his activities.

As the only feasible answer to the frivolous conduct of the defendant, the court therefore deems it necessary to pronounce the death sentence as the heaviest punishment provided by Article 4 of the Decree against Public Enemies. His case must be judged with special severity, as he had to be sentenced in connection with the offense of committing racial pollution, under Article 2 of the Decree against Public Enemies, and even the more so if taking into consideration the defendant's personality and the accumulative nature of his deeds. This is why the defendant is eligible for the death penalty, which the law provides as the only punishment in such cases. Dr. Baur, the medical expert, describes the defendant as fully responsible.

Accordingly, the court has pronounced the death sentence. It was also considered necessary to deprive him of his civil rights for life, as specified in Paragraphs 32–34 of the Penal Code.

When imposing punishment on the defendant Seiler, her personal character was the first matter to be considered. For many years, Seiler indulged in this contemptible love affair with the Jew Katzenberger. The national regeneration of the German people in 1933 was altogether immaterial to her in her practices, nor was she in the least influenced when the Law for the Protection of German Blood and German Honor was promulgated in September 1935. It was, therefore, nothing but an act of frivolous provocation on her part to apply for membership—which she subsequently obtained—to the NSDAP [Nazi party] in 1937.

When by initiating legal proceedings against Katzenberger the German people were to be given satisfaction for the Jew's polluting activities, the defendant Seiler did not pay the slightest heed to the concerns of state authority or to those of the people and decided to protect the Jew.

Taking this overall situation into consideration, the court determined that the defendant deserved a sentence of four years of hard labor.

An extenuating circumstance was that the defendant, finding herself in an embarrassing situation, lied under oath, as she knew. Had she spoken the truth she could have been prosecuted for [the harsher charge of] adultery and aiding and abetting Katzenberger's violation of the Nuremberg Laws. The court therefore reduced the sentence by half despite her guilt, and imposed two years of hard labor as the appropriate sentence. (Paragraph 157, Section 1, No. 1, of the Penal Code.)

On account of her lack of honor, she had to be deprived of her civil rights, too. This has been decided upon for a duration of two years, taking into consideration the time spent in arrest pending trial. (Paragraph 60 of the Penal Code. Costs: Paragraph 465, Code of Criminal Procedure.)

Certified:

[Signed]

DR. ROTH AUG

DR. FERBER

DR. HOFFMANN

Nuremberg, March 23, 1942

The Registrar of the Office of the Special
Court for the district of the Nuremberg Court
of Appeals with the District Court Nuremberg-Fürth
[Stamp]

District Court
Nuremberg-Fürth

[Illegible signature]
Justice Inspector

LAW, JUSTICE, AND THE HOLOCAUST

German Justice System Quotations 1933–1945

The courts are taking up the duty now more than ever of recognizing the deepest spiritual needs of the people and strengthening and awakening in the people the need for a strong legal order, faith in justice and the willingness to do justice. All of the judges, prosecutors and attorneys at the Supreme Court strive for truth and justice and nothing more than truth and justice. This will contribute to the regeneration of our fatherland.

—Supreme Court President Dr. Erwin Bumke, 1929

Bundesarchiv Koblenz, Findbuch 4319N

The National Socialist movement will try to achieve its aim with constitutional means in this state. The constitution prescribes only the methods, not the aim . . . we shall try to gain decisive majorities in the legislative bodies so that the moment we succeed we can give the state the form that corresponds to our ideas.

—Adolf Hitler, testimony before the Supreme Court, September 1930

Justiz und Nationalsozialismus: Katalog zur Ausstellung des Bundesministeriums der Justiz. Cologne: Verlag Wissenschaft und Politik, 1989, 53

I am deeply mortified that I am to leave office before I reach the mandatory retirement age, under such humiliating circumstances, after I have felt and acted my whole life like a “real” German. Loyalty can be found in every religion and every race. I think statesmen should preserve loyalty like a holy flame, regardless of where they may find it.

—Supreme Court Justice Alfons David, shortly before his removal from office because of his Jewish ancestry, March 1933

Bundesarchiv Potsdam, Reichsgericht Personalia 143

I swear I will be true and obedient to the Führer of the German Reich and people, Adolf Hitler, observe the law and conscientiously fulfill the duties of my office, so help me God.

—Oath sworn by civil servants, August 1934

Reichsgesetzblatt, I 1934, 785

After careful consideration I find, in good conscience, that I am not able to swear the loyalty oath to the Reich Chancellor and Führer, Adolf Hitler, as required of all officials by Reich law of August 20, 1934.

—State’s Attorney Martin Gauger, resignation submitted to Chief Judge of the State Court in Wuppertal, August 25, 1934

Mitteilungen des Hamburgische Richtervereins, 4/2005, 15 December 2005

Whether the judgment is healthy, must be tested against the standards and guidelines that the Führer himself has repeatedly given to the people in important questions affecting the life of the nation.

—State Secretary Roland Freisler, on the meaning of “sound popular judgment” [gesundes Volksempfinden], 1935

Roland Freisler, “Volk, Richter, Recht” *Deutsche Justiz*, 97/1935

What is right may be learned not only from the law but also from the concept of justice which lies behind the law and may not have found perfect expression in the law. The law certainly continues to be the most important source for the determination of right and wrong because the leaders of the nation express their will in the law. But the legislator is aware of the fact that he cannot give exhaustive regulations covering all the situations which may occur in life; he therefore entrusts the judge with filling in the gaps.

—Reich Minister of Justice Dr. Franz Gürtner, 1935

NA Nuremberg Trial Document 2549-PS Document Book USA-F, Part 1, 119

Those actions of judges that seek to limit the political decisions of the Führer and ultimately obstruct them are in direct opposition to the central legal conception of the National Socialist state, namely the Führer Principle.

—State Secretary Dr. Stuckart

Deutsche Verwaltung, 12 JG 1935, 161

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Other difficulties argue against such a narrow definition equating “sexual relations” with “intercourse.” Such a definition would pose nearly insurmountable difficulties for the courts in obtaining evidence and force the discussion of the most delicate questions. A wider interpretation is also required here because the provisions of the law serve not only to protect German blood but also to protect German honor.

—Supreme Court decision on the Nuremberg Race Laws, December 9, 1936

Bundesarchiv Koblenz, RG R22 File 50

I am totally indifferent as to whether a legal clause opposes our actions . . . during the months when it was about the life or death of the German nation, it was entirely irrelevant whether other people whined about breaking the law. . . . They called it lawless because it did not conform with their notions of the law. In truth, through our labors we laid the foundations of a new law, the right to live of the German nation.

—Reich Leader of the SS and Chief of the German Police Heinrich Himmler, speaking to the Committee of Police Law of the Academy of German Law, October 11, 1936

Hans Adolf Jacobsen and Werner Jochmann, eds. *Ausgewählte Dokumente zur Geschichte des Nationalsozialismus 1933–1945*. Bielefeld: 1961

Reich Leader Bouhler and Dr. med. Brandt are charged with responsibility to extend the powers of specific doctors in such a way that, after the most careful assessment of their condition, those suffering from illnesses deemed to be incurable may be granted a mercy death.

—Adolf Hitler, authorizing the secret “euthanasia” killing program, September 1, 1939

National Archives, PS 630 RG 238 Box 14

They are taking certain mentally ill patients from asylums and killing them, without the knowledge of their relatives, their legal representatives and the family court—without the guarantee of orderly legal process and without the proper legal foundation.

—Judge Lothar Kreyszig, writing to the Minister of Justice, July 8, 1940

Letter reprinted in Ernst Klee, ed., *Dokumente zur “Euthanasie,”* Frankfurt am Main: Fischer Taschenbuch Verlag, 1992, 201–204

Katzenberger practiced [race] pollution for years Neither the National Socialist Revolution of 1933, nor the passing of the Law for the Protection of German Blood and German Honor in 1935, neither the action against the Jews in 1938, nor the outbreak of war in 1939, made him abandon his activities. As the only feasible answer to the frivolous conduct of the defendant, the court therefore deems it necessary to pronounce the death sentence as the heaviest punishment provided by Article 4 of the Decree against Public Enemies.

—Decision of the Nuremberg Special Court of March 13, 1942, in the Katzenberger Race Defilement Case

Military Tribunal III Document NG-154; *The United States of America v. Josef Altstoetter, et al., in Trials of War Criminals before the Nuernberg Military Tribunals, October 1940–April 1949*. Washington, DC: United States Government Printing Office, 1951

In our system of justice the judge is the expert in the law, the prosecutor speaks for the state administration and the lawyer speaks on behalf of the Folk comrade who is seeking justice before the court.

—Reich Minister of Justice Otto Thierack, 1944

Heinz Boberach ed. *Richterbriefe: Dokumente der deutschen Rechtsprechung 1942–1944*. Boppard am Rhein: Harold Boldt Verlag, 1975, 397

His [Judge Rothaug’s] acts were more terrible in that those who might have hoped for a last refuge in the institutions of justice found these institutions turned against them and a part of the program of terror and oppression.

—Decision in *U.S. v. Altstötter et al., or the “Jurists Trial,”* December 4, 1947

Military Tribunal III Document NG-154; *The United States of America v. Josef Altstoetter, et al.* Washington, DC: United States Government Printing Office, 1951

LAW, JUSTICE, AND THE HOLOCAUST

Suggestions for Further Reading

HISTORICAL BACKGROUND

Bergen, Doris. *War and Genocide: A Concise History of the Holocaust*. Lanham, MD: Rowman & Littlefield, 2003.

Dawidowicz, Lucy S. *The War against the Jews, 1933–1945*. New York: Holt, Rinehart, and Winston, 1975.

Gilbert, Martin. *The Holocaust: A History of the Jews of Europe during the Second World War*. New York: Holt, Rinehart, and Winston, 1986.

Gutman, Israel, ed. *Encyclopedia of the Holocaust*. New York: Macmillan Publishing Company, 1990.

Hilberg, Raul. *The Destruction of the European Jews*. New Haven: Yale University Press, 2003.

———. *Perpetrators, Victims, Bystanders: The Jewish Catastrophe, 1933–1945*. New York: Aaron Asher Books, 1992.

Meinecke, Jr., William F.; Alexandra Zapruder; and Timothy Kaiser. *Nazi Ideology and the Holocaust*. Washington, DC: United States Holocaust Memorial Museum, 2007.

Yahil, Leni. *The Holocaust: The Fate of European Jewry, 1932–1945*. New York: Oxford University Press, 1990.

JUDGES, LAWYERS, PROSECUTORS

Cocks, Geoffrey and Konrad H. Jarausch, eds. *German Professions 1800–1950*. Oxford: Oxford University Press, 1989.

Jarausch, Konrad H. *The Unfree Professions: German Lawyers, Teachers, and Engineers, 1900–1950*. New York: Oxford University Press, 1990.

Koch, Hans-Joachim Wolfgang. *In the Name of the Volk: Political Justice in Hitler's Germany*. New York: I.B. Tauris, 1997; (Published in UK in 1989).

Meinecke, Jr., William F. "Conflicting Loyalties: The Supreme Court in Weimar and Nazi Germany, 1918–1945." Ph.D. diss., University of Maryland, College Park, 1998.

Morris, Douglas G. *Justice Imperiled: The Anti-Nazi Lawyer Max Hirschberg in Weimar Germany*. Ann Arbor: The University of Michigan Press, 2005.

Müller, Ingo. *Hitler's Justice: The Courts of the Third Reich*. Cambridge, MA: Harvard University Press, 1991.

Neumann, Franz. *The Rule of Law: Political Theory and the Legal System in Modern Society*. Dover, NH: Berg Publishers, 1986.

Stolleis, Michael. *The Law under the Swastika: Studies on Legal History in Nazi Germany*. Chicago: University of Chicago Press, 1998.

POLICE

Browder, George C. *Foundations of the Nazi Police State: The Formation of Sipo and SD*. Lexington, KY: University Press of Kentucky, 1990.

———. *Hitler's Enforcers: The Gestapo and the SS Security Service in the Nazi Revolution*. New York: Oxford University Press, 1996.

Browning, Christopher R. *Nazi Policy, Jewish Workers, German Killers*. New York: Cambridge University Press, 2000.

———. *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland*. New York: Harper Collins, 1992.

Gellately, Robert. *The Gestapo and German Society: Enforcing Racial Policy, 1933–1945*. New York: Oxford University Press, 1990.

Johnson, Eric A. *Nazi Terror: The Gestapo, Jews, and Ordinary Germans*. New York: Basic Books, 1999.

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MARCUS A. APPELBAUM

Marcus Appelbaum is the director of Law, Justice, and Society Initiatives at the United States Holocaust Memorial Museum. These programs provide training for law enforcement officers, members of the judiciary including prosecuting attorneys, and state and federal judges on the role of their profession in safeguarding democracy. To date Appelbaum has created and facilitated training models for more than 70,000 law enforcement professionals across the nation. He received his undergraduate degree in history from The George Washington University in Washington, DC, and his master's degree in museum management from the Bank Street College of Education in New York City. His association with the Museum began in 1997, when he completed a student internship while in high school. Since then, he has served as a docent, has compiled survivor testimonies, and has represented the Museum at special events such as President Clinton's Millennium Council at the White House on human rights. Appelbaum's grandmother, a Holocaust survivor, inspires his passionate support of the Museum's mission and the work he does to share the relevance of this history to our society today.

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William Frederick Meinecke Jr. is a historian at the United States Holocaust Memorial Museum. He received his undergraduate degree in German and history from the University of Maryland, Baltimore County, in 1983. He attended the universities of Bonn and Berlin in Germany and received his M.A. (1988) and Ph.D. (1998) in history from the University of Maryland at College Park. The title of his dissertation was *Conflicting Loyalties: The Supreme Court in Weimar and Nazi Germany 1918-1945*. In 1992 Meinecke joined the staff of the Museum's Wexner Learning Center to help design a multimedia program on the Holocaust, the *Historical Atlas of the Holocaust* (book and CD-ROM), and a Web site for students. Since 2000, Meinecke has worked with law enforcement officers, judges, prosecutors, and attorneys in the Museum's Law, Justice, and the Holocaust training program. His book, *Nazi Ideology and the Holocaust*, was published by the Museum in December 2007.

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