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MURDER BY GOVERNMENT

Robert M. W. Kempner

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On October 1, 1946, the International Military Tribunal at Nuremberg adjudged a number of German organizations to be of criminal nature, among them the SS Elite Guards, the SD Security Service, and the Gestapo, later known as Department IV of the Reich Security Main Office. As a phase of the presentation of evidence against them, the murder of French General Maurice Mesny was developed through documentary evidence from the files of the Foreign Office of the German government. For the first time in criminal history, a first-degree murder by the government of a state was pictured in the orders and files of that government.

From French war crime files, the Nuremberg prosecution knew only that General Maurice Mesny had been murdered on January 19, 1945, under unusual circumstances: A German Army car with General Mesny in the rear stopped in the woods on the road between Koenigstein and Golditz, near Dresden, Germany. German Captain Schweinitzer, who was sitting beside the driver in the front seat, turned around and fired fatal shots at the general in the rear seat. The car then continued on its way to Dresden with the corpse. Captain Schweinitzer turned the body over to the military hospital in Dresden, reporting that "General Mesny had been shot while trying to escape." Eight days later, a solemn funeral with full military honors took place at the military cemetery in Dresden. The International Red Cross transmitted an official message to Mesny's widow in Lyon, that her husband had been "shot in trying to escape." The message was based upon official German reports to the Embassy of Switzerland, the Protective Power.¹

¹ Office of U. S. Chief of Counsel, Nuremberg. Document PS-4069.

Months of investigation, in which I had the help of my able research assistant, Miss Trudy Levinger, were required to uncover the blueprint of the murder plan. Through the efficiency of the Berlin document center of the U. S. Army, we succeeded in locating the official records of the German Foreign Office pertaining to the matter.

In the fall of 1944, Reich Press Chief Otto Dietrich mentioned in a conference at the Fuehrer's headquarters that German General Brodowski allegedly had been killed by the French underground. The statement was made without investigation. Hitler became very excited about Dietrich's remark. He suggested the murder of a French general in retaliation, and the publication of his death in phraseology intended to spread terror in France. Although contrary to international law, the suggestion was immediately taken up by the participants in the conference.

There was some confusion at first about just who had the responsibility for carrying out the plan. On November 18, 1944, Legation Counselor Horst Wagner of the German Foreign Office dictated a conference memorandum, however, which showed that Wilhelm Keitel, Alfred Jodl, and Ernst Kaltenbrunner of the Gestapo were all involved. On it there was noted the fact that von Ribbentrop had read the conference memorandum.² The memorandum tentatively set the date for the murder for November 27th to 30th. An annex to it set forth the murder plan:

In Camp Koenigstein there are 75 French generals. For a long time it has been the intention . . . to transfer these French generals . . . The transfer will now commence in the following manner, that in the first draft 5-6 French generals, each in a special automobile, will be brought to another destination. In each case there will be a driver and a German attendant in the automobile. Each car will bear Wehrmacht markings. The two Germans will wear Wehrmacht uniforms. They will be specially selected people. During the drive, General Deboisse's car will have a breakdown in order to separate him from the others. This will provide the opportunity to have the general shot in the back "while attempting to escape." The time proposed is twilight. It will be made certain that no rural inhabitants are in the vicinity. To insure against later investigation, it is planned to burn the body and to send the urn to the cemetery of the fortress Koenigstein. . . . It must be made certain that medical report, death certificate and certificates of cremation are made out in the regular manner . . .

. . . It will be assured through the selection of the persons concerned and the preparation of all documentary evidence that in the event the Protecting Power [Switzerland] is desirous of an investigation, the necessary documents are available for dismissal of a complaint.³

A Foreign Office memorandum dated December 13, 1944,

² Office of U. S. Chief of Counsel, Nuremberg. Document PS-4076, Photostat No. 290440.

³ Office of U. S. Chief of Counsel, Nuremberg. Document PS-4049.

revised the scheme's details and bestowed some leeway upon its executioners:

. . . The transfer will be carried out in three automobiles whereby two of the younger ranking generals will enter the first two cars, while the older ranking general in question will ride alone in the last car in order to give him the special attention due his rank. The cars will be driven by SS personnel in Wehrmacht uniform.

The order will be carried out during the drive, in other words either (1) by shooting during escape— . . . The general will be killed "by well aimed bullets from behind." Examination of the body, even a possible later autopsy, will confirm the fact that the general was fatally hit while attempting to escape.

(2) through poisoning by carbon monoxide gas. A specially built car is required for this purpose which has already been constructed. The general will sit alone in the back seat. The doors will be locked in order to prevent him from jumping out during the drive. The windows, on account of the cold winter weather, will be closed. The window between the back and the front seat . . . will be closed. Possible air holes will be specially sealed. Odorless carbon monoxide gas will be introduced during the drive into the closed room through a special apparatus which will be handled from the front seat. A couple of breaths will suffice to insure that he is killed. As the gas is odorless, the general should not become suspicious at the particular moment and break the window in order to let in fresh air . . . It will be established that through leakage from the exhaust pipe, gases from the engine entered the back compartment, which led unnoticed to his death . . . ⁴

On December 30, 1944, Kaltenbrunner brought Himmler (his chief) up to date on the matter, and introduced two more changes. One was that the personnel to execute the plan, while still to be garbed in German Army uniforms, were to be Gestapo agents, not SS men. The other was a change in the victim:

In the meantime, it has been learned that the name of the man in question has been mentioned in the course of various long distance calls between Fuehrer Headquarters and the Chief of Prisoner of War Matters; therefore (the latter) now proposes the use of another man with the same qualifications. I agree with this and propose that the choice be left to (him).⁵

Subsequently the Foreign Office asked one of its counselors, on order of its chief, Ribbentrop, to examine carefully "exactly what rights the Protective Power could claim in this matter in order to make our plans accordingly."⁶ A legal opinion was embodied in a memorandum of January 18, 1945, written by counselor Krieger. Its conclusion was that

. . . the de Gaulle government, however, receives death notices only in the routine form . . . through the International Red Cross Committee at Geneva. In view of the absence of a Protective Power in the case of the de Gaulle government, additional information could be

⁴ Office of U. S. Chief of Counsel, Nuremberg. Document PS-4052.

⁵ Office of U. S. Chief of Counsel, Nuremberg. Document PS-4048.

⁶ Office of U. S. Chief of Counsel, Nuremberg. Document PS-4051.

requested only through the International Red Cross. We have no obligation to answer them.⁷

Thus a thorough investigation could be forestalled. On the next day General Mesny was shot. His selection could have been fortuitous, or it may have been connected with the fact that General Giraud, who escaped from Koenigstein several years earlier, had been harbored by Mme. Mesny in Lyon.

In August, 1946, I interrogated a number of the underlings whose initials or signatures appeared on the documents. Their answers are interesting:

Karl Ritter, of the Foreign Office: "No, not as far as I can recollect. My memory is very bad. . . . There was a group surrounding Legation Counselor Wagner who had the tendency to drag my person into unpleasant matters. They were very apt to push disagreeable matters onto my shoulders . . . it is a highly dirty business. But not as far as my person is concerned. . . . I know nothing. . . . I can only say that (my poor memory) is the fault of our way of living during the past two years . . . food and treatment are not always what they should be."⁸

Paul Otto Schmidt, of the Foreign Office: "There was no time for me to read the documents in detail. I can only say that I was shocked by what I had seen . . . (Ribbentrop) put the documents back in the envelope, handed it to me and instructed me neither to study them myself nor to allow anyone else, except Legation Counselor Wagner, to have any knowledge of them."⁹

Legation Counselor Horst Wagner: "The most terrible impression which I received during my service . . . was the plan for the murder of a French general. . . . The idea and the planning would have been undertaken exclusively at the top, so that the subordinate offices were not able to prevent the execution of this order."¹⁰

When Commander Whitney Harris of the U. S. prosecution introduced the Mesny documents in the case against the Gestapo,¹¹ the defense lawyers were tremendously shocked. Their clients, especially Ribbentrop and Keitel, had steadfastly denied any participation in ordinary criminal activities, and here was clear evidence to the contrary. Here was official murder, planned and ordered by them, as well as Hitler and Himmler. Thomas G. Dodd, in summing up the case against the indicted Nazi organizations referred to the Mesny case as "white collar homicide, custom-built for deceit, starched up with foreign office formality, bearing the cold sheen of Kaltenbrunner's SD and Gestapo, and sustained by the outwardly respectable yoke of the professional army."

⁷ Office of U. S. Chief of Counsel, Nuremberg. Letter to Mr. Legation Counselor Bobrik, from Krieger, January 18, 1945. Document number not yet assigned.

⁸ Office of U. S. Chief of Counsel, Nuremberg. Interrogation of Ambassador Karl Ritter at Stalag XIII D on 19 August 1946, by Dr. R. M. W. Kempner.

⁹ Office of U. S. Chief of Counsel, Nuremberg. Document PS-4075.

¹⁰ Office of U. S. Chief of Counsel, Nuremberg. Document PS-4078.

¹¹ Office of U. S. Chief of Counsel, Nuremberg. Court Record of August 1, 1946. p. 14855 et sub.