5 CAGED JUSTICE

On the first day of February 1946 in Emsland, Lower Saxony, near the border with the Netherlands, stood a group of men holding spades and shovels. At least two dozen of them were about to start digging. Encircling them were tens more, watching. They were all standing in what used to be part of the Emslandlager, a network of fifteen labour and penal camps for people prosecuted by the regime, including deserters, homosexuals and anti-Nazis. Most were German but there were others, among them French, Russians and Yugoslavs. The bodies of 136 of them were about to be recovered that morning. They had been murdered together the previous April, when a group of around fifteen German soldiers, determined to prevent the prisoners from being liberated alive by the approaching Allied forces, arrived at the Emsland claiming to have orders to execute everyone. Leading them was nineteen-year-old Willi Herold, a lance corporal who had stolen a captain's uniform; it is with that authority that he waved around what was a fake order. He was eventually believed and was allowed into one of the camps, within which prisoners from all Emsland camps had been brought. Marching in with a gun carrier, they pulled some of the prisoners together – in what a witness described as a 'tightly-pressed mass of humanity' – and turned the gun carrier towards them.[1] If anyone survived the shooting, they did not survive the grenades that were thrown at them immediately afterwards. Even more prisoners were murdered by Herold and his men over the next few days.

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Now, ten months on, the purpose of the exhumation was justice. The bodies were counted, examined, photographed and reburied following a Christian funeral. The resulting postmortems were used in the trials of those accused of the murders, including Herold, who was found guilty and executed by the guillotine later in 1946. But justice had a more symbolic dimension whenever possible, as it did in the Emsland that February morning. Those brought to dig up the bodies were Herold and his group, as well as some of those who had previously staffed the camps. They were now detained by the British as suspected war criminals. The spectators surrounding them were the residents of the district who used to be members of the Nazi Party. They were summoned to attend by the British Military Government, since the Emsland was now part of the British Occupation Zone. 'I like a little poetic justice', was how Major Theodore Pantcheff, the officer leading the investigation into the murders, put it when organising the exhumation.

The task of investigating a fraction of the countless horrors that made up the Second World War in Europe was assigned mainly to interrogators. Some were based in Germany, in what was called the War Crimes *Investigation* Unit. The others were based in Britain, in what was too similarly called the War Crimes *Interrogation* Unit.[2] Such a team was needed in Britain because of the half a million German soldiers who were in the country, thousands would have either committed or witnessed war crimes. While this period tends to be associated with the 'major' war criminals tried in Nuremberg's International Military Tribunal, jointly formed by the four major Allies to deal with key decision-makers and high-ranking leaders of the Nazi regime, thousands more were pursued in the years after the war. These were concentration camp guards, doctors and soldiers of all ranks who had physically committed crimes or ordered their subordinates to commit them. The exact numbers are difficult to establish, but by March 1948, close to 40,000 Germans, Italians and Japanese nationals had been charged with a war-related crime. This figure includes the charges by powers such as Britain, France and the US but not the thousands of additional charges brought by the USSR, who were less forthcoming with their numbers.[3] Only a fraction of them ended up being eventually prosecuted. In the case of Britain, a third of the just over 3,000 charged ended up in a British military court on a war crime charge, these being violations of the 1929 Geneva Convention or other laws of war in force at the time. The others escaped justice for all sorts of

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reasons, ranging from the inability to locate them to their perceived usefulness to British or American interests, usually against the Soviets.[4]

Yet the arbitrariness surrounding who ended up being tried was not reflected in how Britain actually investigated war crimes. Take the Emsland case, which entailed much more than that moment of 'poetic justice' during the exhumations. The search for witnesses and accused had taken Pantcheff's team to Germany, Poland, Czechoslovakia, the Netherlands, Belgium and France, during which they interrogated almost a thousand people.[5] The additional paperwork they recovered from all over the Emsland, explaining how the camps were managed between 1933 and 1945, weighed over 12 tonnes.[6] It is because of these efforts that people did face justice in a court of law in this case. Other cases that were also thoroughly investigated were never tried.

This is why Pantcheff's team was vital: without it, Britain would have been much more restricted in pursuing the judicial route the Allies chose. For Britain in particular, this route entailed *procedural* justice as well. Put another way, the ambition was not to hold 'show trials', where people like Herold would go through the motions of being in a courtroom but whose guilt would be a foregone conclusion. Rather, trials became another opportunity to press on the Germans that the British were truly just, the implicit message being that they were unlike the Soviets. All these investigations and trials were, after all, unfolding in parallel with the emerging Cold War, which was becoming quite visible in this context.[7] This aim made the role of interrogation much more important than its overlooked history may suggest. It was only through proper investigations that there could be proper trials, which the Germans could attend and reach their conclusions about Britain. Interrogation was thus at the core of a fundamental post-war aim: to ensure that Britain would have influence in Germany.

5.1 CHAOS

Why was all of this necessary? Even saying that the crimes of the Second World War had to be investigated may sound perverse – as if questioning cruelty we know occurred. Did people like Herold really need to be interrogated to prove their guilt? Some may argue he did not even need to stand in front of a judge. The possibility of summary executions had been discussed by the 'Big Three' Allies in the final war years as a likely way to deal with the most senior figures

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of the regime – the 'arch-criminals', as an American plan from 1944 called them. Although Herold was not on arch-criminal by that definition (Pantcheff preferred to call him an 'arch-bastard'), the idea of summary executions was not beyond the pale. And there was an intention to deal with people who were not 'arch-criminals' too. This was formally announced during the Moscow Conference in October 1943, when Churchill, Stalin and Roosevelt jointly and publicly pledged that 'Germans who take part in [war crimes will] be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged'. More than that, they warned that the Allies would 'pursue them to the uttermost ends of the earth and will deliver them to their accusors in order that justice may be done', so that they could be tried 'according to the laws of [those] liberated countries'.[8]

What that meant was unclear. Would the accused be punished according to established legal norms or 'judged on the spot'? Who would pursue suspects to 'the uttermost ends of the earth' to arrest them? Who would initiate proceedings? Would there be a judge or a jury? Right before the public statement in Moscow, Churchill agreed with Molotov that justice should be 'stern, swift'. They were responding to Cordell Hull's confession that if he was to have it his way, he would 'take Hitler, and Mussolini and Tojo and their accomplices and bring them before a drum head court martial and at sunrise on the following morning there would be an historic incident'.[9] But what about less senior figures? Where would the line be drawn? When a month later at Tehran Stalin said that at least 50,000 of the German General Staff should be executed, Churchill was appalled. 'The British Parliament and public will never tolerate mass executions', he said, before declaring that he would 'rather be taken out into the garden here and now and be shot myself rather than sully my own and my country's honour by such infamy'.[10] He left the room, but returned when Stalin reassured him he was joking. Such was the discourse surrounding war criminals during the war, and a more specific course of action only became clearer with Germany's surrender. Precisely to avoid summary executions getting out of hand, as well as to establish enduring legal norms out of this war's barbarities, the decision was that all cases should be pursued in courts of law. Once that decision was taken, evidentiary standards of proof became relevant, and so people like Herold did have to be interrogated, the sites of their murders did have to be visited and witnesses did have to recall – usually more than once – what they saw them do.

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The legal route was articulated in the Charter of the International Military Tribunal signed in August 1945. What this did was to establish an inter-Allied tribunal to deal with senior Nazi leaders, and try them not only under the established category of 'war crimes' but also under two new categories now stipulated in the Charter: crimes against peace and crimes against humanity. The conventional category of war crimes, which covered the treatment of prisoners of war and civilians under occupation, was simply not wide enough to capture the scale of Nazi criminality. This is what the new categories attempted to do. And they did so first by extending responsibility to cover crimes against peace, understood to mean the planning and waging of aggressive war (such as the invasion of Poland), and crimes against humanity, including the systematic persecution of and atrocities against civilians on political, racial and religious grounds. Other than the acts they would cover, the new categories also expanded notions of who the victims were. War crimes could only be committed by a state against the nationals of another. Crimes against humanity, however, would now encompass crimes committed against any civilian population, including a state's own. After all, millions of Germans suffered under the Nazis. The desire was also for crimes against humanity to expand beyond acts that happened during armed conflict – because, once again, people had been suffering under Nazism before September 1939. Hence there was a desire to cover peacetime as well as wartime conduct. Peacetime conduct, however, was deliberately turned into a separate category during the negotiations for the Charter, so that crimes against humanity would still be limited to actions committed during war. The reluctance to make peacetime conduct part and parcel of crimes against humanity was the colonial mentality shared by all involved in the negotiations. Taking action against Germany for how it treated its own people during peace could later open the floodgates to claims against the Allies by their own citizens and colonial subjects. So, while the International Military Tribunal (IMT) could focus on more crimes against more people, the focus would remain on the 1939–1945 period to avoid setting precedents that could later boomerang.

That was, in essence, the main innovation of the Charter: whereas war crimes could only apply to events on the battlefield and to occupied territory, it was the new categories that would capture what we now know as the Holocaust, the genocide of Europe's Roma and Sinti populations, and the targeting and systematic murder of other minority groups.

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But the IMT was the only united Allied front that existed around trials. When it came to deciding what to do with anyone other than the 'major' war criminals, policies permanently diverged. And they diverged not only between the Soviets and other Allied powers, but between everyone involved, with each power making its own decisions about who it wanted to deal with and under what legal system. The Americans, interested in establishing certain precedents in international law, decided to continue dealing with both war crimes and crimes against humanity. These could have been committed anywhere in Nazi Europe during the war (again excluding peacetime conduct) so long as the suspect was now in US custody. The French too pursued both war crimes and crimes against humanity but prioritised those involving French victims committed in France. As for what was happening to war criminals east of Germany, 'only occasional scraps of war crimes information' were emerging about that.[11]

That Britain also had to deal with 'minor' war criminals was a given; the question was how extensively to do so. Reasoning within government varied, but all were pointing towards a very reserved policy. There was the Foreign Office, which was concerned about the emerging Cold War and German economic recovery, and was reluctant for Britain to commit to an extensive trials programme or cooperate with the Soviets over it.[12] There was the War Office, which wanted crimes involving its own soldiers to be prioritised over those of Allied nationals. And there were also the lawyers – the Attorney General, the Treasury Solicitor's Office, the Judge Advocate General's Office – who were concerned with questions of evidence and process, and with how crimes could actually be proven in court. The result was a reluctance to use anything other than the traditional category of war crimes. Part of the logic was that the acts stipulated in instruments such as the Hague and Geneva Conventions were specific, individual crimes (murder, rape and looting) that could more easily be proven in court, as opposed to the more 'adventurous' new categories of 'murder, extermination, enslavement, deportation, and other inhumane acts … or persecutions on political, racial or religious grounds', which was the definition of crimes against humanity. The government's decision was therefore that Britain would go after war crimes only, not crimes against humanity. To implement this, a Royal Warrant was passed in June 1945 which allowed Britain to prosecute war crimes, and British military courts were set up for the purpose in Germany, Austria, Italy and, from mid-1946, across Asia.[13]

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This decision, which meant to result in a more straightforward legal environment, did not respond to the realities of the Second World War, and Britain kept running into crimes which the narrow remit of the Royal Warrant could not address. The Emsland case was one of the first examples. With most Emsland inmates having been German men who were persecuted by their own regime, their deaths and persecution were not war crimes. The fact that the Emsland was also in Germany rather than in occupied Europe took it even further away from conventional war crimes territory. Yet Britain could not simply ignore the criminality it had stumbled upon, involving an entire network of camps and hundreds of victims in the last month of the war alone. Unable to do much under the Royal Warrant but also unable to simply drop the case, it pursued a parallel legal avenue created by an instrument known as Control Council Law No. 10. Soon after occupying Germany, the four occupying powers, through their Allied Control Council, passed this law which was meant to enable courts in Germany to prosecute war crimes, crimes against humanity and crimes against peace. Simply put, Control Council Law No. 10 extended the reach of the IMT Charter to courts in Germany as well. This is how Herold and eleven others were pursued, rather than under the Royal Warrant. The charges against them were those of murder, charged under the relevant section of the German penal code, with Herold specifically also being charged with a crime against humanity.[14] Six of the twelve accused, including Herold, were found guilty and were decapitated. The other six were acquitted.

This may sound like a convoluted case, especially for such an obvious crime, but what the Emsland example illustrates are the practical implications of the Royal Warrant. It left entire crimes affecting millions of victims outside its scope, with alternatives having to be found in cases that could not simply be shelved. But with the practical implications there was also an intellectual consequence. Despite the innovations of the Charter, of which Britain was part, the government was now reverting to a position in which each crime was seen in isolation rather than as part of systematic and deliberate patterns of violence, thus missing much of the essence of the Second World War.

Yet within the legal corner that it carved for itself, Britain undertook to investigate anyone under its control suspected of having committed war crimes against *any* Allied national.[15] This cast a very wide net, one which would catch the German prisoners of war who

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were in Britain, German prisoners of war held by Britain elsewhere as well as German civilians in the British Zone of Germany. These were millions of people. The aim was to identify the war crimes suspects among them, consider the evidence against them but not take all of them to court. Only those with strong evidence against them would be prosecuted. Having flexibility in choosing which cases to try would also help to deal with the awkward fact that the Allies too had committed war crimes. Cases involving German reprisals against Allied prisoners of war were for this reason considered problematic, because they risked the defence bringing up potential British wrongdoing.[16] But if there was no undertaking to prosecute all cases identified, those situations could be controlled.

A perhaps unintended consequence of this liberal undertaking to investigate any suspect under British control was that Britain ended up actually investigating cases which in the process proved to be crimes against humanity – such as the case involving Herold. But instead of dropping such cases completely, it would hand the evidence over to other interested nations so that they could try those cases themselves. So, while Britain's trials policy was limited and not fit for purpose, Britain ended up investigating many more crimes than it tried, some of which were crimes against humanity and some of which were tried as such by other Allied nations.

Investigating anyone under British control suspected of a war crime proved to be an immense task – beyond what anyone could have imagined. It was not just a question of finding the suspect – which in itself was not straightforward – but also of locating witnesses and in some cases visiting the sites of crimes. But Europe was chaos. Germany alone was chaos. Millions of people – liberated concentration camp inmates, refugees, soldiers, ethnic Germans expelled from Eastern Europe – were moving across the country in search of somewhere to settle or hide. An equally enormous number of German prisoners of war were held there. Crucially, in a country now controlled by four separate powers, suspects and witnesses sought by Britain were often under the control of another power, while locations of crimes needing to be investigated by one power were often under the control of another. There was some cooperation when it came to exchanging wanted persons – Britain itself would hand 3,000 prisoners over to various others for trial by May 1947 – but the realities of occupation created delays and obstacles, preventing many cases from reaching a court.[17]

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In Britain, too, there was chaos. Leaving aside the economic, imperial and social situations, all of which were enormous and grave, the situation surrounding the hundreds of thousands of German soldiers in the country was chaotic enough. The basic question of their identity was unknown in too many cases. This is because it was not an uncommon occurrence for soldiers to lie about who they were, precisely to avoid being implicated in war crimes. And even when they were honest about their particulars, how could anyone know what they had done during the conflict? Prisoners could not be expected to volunteer that they might be war criminals simply by being asked. Hopes were raised by the United Nations War Crimes Commission – predecessor of the United Nations – established in October 1943 following the Moscow statement in order to collect evidence of war crimes and compile lists of perpetrators. The Commission then established the Central Registry of War Criminals and Security Suspects, known as Crowcass, containing the names of all persons wanted by its members and all prisoners of war held in their hands. This meant Britain could cross-check its prisoners' names (once it was sure of them) against Crowcass and identify suspects that way. And once it began investigating a specific war crime, it could again use Crowcass to identify more suspects and witnesses it needed but who were held by others. Valuable as it was, the registry was far from perfect because the USSR joined neither the Commission nor Crowcass. So, while there was some infrastructure in place for identifying suspects at a transnational level, the USSR's non-participation posed a serious obstacle to investigations.

Identifying a suspect was necessary, but evidence – in the form of witnesses or documentary proof – was still needed to make a case pass from Crowcass to court. Such evidence was not collected in a systematic way by Britain during the war despite the rhetoric promising to pursue war criminals, mainly because the Combined Chiefs of Staff were worried that taking steps in that direction while the war was ongoing would risk German reprisals against Allied prisoners. Some interrogators on the Continent were told in the second half of 1944 to start asking German prisoners about war crimes, but that was all.[18] Not much else was done until the middle of 1945, when it was properly realised that thousands of prisoners of war had been interrogated 'without being asked whether they have witnessed any war crimes'.[19] What did exist was information that had been incidentally collected, as part of operations to collect military intelligence. One obvious example

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were CSDIC's bugged conversations, in which prisoners did discuss crimes. The organisation selecting prisoners for CSDIC – the PWIS (Home) – as well as the Royal Patriotic School interrogating refugees were also in possession of intelligence on several concentration camps, collected before these were liberated, including Buchenwald, Auschwitz, Natzweiler-Struthof, Sachsenhausen, Dachau and Mauthausen. But to make matters difficult, the DMI, which was responsible for all of the aforementioned intelligence organisations, quickly washed its hands of any involvement in investigations, since war crimes were not considered to be a military intelligence concern.[20] With that logic, they also ruled out the possibility of suspects being interrogated in CSDIC, and the prospect of using CSDIC's reports as evidence in trials.[21]

With the DMI out of the picture, all matters relating to both investigations and trials came to fall under the Judge Advocate General's Office (JAG), the part of the War Office dealing with legal matters.[22] Yet the reality was that although the DMI did not regard investigations as a military intelligence matter, it inadvertently possessed much of the evidence required by the investigations. What investigations really needed were therefore people with DMI experience. It is only through the skill and expertise of intelligence officers that suspects could be identified, cases investigated and the evidence passed on to the lawyers who would decide whether the case would be prosecuted, extradited or shelved.

5.2 BACKBONE

In this context of mass improvisation, however, it would take some time for JAG to realise the extent to which intelligence officers were necessary for its work. And so investigations were first assigned to people who proved unsuitable for the task. Some of the first investigators sent to Germany did not speak German, for instance, which meant that they had to rely on locals to translate what suspects were telling them.[23] This was hardly the way to investigate any crime, but even less so atrocities involving a society that was now completely fragmented. The resulting miscommunications were the reason why Pantcheff's team – what eventually became the War Crimes Interrogation Unit – was brought into the picture. At that point in mid-1945, this was a team of interrogators belonging to the DMI since 1940, when they were known as the PWIS (Home), tasked with briefly interrogating

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all enemy prisoners of war sent to Britain, a number that by 1945 had reached 300,000. The primary purpose of these interrogations was to select the few prisoners sent to CSDIC. But the same unit also helped train other interrogators – including for CSDIC as well as US interrogators – and sent some of its own officers to accompany British commando missions during the war, in order to interrogate prisoners and civilians on the spot.[24] From mid-1944 onwards, they also started collecting intelligence on atrocities, and so by the summer of 1945, it was decided to focus the team's efforts towards supporting JAG's investigators. In that capacity, they quickly proved able to lead the investigations rather than merely support them. By the autumn of 1945, it was already thought that Britain would be 'unable to proceed with their preparation of cases against many individual war criminals' without those interrogators.[25] By January 1946, their name was changed from Prisoner of War Interrogation Section to War Crimes Interrogation Unit (WCIU), and they were moved from the DMI to JAG.

One thing that remained constant, however, was that both the wartime and post-war iterations of this team were headed by Lieutenant Colonel Alexander Scotland. As we have seen, although he had retired in 1935, Scotland was summoned back in 1940 specifically to interrogate prisoners of war. His experience was important: he had served in the German army in German South West Africa, where he migrated in 1902, and had gained some knowledge of how that Army was organised and how it worked. But in 1914, he was imprisoned for a year by that Army as a suspected spy, an experience which gave him 'first-hand knowledge of the hopes and fears of a prisoner of war'.[26] In reality, Scotland was likely not a spy at that point, nor was his pre-1914 service in the German Army important in any sense: he was asked to join nominally as a war volunteer, so that he could continue running a grocery shop supplying local German soldiers.[27] Still, his experiences meant that upon his release in July 1915, he became a British intelligence officer, responsible for interrogating German prisoners of war. This is why he was taken out of retirement in 1940, when there were no trained interrogators in the country apart from veterans like himself.

Those under Scotland after 1945 were a combination of existing wartime interrogators and new recruits.[28] One of WCIU's most senior interrogators was Major Antony Terry, a journalist in civilian life and a bilingual English and German speaker with good knowledge of

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French. He had a long service as an interrogator, having been attached to PWIS(H) during the war. In that capacity he had joined the commando mission to St Nazaire in France in 1942 to interrogate prisoners of war. He was, though, captured by the Germans and became a prisoner of war himself. When he returned home, he resumed his duties as he had left them. He was thirty-two when he started interrogating suspected war criminals, and at that point Scotland described him as a 'highly efficient' interrogator. Similarly, Captain W. E. Kaiser, also a fluent German speaker, was an experienced interrogator who was particularly effective with interrogations involving technical subjects. His civilian profession was of a school master and, eager to return to that job, he applied for early release. Others voluntarily deferred their demobilisation. One of them was Pantcheff, also an interrogator of prisoners of war since 1942 – a role he had assumed following his studies – and a 'naturally gifted investigator' in Scotland's eyes. This is why he was trusted with leading the Emsland investigations, among others. Another who deferred his demobilisation was Captain Arthur Ryder, who before the war was a civil servant. Now, he was a 'painstaking interrogator' who was more effective with prisoners who were more 'ready and willing'. This was in contrast to Captain M. F. Cornish – who too had deferred – who was 'successful with the difficult sort' of prisoner, even though he had only joined WCIU at the end of the war, having previously served overseas. Another new recruit was Lieutenant R. A. Hepton, who was fluent in German and 'exceedingly keen' to learn WCIU's ways, quickly proving himself to be 'a valuable addition to the staff'. What made all these people, with their different backgrounds, better qualified than the first JAG investigators was that most had some experience in interrogating German personnel, and all spoke German.[29] These were therefore not just fluent German speakers but fluent in German military formations, ranks and equipment.[30]

A further advantage of the WCIU team was that they were authorised to take statements from suspects and witnesses. British investigations outside the UK involved people who had no authority to obtain affidavits, which meant that even when they were successful in obtaining evidence, they had to wait for legally trained personnel to obtain it in writing.[31] Contrarily, WCIU were authorised to produce affidavits themselves, a task assigned to Warrant Officers Wilhelm Bonwitt and Michael Ullman.[32] Both were Germans, likely Jewish, who had escaped from Nazi Germany; Bonwitt, for instance, escaped

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to the UK in 1933 and was sent to Canada in 1940, following the mass rounding up of 'enemy' nationals.

The fact that between 1940 and 1945 this unit had been part of the DMI meant that they also knew how to track down the scattered evidence collected over the previous years. This was not necessarily intelligence explicitly describing a crime. Rather, the starting point of any investigation proved to be the very simple fact of establishing which German unit was at the location of the crime in question. This was the kind of information the DMI had, and the kind of information Scotland's interrogators were already using during the war to confirm what prisoners were telling them. Having been part of the wartime interrogation system, WCIU were also in the know about CSDIC and so were able to informally use its reports to find where they stood in relation to specific individuals, even if they could not use that material to prove someone's guilt. Former CSDIC staff also joined WCIU in 1945, including Captains Egger and Hay, in order to support WCIU's use of microphones. During the war, and although concealed microphones were seen as strictly a CSDIC method, PWIS(H)'s London Cage was deemed special enough to also have microphones hidden in some of its rooms. What warranted this special status was the fact that the Cage – which was *not* part of CSDIC – was interrogating in depth prisoners who had intelligence in areas not covered by CSDIC but which was of interest more generally, as well as cases of prisoners who had tried to escape from their camps.[33] This is why it had its own special status within the interrogation hierarchy – not as important as CSDIC but more important than other cages.

Those microphones kept recording after 1945. The process surrounding secret listening at the Cage does not appear to have been written down, which is unsurprising, but Scotland once described it when updating JAG about a specific case. The case concerned two Gestapo officers who had served in Italy, where they were involved in the torture and executions of Italian partisans. In updating JAG, Scotland explained that the 'the usual [London Cage] process', was used with them:

> i.e. that the PsW were placed in separate rooms on arrival from Germany, that they were interviewed separately by the undersigned, that [the allegations against them were] read over to them in German, and that the usual instruction was given to them to

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> write out in their rooms and by themselves an answer … They were at their own request provided with typewriters and used these for writing out their statements. These they then dictated to the Clerk, who typed the documents on the wax, two copies of which were later signed, each PW receiving an unsigned copy. The two men were then brought to gather again in the same room, and thereafter [one of the prisoners] produced his additional report no.1757 of 8 December 1947.[34]

It was possibly after they were 'brought to gather again' that secret listening was used, otherwise why would two suspects be placed together in that sequence? Unlike CSDIC, however, neither the wartime nor post-war London Cage seems to have produced verbatim reports of what prisoners were saying. And it is difficult to see how the Cage could have produced such material, because it did not seem to have the necessary staff for it. Rather, the Cage likely had a process that was less regimented than CSDIC's, one which would allow interrogators to informally gauge whether a suspect was hiding something, but without writing everything down; having written notes also ran the risk of such transcripts being leaked, deliberately or otherwise, and frustrating the course of trials back in Germany.

These various strengths – the linguistic expertise, the use of microphones, the DMI experience – combined to make the quality of WCIU's work very high, which turned them into the main team investigating war crimes in Britain. Their work consisted of several different tasks. One of their main priorities was screening prisoners en masse. Screenings were usually done by having prisoners fill up specific forms, where they would declare their particulars and history, and then the information would be cross-checked with Crowcass. This task had initially been delegated to individual prisoner-of-war camps, but some did not have access to Crowcass and others did not know how to establish whether a prisoner whose name was on Crowcass was the same as the one in their camp – which was often the case with common surnames such as Koch or Müller.[35] And so WCIU had to do much of that work. Then any matches (or close matches) would be interrogated by WCIU in order to establish what was going on. A further screening exercise concerned SS personnel in particular. Some 25,000 SS members of all ranks were in Britain at the end of the war, but very little was known about which divisions they belonged to, and nobody had

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considered whether those divisions were now part of investigations, be it by Britain or others. This was another task assigned to WCIU: they asked the 25,000 men to fill in 'special pro-formas', which WCIU then assessed and selected a few thousand for interrogation.[36]

There were also prisoners whose names were not on Crowcass but who had been denounced by fellow prisoners, or whom camp staff suspected were hiding something. For instance, when a camp in Sheffield realised that one of its prisoners used to be a member of the Bremen Gestapo, the next step was for WCIU to travel to the camp and interrogate him about his past. Their conclusion was that the man, who was indeed in the Gestapo, was 'of low intelligence and rather frightened. He is not dangerous, of no value for War Crimes and is only anxious to "work his passage"'.[37] Dozens such cases were investigated, and for most of them the verdict was that the man was of no use to investigations. But to formally reach that conclusion, the prisoner had to be interrogated.

In parallel with these various siftings, which spanned from 1945 into 1947, the core of WCIU's work centred around a hundred or so cases of war crimes they investigated in depth. Once it was ascertained that there was a case to be investigated, WCIU had to work backwards to identify whom they needed to interrogate. Sergeants Gerhard (Gary) Leon and Martin Eversfield – both of them refugees from Germany – were responsible for tracking down where specific individuals were, having 'developed their own method' of hunting down suspects and witnesses. That method, which required them to know what kind of records were kept by Britain and other Allied powers, made them into 'the most successful team in this difficult operation'. Identifying and locating people was an incredibly difficult task and some cases worked out through nothing more than luck. As an example, a 'Hauptmann Jung' was wanted after a British prisoner accused him of ill-treatment – Jung was the doctor in charge of a hospital for British prisoners in Kloster Haina, and had a habit of forcing amputated and injured prisoners to walk to the station where they had to report with all their luggage, some 9 kilometres away.[38] He would also lock them up in the hospital with the windows shut and refuse to order artificial limbs or allow the British doctor to access surgical instruments.[39] When searching for Jung, the only information held other than his approximate age and height was that he was 'not unlike Mussolini in appearance'.[40] The resemblance must have been striking because he was located the next day and brought in for interrogation.[41]

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Miscommunications, however, caused many complications to WCIU's already complex work. When WCIU interrogated Lieutenant Leo Rosenau about the death of 106 British prisoners in Bayreuth, they found discrepancies between his statement and the affidavits implicating him; a 'freezing order' was issued so that he would not be repatriated until the matter was clarified.[42] But having been taken to a hospital in the meantime, Rosenau was repatriated as a sick person by mistake.[43] He was eventually located and sentenced to two years, but much additional labour was spent in searching for him.[44] More stress was caused by the sheer disorganisation that existed within the relevant bureaucracy. For example, when Pantcheff was working on the Emsland investigations, he was looking for Werner Schaefer, former Commandant of the Emsland, and Willi Herold. The two had already been arrested and were in British custody, though no one had informed Pantcheff, and so he travelled to Germany to look for them himself.[45] 'The left hand very often doesn't even know of the existence of the right hand, never mind what it's doing', he remarked upon learning that they had for a while been in British hands.[46] Similarly, when a WCIU detachment team visited Belgian camps and identified witnesses for cases they were working on, these men were then accidentally released.[47] An additional month was spent trying to find enough of them, illustrative of the kind of problems that were frequent and which made a difficult job even more so.

Once a suspect or witness had been located, in-depth interrogations would follow. Approximately 3,600 individuals were interrogated in detail by WCIU about specific war crimes cases, and their interrogations usually took place either at the London Cage or the Kempton Park Cage. Interrogations, however, were not simply aiming for a confession. Both British and American trials saw fewer admissions of guilt than Soviet ones, which 'almost always' produced one, many of them no doubt unwillingly.[48] Interrogators instead aimed to obtain verifiable details which would corroborate admissions of guilt or be used to prove them independently. For this reason, the aim was to interrogate more people than just the main suspect. As part of the effort to obtain verifiable information, identification parades were also organised so that the identity of suspects could be confirmed by witnesses, while for some of the cases, such as the Emsland, interrogators would also visit the location of crimes to gather evidence themselves – which occasionally meant exhumations in order to establish the number of victims.

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All four zones of Germany, various parts of Europe and even Russia were visited by WCIU interrogators in the process, looking to find people and evidence. For example, in spring 1946 Major Terry visited the Dachau camp in the US Zone to interrogate General von Falkenhorst, who was eventually convicted for implementing Hitler's 'Commando Order', stipulating the execution of Allied commandos after capture. He then visited Rotenburg and Korbach, also in the US Zone, to identify witnesses for other trials.[49] Then Terry went to Bückeburg to appear as a witness in a trial, after which he proceeded to France for further interrogations.[50] In another case, an entire WCIU detachment travelled across Germany and Belgium for three weeks in order to collect evidence for a number of different cases involving the murder of British prisoners of war. To identify those who had any information, they first visited nine internment camps, where the team of three screened 28,000 SS members. Of those, they interrogated some 765 and then made arrangements for around 60 of them to be transferred to the London Cage for in-depth questioning.[51]

Alongside their own cases, WCIU also assisted other Allied nations with their own investigations. At the very minimum, WCIU would notify others about people of potential interest – 'the American, French, Belgian, Dutch, Jugoslav, Polish, Czech and Russian investigators' all found out about people of interest through WCIU.[52] An important example of such liaison concerned the Yugoslavs. It was on account of Major Terry that they were notified that some 1,500 members of what used to be the SS *Prinz Eugen* and the SS *Handschar* divisions were now prisoners of war in Britain. Even though this was now 1947, these divisions had committed horrific crimes against thousands of civilians, partisans and prisoners of war in Yugoslavia, and so the Yugoslavs – who were holding their own trials – were more than eager to investigate them. Accordingly, those 1,500 prisoners could not be repatriated until those investigations were completed, all of them in Britain.[53] In cases where Allied investigators would arrive to interrogate suspects, if those investigators did not speak German, WCIU would serve as interpreters.[54] In other cases, they were asked to interrogate people on behalf of other nations. Between December 1946 and February 1947, for instance, WCIU interrogated eighty-five individuals on behalf of others. For example, Allied powers left it up to WCIU to interrogate their suspects if those people were in hospital and could

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not be moved.[55] A further way in which WCIU served the interests of others was when it came to repatriation. From early 1947 onwards, when repatriation was underway, WCIU was instructed to individually screen prisoners of war who were to be repatriated to allied and neutral countries (as opposed to Germany and Austria), in order to notify those countries of any potential war crimes suspects they were about to receive.[56]

The administrative work of WCIU was immense, as a result of these tasks. Leaving aside the screenings and siftings, the workload was substantial for those cases that were investigated in depth alone. All of the material produced had to be translated, mainly by the 'highly efficient' Sergeants Rapp and Siegal, supported by staff from the Adjutant General's Corps. This is because while almost all interactions between WCIU and prisoners were in German, not everyone associated with trials – in some cases not even the prosecutors – spoke German.[57] And so all material had to be translated into English. The process of circulating reports – 1,000 of them were eventually produced by WCIU – was also painstaking, since those documents had to meet the standard necessary for JAG to decide whether a case merited prosecution. This involved a number of steps.[58] The lead interrogator would make a draft report of each interrogation, which would then be checked by the second interrogator who was present during the questioning. As the interrogation had been in German, the same process would be repeated to create an English translation, and both the English and German versions would then be typed up and dispatched to the appropriate recipients, which always included sections of JAG and of the DMI but on occasion others, such as the Admiralty, the Air Ministry and the French War Crimes Commission. This elaborate process was necessary so that any documents produced could be admissible in court, if a case was to go down that route. This may make the WCIU establishment sound like a large organisation, when in reality, in January 1946, WCIU had ten officers and ten other ranks.[59] If anything, by March 1947 its intelligence staff was reduced to seven officers and nine other ranks; and right before winding down in August 1948 there were only three officers and two other ranks.[60] So, at its strongest, WCIU's intelligence section was a team of merely twenty-two people.

Yet despite how immense and necessary it was, WCIU's work was constantly undervalued. When Ullman and another warrant

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officer, R. L. Richter, arrived in Bückeburg to interrogate prisoners, they discovered that no accommodation had been arranged for them by the British Army of the Rhine (BAOR), nor had the people they wanted to interrogate been made available.[61] An officer even refused to give them a car for what he called the purposes of 'swanning around Europe'.[62] This dismissive attitude was seen as a response both to Ullman and Richter's ranks and possibly the fact that they were not British, and demonstrated a total lack of appreciation of WCIU's work. While Scotland did give BAOR headquarters a piece of his mind for judging his men's work based on their ranks, the director of personnel services also intervened to explain that WCIU 'undertake interrogations of a very specialised nature and almost all their cases are exceptionally important due to the enormity of the crime or to the complexity of the case'.[63] Knowing that this kind of work was being undervalued, and to avoid Pantcheff from finding it difficult to get things done when he was conducting investigations on the Continent in 1945, Scotland also appears to have given him the insignia of a major (Pantcheff was still a captain at that point). In a letter to Scotland (which Scotland took home with him and the War Office recovered with other documents in the 1950s), Pantcheff told him: 'Well, this crown you gave me has been a great help to me – in fact to us all. It makes things so much easier that it will be very hard to take it down again when I get back. People here are really very cooperative when you hammer at them.'[64]

If this was indeed a crown to make Pantcheff look like a major, he did not have to abandon it for too long once he returned home, as he was soon promoted to (temporary) major. And while this does say something about Scotland's irregular tactics, the fact that WCIU was put in this position of having to use false insignia to be able to investigate war crimes also reveals how their work was perceived. That the enormity of the task facing WCIU was not comprehended is also clear from the expectations that existed in 1945, when the decision was taken to convert PWIS(H) into WCIU. There was a realisation that these interrogators would be useful, but exactly what they needed to do to identify war criminals and investigate cases was nowhere near being realised. As such, the expectation was that WCIU would last up to four months.[65] In the end, WCIU continued for thirty-three months and until September 1948, the point after which no *new* war crimes trials would be initiated by Britain.

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5.3 PROCEDURAL JUSTICE

Knowing that a crime occurred and prosecuting it were two different matters. Even within the narrow remit of what type of crimes Britain could prosecute, the task of investigation was enormous. And it was assigned to a small team. Those who had to identify the suspects on paper also had to locate them physically, interrogate them (usually several times), translate their statements and, if needed, organise exhumations or search crime scenes for more evidence. Only then could JAG decide whether the case would be prosecuted. All these tasks also had to be done by the book, as much as possible, so that the resulting evidence could be admissible in court. This only added to interrogators' duties, especially when it came to statements which prisoners wrote themselves, giving their version of events:

> Some prisoners' statements run to many pages and are frequently written in the German script and almost indecipherable. The contents of these documents are, of course, subject to the most careful scrutiny before proceedings and must therefore be correct. This work of copying, translation and reproduction must be carried out at the point of interrogation so that any alternations prisoners may wish to make can be incorporated in the final document; and prisoners must be shown all documents before they are finally passed to JAG … [I]t cannot be appreciated how much work is involved in these major war crimes investigations duties without studying the vast amount of material which is produced although relatively little may finally be produced in Court.[66]

What would be discussed in court if a case reached that stage was of paramount importance, both to WCIU and to the government. Britain could not be seen by the Germans as holding show trials, forcing confessions or fabricating evidence. Indeed, when instituting British courts in Asia for Japanese war criminals, it was thought that the machinery for them 'need not be as elaborate as that for war criminals in Europe'.[67] Even small slip-ups were seen as major incidents that had to be avoided. In one trial in Germany, the (British) judge was infuriated when the counsel for the defendant did not show up. He adjourned the case and reported the incident to his Chief of Staff, saying that 'the court room as usual here was

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packed with Germans … you can judge for yourself the view the Germans take over such incidents'.[68] Aspects such as giving enough time for German lawyers appearing for the accused to prepare their defence were also key, and it was considered important to give them at least two weeks' notice ahead of proceedings.[69] And while it was not a requirement for counsels on either side of a case to be legally trained,[70] there was an effort not to use trained British lawyers to prosecute when the defence was carried out by a non-legally trained individual – again so that 'the German public [was] to be suitably impressed with the merits of the British Judicial procedure and the justice of the trial'.[71] The overarching concern was therefore to give the opportunity for the accused to be properly defended. How often these ambitions were met is unknown. Proceedings were still invariably far from perfect. Reflecting on the Emsland trials, Pantcheff (who attended those proceedings) remarked that 'witnesses for the prosecution … get away with much more than they would if they were cross-examined properly, and witnesses are called for the defence who, when cross-examined by the prosecution, do more harm than good to the defendant's case'.[72] The reasons for such instances, however, seemed to have been contextual rather than deliberate. From when the question of legal proceedings was raised during the war, a key discussion point was the different legal systems that would be involved. In the case of British military trials, and despite efforts to make proceedings fair, the fact was that German lawyers were trained in a civil rather than a common law tradition. There was also the problem that for years, German lawyers were practising whatever Hitler said was law.[73]

Despite these inescapable imbalances, the aim of not being seen as holding show trials was not simply an unspoken ambition but one that was constantly mentioned – by investigators, judges and politicians – and steps were taken to uphold proper standards. As part of this, it was also considered 'indispensable' to have WCIU's interrogators present at the trials of those they had investigated. Even the 'most willing of prosecutors [could] never master the detail of background' that interrogators had acquired. Being more familiar with cases than the prosecutors, interrogators had to be physically by them in court in order to ensure adequate interpretation of evidence, especially because 'small details of misinterpretation if undetected may cost a man his life, and if detected lose the court much

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time in argument and discussion', as Pantcheff put it.[74] How much judges ultimately relied on WCIU's evidence is unknown, because judges would not write down their opinions, only the verdicts.[75] But the amount of work WCIU ended up doing was down to the fact that the quality of investigations was at the heart of this broader aim to conduct trials properly.

The professed concern with legal process may appear to be hypocritical, considering that, at its core, trials were a form of victor's justice. But the trials were only an element, albeit a major one, of the policy that Britain was pursuing in Germany. Another was re-education: 're-educating' the Germans away from Nazism and communism and towards more Western democratic norms. This policy too had its origins in the war but was soon adjusted to post-war realities. Developed by the Foreign Office, it was aimed first towards the German prisoners in Britain, with the aim then being to extend it to schools and universities in the British Zone. In very literal terms, the aim was to use educational activities – English language courses, lectures on politics and history, discussion groups, books and propaganda newspapers – in order to make German soldiers see the value of democracy. Then, when they returned home and assumed civilian positions, they would be inclined to adopt political outlooks that were compatible with the West, this way guarding against communism or a Nazi revival. The large-scale effect of this policy was likely very limited, even if it did influence some soldiers at an individual level. Nor is it implied here that the sole aim of war crimes trials was re-education – they had much more to do with punishing perpetrators as well as with setting legal precedent.[76] For Britain, however, re-education remained an overarching aim and framework during this period: the idea that a future war could be forestalled 'by drastically changing the political behaviour and social outlook of the German people through a fundamental restructuring of all the means of opinion and communication'.[77] The way trials were being conducted had therefore to be compatible with the image Britain was trying to project in Germany.[78]

The Germans were not, in the end, impressed with the trials. That the German public would be watching carefully was something that became obvious in the opening session of the Belsen trial – the first in a British court – which was attended by some 400 people.[79] In the Ravensbrück trial the following year, 120 extra seats were allocated to members of the public, as attendance had turned into a German 'social

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convention'.[80] Far from being apathetic, ordinary Germans were involved in proceedings – at least initially – and the concern with how these trials would be perceived by them extended beyond the courtroom. From at least spring 1946, the Air Ministry made it its practice to write to relatives of German airmen suspected of war crimes and inform them of their impending trial, 'to protect them against the shock of a newspaper report'.[81] But unlike later generations of Germans, those witnessing these trials had fundamental doubts over their legality and morality, especially as they continued to go on for years and alongside Germany's occupation. The chief criticism was that military personnel should never have been tried for their actions, because these were dictated by the specific political context in which they existed. And so they called these people not war criminals but 'war-guilty' and 'war-convicted', a narrative that eventually led to many of them being released in the early 1950s.[82] It was also the case that for the Germans, Britain's trials were happening alongside those of the other occupying powers, as well as alongside the parallel 'denazification courts' through which former members of criminal organisations – the SS, Gestapo and so on – were also being given prison sentences and prevented from holding positions of influence.

It was not just for the Germans that life was beginning to move on from the war; in Britain too there was a sense of fatigue associated with the trials, creating a pressing need for the government to show tangible results from this pursuit. Yet progress could not be easily assessed. The concerns with procedural justice on the one hand and the enormity of investigations on the other meant that on paper things moved very slowly. In terms of actual trials being held, Britain was not prosecuting nearly as many as it thought it should be, based on the resources spent on investigations. As early as October 1945, and although in theory BAOR in Germany had 695 cases to prepare prosecutions for, in reality it only had the accused for fewer than half (40 per cent).[83] In other cases, the suspects were in custody but witnesses had not been found.[84] Then there was the international politics dimension. Britain predominantly investigated cases committed against non-Britons and so would then hand over the case to the country whose nationals were the victims, so that they could try them and give a sense of justice to their publics – as promised in Moscow in 1943. So just because a suspect was in British custody and Britain may have built a case against them, this did not always mean Britain would prosecute

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them. For reasons that had nothing to do with a lack of evidence itself, these cases would be delayed, extradited and some simply shelved. For those that did end up in court, concerns with process meant that proceedings would not last a matter of minutes but could often go on for days.

But trials were a politicised topic, and soon enough progress became a question of headcounts rather than the substance of the proceedings. In November 1945, the Attorney General, Hartley Shawcross, even set a target of how many individuals he wanted to see tried in Germany in the next six months. That number was 500 people.[85] When he announced that figure, those involved in the investigations and trials dismissed it as completely unrealistic. The critics included Major-General Chilton, Commander-in-Chief of BAOR.[86] His criticism was based on the fact that a single case often concerned multiple victims and accused, requiring hours for investigations and then time to prove it in court.[87] His scepticism proved well-founded, for the target was nowhere near being met when the six-month deadline arrived in April 1946. At the end of that month, only 65 cases had been tried in British courts in Germany, involving 189 individuals.[88] This was not even close to half the number that Shawcross wanted to see. It was not until a full six months later, in October 1946, that April's target was met.[89] Writing in his memoirs years later, Shawcross thought the failure to hit his target was down to the reluctance of the War Office to organise these trials, calling their efforts 'dilatory in the extreme'. '[I]f instead of Montgomery I had been in charge of the matter', he told Prime Minister Attlee, 'we would have got much nearer to our targets'.[90] Yet by looking at WCIU's work, it is clear that Chilton's reasoning was closer to the truth.

This leads to the broader point that the pursuit for war criminals was full of conflicting realities. While British policy itself was narrow in terms of what crimes it would cover, this made no one's job easier because it was combined with the very broad commitment to investigate all suspects in British control. This proved impossible to execute, because of the scale of Nazi criminality and also geography. In the final months of the war, as the Soviet advance was unfolding, concentration camp staff were moving north-westerly to escape, and many ended up in what became the British Occupation Zone.[91] Put simply, there were many more 'minor' war criminals in British custody than was anticipated. The broad commitment to investigate any war crime

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committed by anyone under British control was formally abolished in 1947, when the focus turned exclusively to cases in which the victims were British servicemen. Even among this smaller group only the most serious cases were to be investigated and prosecuted. The other conflicting reality had to do with the length of the trials. There was a strong political desire to win over the Germans as part of this process, but there was also political impatience when the resulting trials were not swift. Similarly, the investigation teams on whose shoulders all of this fell were receiving little assistance and were operating on meagre resources. The counterparts of WCIU in Germany – the War Crimes Investigation Unit – noted this tension in an exasperated note to BAOR in June 1946. In it, they pointed to the contradiction between the pressure to work even faster to achieve the same thorough results, while their numbers were constantly being cut due to demobilisation.[92]

The result was that investigations were inevitably slow and only hindered further by various factors, but those investigations were conducted as properly as possible. This was, in many ways, a thankless task. It was only the fraction of cases that ended up in court that counted, not all the cases investigated; the disparity was considerable. And it was the trials that grabbed the attention, not the investigations behind them. It is, of course, understandable that it is not the procedures that stay in memory but the gruesome details made public in courtrooms, as well as the characters of the accused. But all of that was made possible because of those who, like Pantcheff, Terry, Ullman and Bonwitt, tracked down people, took statements, searched crime scenes, translated documents and made everything available for presentation in court. Many of those efforts were put into investigating crimes that never reached a British court. Some reached Polish, Yugoslav, French, Greek, Soviet, Dutch, Belgian courts and so on; others were simply shelved. But they were investigated as much as the evidence allowed. Like many others involved in intelligence, the people doing these investigations spoke little of their efforts. Not only was their work allowed to be forgotten, but it also seemed not to have been recognised at a formal level at the time either. At the end of 1946, Scotland recommended six of his interrogators – including Terry and Pantcheff but also Ullman and Bonwitt – for OBEs and MBEs. He had received an OBE in 1919 and saw his interrogators as deserving some kind of formal recognition for their work as well. None of them appears to have been awarded the honour at that point and for that work.[93]

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