

VI. First Letter to All Judges (Guidelines for Sentencing) October 1, 1942

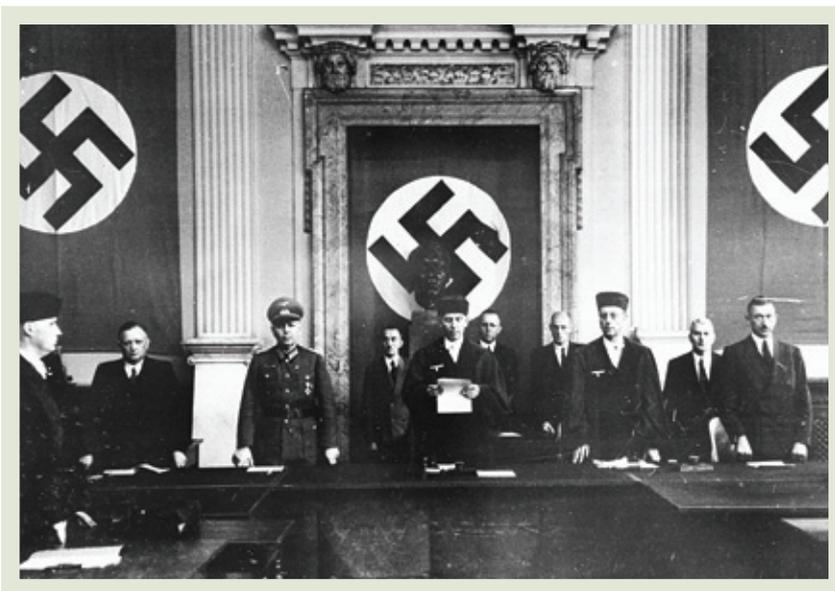
On August 20, 1942, Hitler appointed Otto Thierack, a vehement Nazi, as Reich Minister of Justice, heralding the end of an independent judiciary in Germany. Given free reign by Hitler, Thierack demanded ever more extreme legal measures against Jews and others, increasing the pressure on German judges to render their verdicts according to Nazi principles and ideology. At Thierack's urging and with the compliance of many individuals throughout the legal profession, the Nazi court system became more and more a state vehicle for injustice and persecution from 1942 until the end of the war in 1945.

On October 1, less than six weeks after his appointment, Thierack issued the first in a series of so-called Letters to All Judges, which served as official guidelines to be used in sentencing. Dealing with such varied cases as divorce, legal determination of Jewish descent, treatment of antisocial elements, refusal to give the Nazi salute, and looting, these letters presented the state's position on political questions and on the legal interpretation of Nazi laws. In practice, Thierack's letters pressured judges, who were under public threat of removal

from office, to choose the path of least resistance and decide a case according to the examples set out in them, although no judge was ever removed from office for the explicit reason of having failed to do so.

The letters were classified as state secrets because the Security Service (Sicherheitsdienst, or "SD") of the SS was convinced that the public would protest the intensification of state control over the judicial system. In a report on May 30, 1943, the SD declared, "The people want an independent judge. The administration of justice and the state would lose all legitimacy if the people believed judges had to decide in a particular way."

Thierack's first letter addressed the use of the death penalty for persons convicted under the Decree against Public Enemies (Volksschädlingerverordnung) of September 5, 1939. Under that law's terms, a person could be sentenced to death—regardless of the severity of the accusation—if he or she was found to have exploited the wartime circumstances to commit the crime in question and, additionally, if judges determined that "sound popular judgment" required them to sentence the person to death. Thierack's letter states in no uncertain terms that it was the desire and expectation of the Ministry of Justice that judges would uniformly apply the death penalty in such cases. As Thierack wrote, "Those in the administration of justice must recognize that it is their job to destroy traitors and saboteurs on the home front. [...] The home front is responsible for maintaining peace, quiet, and order as support for the war front. This heavy responsibility falls especially to German judges. Every punishment is fundamentally more important in war than in peace."



Roland Freisler, Nazi jurist and president of the People's Court, pronounces the judgment of the court. Berlin, Germany, August 1944. USHMM

Letter to All Judges—Announcement of the Reich Minister of Justice—Nr. 1⁶

Pests (*Volksschädlinge*), especially blackout criminals
Judgments of various courts from the years 1941–1942

1. Shortly after his hiring in the winter of 1941–1942, a 19-year-old worker who was employed on the Reich railway since 1941 exploited the blackout and stole from the baggage car of a long-distance train, from parked mail carts, and from packages. In total, he was involved in 21 cases [of theft]. The Special Court sentenced him as a “pest” to four years in prison.
2. At the end of 1941, a 34-year-old metalworker tried to commit a purse-snatching during a blackout. In a darkened street, he attacked a woman, ripping her purse from her arm. He was chased down and arrested. The culprit had been previously convicted six times for, among other things, larceny, physical assault, and manslaughter. He was convicted for physical assault in 1931 because he and a Communist beat up a National Socialist with a gatepost.

The Special Court classified the crime as larceny rather than mugging because the woman carried her handbag so loosely that the robber didn’t have to use violence to take it. The court, however, did declare him a “pest” because he posed a serious threat to the community. However, the punishment was only two years in prison.

3. In early 1941, a repeat offender, a “work-shy” 29-year-old worker, tried to steal a handbag during a blackout. He had just been released from the hospital, where he had been faking an illness, and wanted to get some money. He pursued two women on a dark street and grabbed for a handbag as he passed them. He couldn’t tear it away, however, because it was tightly held. A few men came rushing when they heard a cry for help and they captured the accused. The Special Court sentenced him to death for attempted robbery as a “pest.” The court indicated at sentencing that those walking on darkened streets require special protection in order to safeguard people’s feeling of public safety.
4. At the start of 1941, an 18-year-old culprit, W., who had previously led a faultless life, exploited the blackout to commit sexual assault on the wife of a soldier at the front. After visiting a bar and returning home around midnight, he and his 19-year-old girlfriend, P., spoke with a young woman who was just returning from work. She explained to the youths that she had to leave because her husband was away at the front and that she wanted to go home. A man standing close by observed W. beat the victim repeatedly in the face without reason. He then pushed the women into a park, beating her and then raping her on a bench. He quelled her efforts at resistance by telling her he had a pistol. During the incident, P. was nowhere to be found. The Special Court sentenced W. to death for sexual assault as a “folk vermin” (*Volksschädling*). P. received a five-year prison sentence as an accomplice.

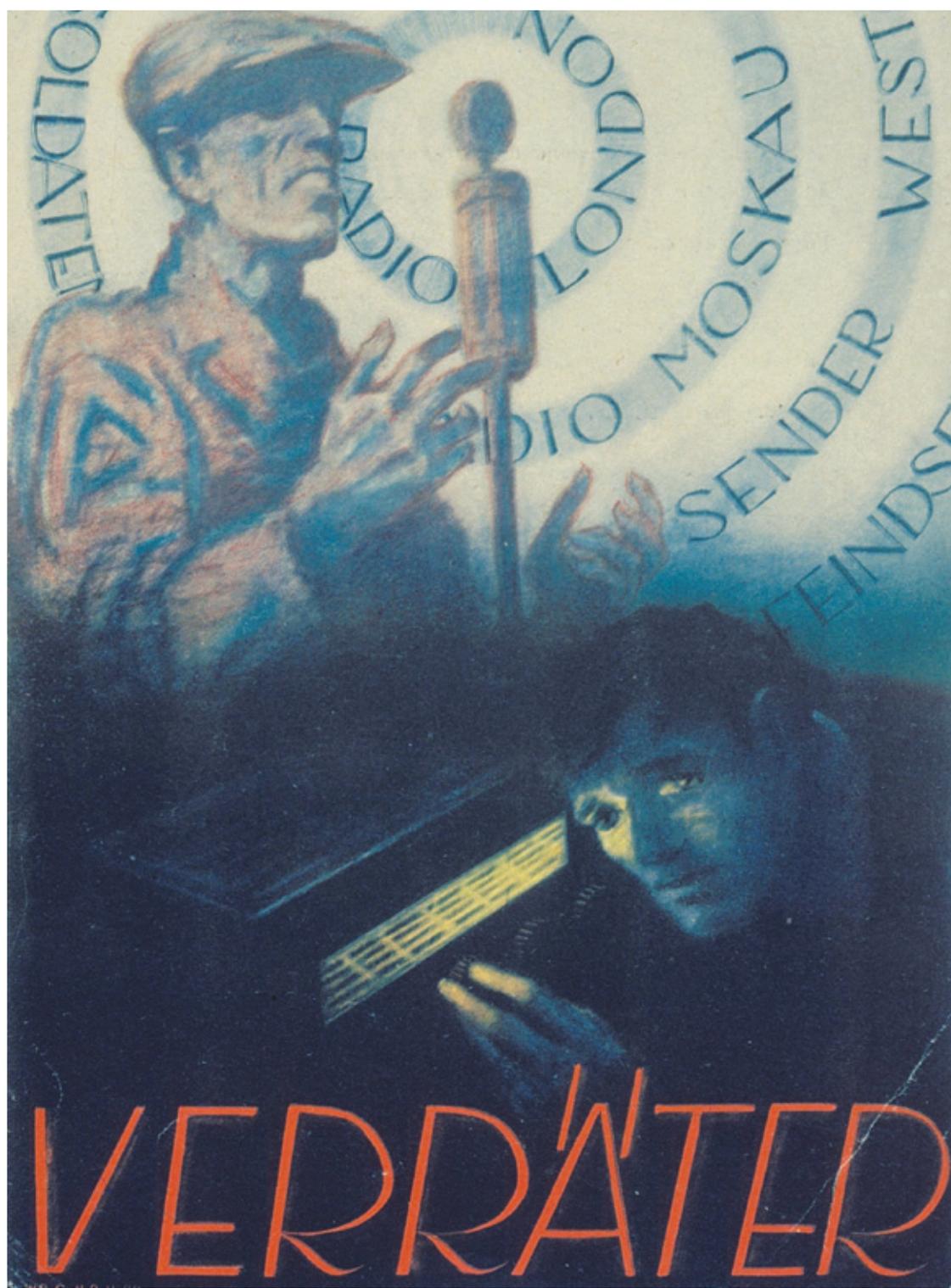
6. Translated from Letter to All Judges—Announcement of the Reich Minister of Justice—Nr. 1—in Heinz Boberach, ed., *Richterbriefe: Dokumente zur Beeinflussung der deutschen rechtsprechung 1942–44* (Boppard am Rhein: Harold Boldt Verlag, 1975), pp. 7–9.

Official Position of the Reich Minister of Justice⁷

At a time when the best of our people are risking their lives at the front and when the home front is tirelessly working for victory, there can be no place for criminals who destroy the will of the community. Those in the administration of justice must recognize that it is their job to destroy traitors and saboteurs on the home front. The law allows plenty of leeway in this regard. The home front is responsible for maintaining peace, quiet, and order as support for the war front. This heavy responsibility falls especially to German judges. Every punishment is fundamentally more important in war than in peace. This special fight is targeted especially against those designated by law as “pests.” Should a judge decide after conscientious examination of the criminal act and of the perpetrator’s personality that a criminal is a “pest,” then the seriousness of this determination must also be firmly expressed in the harshness of the verdict. It is a matter of course that a plunderer, who reaches for the possessions of another after a terror attack [bombing] by the enemy, deserves only death. But every other culprit who commits his crimes by exploiting the circumstances of war also sides with the enemy. His disloyal character and his declaration of war [on the German people] therefore deserve the harshest punishments. This should especially be applied to criminals who cowardly commit their crimes during blackouts. “I don’t want,” the Führer said, “a German woman to return from her place of work afraid and on the lookout so that no harm is done to her by good-for-nothings and criminals. After all, a soldier should expect that his family, his wife, and relatives are safe at home.”

The majority of German judges have recognized the immediate needs of the moment. The death sentence that the Special Court handed out to the 18-year-old assailant of the defenseless soldier’s wife, and to the “work-shy” purse-snatcher, placed the protection of the people above all other interests. There are, however, still cases in which the personal circumstances of the culprits are placed above the interests of the necessary protection of the community. This is shown in the comparison of the judgments listed above. The cunning, nighttime handbag robbery perpetrated by a culprit with prior convictions and the 21 thefts committed by the 19-year-old worker were wrongly punished with four years in prison. The decisive factor [in sentencing] is not whether stealing the handbag was legally theft or robbery (which, by the way, does not depend upon whether the bag was carried tightly or loosely); it is not whether the sex offender caused a specific damage with his offense. That he cowardly and cunningly attacked a defenseless woman, and endangered the security of the darkened streets, makes him a traitor. The protection of the community, above all, requires that punishment in such cases serve as deterrence. Prevention here is always better than reparation. Every sentence given a “pest” that is too lenient sooner or later damages the community and carries in itself the danger of an epidemic of similar crimes and the gradual undermining of the military front lines. It is always better for the judge to quell such epidemics early than to stand helpless later against an infected majority. In the fourth year of his prison sentence the criminal should not get the impression that the community’s fight against him is waning. On the contrary, he must always feel that German judges are fighting just as hard on the home front as the soldiers are with the foreign enemy on the military front.

7. Ibid., pp. 9–10.



This poster is captioned "Traitor" and depicts a German citizen listening to foreign radio broadcasts, 1944. BAK, Plak 003-027-001