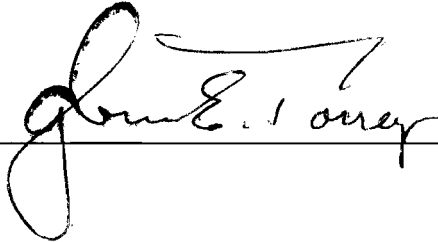


An Abstract of the Thesis of Edina von Hofman for the degree of Master of Arts in History presented on 5 August 1996 entitled The Leadership of East Germany on Trial: German Public Reactions towards the Prosecution of Erich Honecker and Erich Mielke.

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The fall of the German Democratic Republic in 1989 necessitated a thorough confrontation between victims of the regime and the GDR's former rulers. Unlike a real revolution, unified Germany put the Socialist Unity Party (SED) leaders on trial instead of standing them against a wall. During the investigation and court procedures, German newspapers served as the public's mouthpiece about the defendants. They expressed a strong need to vindicate the victims.

The courts in a rush to charge the top leaders seemed to be satisfied with any charge, as long as it led to a trial. This resulted in the separation of the prosecution of former security chief Erich Mielke from the main trial involving him, former party chief, Erich Honecker and several other SED-leaders. The court decided to try Mielke first for the murder of two policemen, a crime committed more than sixty years earlier.

Honecker on the other hand was prosecuted for the deaths of escapees at the West German/East German border. His health, however, was failing and so his prosecution was

**THE LEADERSHIP OF EAST GERMANY ON TRIAL:
GERMAN PUBLIC REACTIONS TOWARDS THE PROSECUTION
OF ERICH HONECKER AND ERICH MIELKE**

A Thesis

Presented to

The Division of Social Sciences

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In Partial Fulfillment

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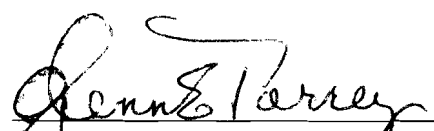
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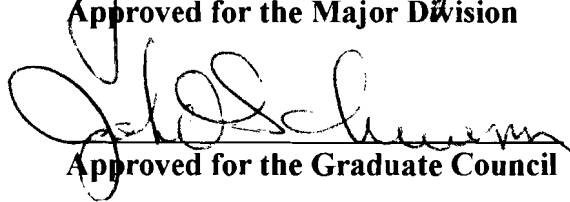
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PREFACE

“All power tends to corruption; absolute power corrupts absolutely.”

Lord Acton in a letter to Bishop Mandell Creighton, 1887

One of the results of the German defeat in World War II was the West German attempt to strive towards establishing a nation based on laws and ethics that are above those individuals who have power through their position or their wealth. In the German language such a government is called Rechtsstaat. Recht means justice or right and Staat is a nation, state or state authority. The meaning though extends beyond laws. Rechtsstaat also implies that a nation's existence is ethical and humanistic in a larger world view. The National Socialist regime in 1936 was established through correct legal channels; however, the regime's ethics and laws were inhuman and therefore a Unrechtsstaat (un = not).

The establishment of the former GDR (German Democratic Republic) was also very questionable. The country's laws were not above the individual. After the fall of the GDR, it was often referred to as an Unrechtsstaat because a group of individuals used their position to manipulate the laws of the country for their purposes. The unified government of Germany was confronted with the obligation to prove itself ethically and ideologically as a Rechtsstaat. Among the results were the trials against the former East German leaders. The question whether East Germany or unified Germany is a Rechtsstaat is not discussed in this thesis, though it was the starting point to research the reactions of the public. Their

feelings towards their representation in court and their attitude about the integrity of their government is very important, especially during the critical years right after unification.

Though political history is something created by a few individuals in positions to shape a nation, their decisions and choices impact a vast, but unseen mass of people. Often in studying history, we forget to look at the effects certain decisions and occurrences have on the population. This is the main reason I became interested in studying the reactions of the German people towards the former SED-leadership and their prosecution, specifically Erich Honecker and Erich Mielke.

The press in all its forms, from newspaper to television programs, are reflections of the opinions present within a culture or nation. Germany dealt with the Nazi experience shyly, trying to avoid the ugly truth. Their behavior led to the question whether the German population actually had learned from their past mistakes and were dealing with the experience of the former GDR any more honestly. How did the people feel about the GDR-leaders? Did Germans feel the government criminals were judged appropriately? And, was the system able to adequately handle the judicial challenge? This thesis is a survey of the periodical and public opinion of the prosecution of the leaders of the former GDR.

I drew the information used in this thesis from the leading German daily newspaper, the Frankfurter Allgemeine Zeitung, which is equivalent to the New York Times; the most popular German newsmagazine, Der Spiegel. I further used Public Opinion polls of the Institut fuer Demoskopie Allensbach which is comparable to the Gallup Polls.

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CHAPTER 1

INTRODUCTION

Germany's failure as a nation to openly face and discuss its history, the nation's responsibilities and the future implications are seen in the results of the Second World War. The Treaty of Versailles created bitterness and hatred against Germany's neighboring countries. The embarrassed German population saw in Hitler someone who could lift Germany to its "deserved" position among the countries of the world. The Nuremberg trials, after the defeat of Germany, were not only a tool to punish the Nazi war criminals, but were also a beginning for the German population to evaluate the past and to reconcile their individual and collective responsibility for the murder of six million Jews, Poles and gypsies in the concentration camps.

After World War II, the Allies helped West Germany master its past as a method of preventing any possible repetition of the horrors caused and committed by the Nazis. Germans accepted their guilt and incorporated it into their national inheritance. This inheritance of guilt not only caused a psychological conflict for the Germans who lived through the Nazi era and projected their guilt onto future generations but it also threw its shadow over Germany for decades. A public opinion poll taken in 1948 showed the inability of the individual German to reconcile his/her passive participation and the reality of the Nazi horrors. When asked if the Germans thought National Socialism was a good idea that was badly executed, 57% of those questioned answered: "Yes, as an idea

National Socialism was good”¹. It took more than two decades for the public to change its attitude towards National Socialism and to see its dangers. However, the experience with a National Socialist past of 1945, trying to heal the individual and communal guilt of the nation might help deal with the experience with a communist past and heal the scars more effectively.

Currently, Germany again is attempting to reconcile its past and overcome it for the sake of future generations. While it took only one year to accomplish reunification politically and legally, the merger of the two German populations will take longer than anyone suspected. Most people in the world and probably Germans themselves expected the unification to come smoothly because ultimately they were the same people with a common history. Professor Robert Darnton crossed the border to East Berlin after spending some time in the West. When a friend approached him, bewildered about the fact that Nietzsche had been cited during a university lecture, Darnton realized the vast difference between the two Germanies. “As I had not known that Nietzsche was taboo in the GDR [German Democratic Republic], I suddenly realized that I was in a very foreign country.”²

The fall of the GDR did not only bring an economic upswing to the Eastern German regions and population, but it also brought to the surface the painful subject of the mistreatment of individuals by the former communist government and its agencies. The Ministry for State Security [Stasi] was GDR’s largest agency with the task to insure the domination of the communist party, the SED [Socialist Union of Germany]. The Stasi’s means to ensure their success was fear and oppression. The collapse of the communist regime in East Germany created the need, for a second time in German history,

to reconcile passive participation of the public and the reality which had been created through their passivity during thirty years under communist rule. However, it goes beyond blaming individuals. As stated in the Frankfurter Allgemeine, reconciling the past of the GDR meant to uncover the system “which completely swallowed the individual and falsified the value system through claiming a person would develop into the collective.”² The communist rule had, much like a war, ruined East Germany: businesses in shambles, rivers poisoned, soils polluted, and, last but not least, lives destroyed.

After forty years of living under socialist rule, many people in East Germany wanted to see justice done with those responsible for their personal sufferings punished. Similarly to 1948, the people were wondering who would pay for the wrong done: those who gave the orders or those who executed them? Between 1990 and 1992 public opinion polls asked on three occasions if the former East Germans were still in support of Socialism. Sixty-five percent answered affirmatively and continued to regard Socialism as a good idea³. This reflects the human inability and lack of courage to acknowledge past failures just as it had in 1948. Socialism had so obviously failed that it was surprising to see so many people still in support of it.

The comparison between the collapse of the GDR and the collapse of the Third Reich occurred frequently in the German press after 1990. The feeling existed that denazification had been incomplete, especially after the fall of the Berlin Wall led to the discovery of NS-criminals (Nazi-criminals) who lived freely in the GDR without ever having faced any consequences. The GDR government was aware of their involvement with the Nazis and even employed many of them in government positions. However, in the West also many NS-officials stayed in top positions after 1945, e.g., Hans Globke,

Hans Karl Filbinger, and Theodore Oberlaender.⁴ Hans Globke was the official commentator on the Nuremberg Race Laws and Theodore Oberlaender was a core Nazi figure.⁵ This failure to clean the West German government of NS-perpetrators created a strong demand for a different handling of the SED (Socialist Union of Germany) leadership of the GDR. As Eberhardt Jaeckel, professor of Modern History stated to Der Spiegel in an interview:

Now [Honecker] is being pursued like Eichmann should have been pursued by the Germans. Back then [during the GDR's existence] the theologian Fink was a well-liked friend of peace. Now he had been fired like Globke and Oberlaender should have been.⁶

Jaeckel was convinced that dealing with the SED's past was necessary if both parts of Germany were to become one unified nation again.

But, while mastering the past was something the whole of Germany had to confront in the post World War II era, the situation was more sensitive in 1990 after the fall of the GDR. Many people in the former East felt as if judgment was being held over them by their fellow countrymen in the West. The issue of guilt for the East Germans was more complex than any other situation in German history. The number of East Germans who worked for the Stasi as secret informers was in the ten thousands. Though many of the informers felt they had no choice but to cooperate with the Stasi and denounce their fellow countrymen, a feeling of guilt accompanied their participation. In retrospect, many Germans felt the informers had a choice and could have denied the Stasi their participation. Resisting the Stasi was not impossible.⁷ SPD-politician Richard Schroeder said in an interview with Der Spiegel:

The experience the people in the GDR had with the Stasi was very ambiguous for the most part and therefore [criticism from the West] gives the impression: The 'Westlers' are sitting in judgment over us [the East].⁸

Schroeder further explained that the courage of the East Germans to speak out about the Stasi originated from their desire to deny their own personal involvement and participation than true human courage. In his own words: "The courage to protest against the Stasi derives the fact that one shouts loudly in an attempt to cover up ones own involvement."⁹ While after the Second World War foreign powers were sitting in judgment over a people who carried a communal guilt, in East Germany it was a number of ist own citizens who wanted justice for themselves and punishment of their fellow countrymen, guilty of helping the government's and SED leaders' oppression of the people.

The government of unified Germany struggled with several problems connected with prosecuting the SED leaders, especially Erich Honecker and Erich Mielke. First, though the moral guilt of these men was beyond any questionable doubt, the German courts had to find legal grounds based upon the former GDR penal code, as agreed to in the reunification treaty. The preparation of the cases against Mielke and Honecker took many months followed by several more months of trials. A total of two years passed during which the German population, especially those from the former East, waited impatiently to see justice done. In 1992 the Frankfurter Allgemeine reported the effects of the delayed prosecution of the SED-leaders upon the victims: the victims were totally frustrated with the judiciary system. "The judiciary system has failed," was the conclusion of many victims. The Saxon Minister of Justice Heitmann tried to explain that the price of

the peaceful revolution was the slow judiciary process.¹⁰ But, on the other hand, many others questioned the legitimacy of prosecuting Honecker and Mielke.

This issue reflected the differences between the population of the former East and West. At the beginning of the trials many West Germans looked upon Honecker, Mielke and the other SED officials, who were all way beyond their 60s, and said: “My God, those senile, old men.”¹¹ This reaction displays the inability of many West Germans to sympathize with the sufferings of the East German population. To simply forget the offenses of these “old men” in the German manner of “Schwamm drueber” [to sponge it over] however would have undermined justice for the victims. The Berlin Justice Senator Jutta Limbach found it inappropriate to let the leadership clique go unpunished due to their old age while the soldiers, policemen and other minor government officials who obeyed their orders got punished. Limbach instructed the investigators to think about “all the little people who gave away their lives during the past forty years--because of the “government” criminals.”¹² Limbach’s attitude, not to let those mainly responsible for the wrong get away, was shared by many Germans. Another politician, the Minister of Environment Joschka Fischer strongly rejected the double morality displayed by some politicians.

Where is the compassion for the victims? Where is the highly praised justice? Someone explain to me why the unofficial Stasi informants are being persecuted, while Egon Krenz [State Secretary after Honecker] can freely take a walk; in the worst scenario he has to appear as a witness in court. Surely, we can not corrupt Erich Honecker, Egon Krenz and all the others, from Mielke to Mittag, any further. However, without them there would not have been any reprimand plan, nor any ‘bug’ under Biermann’s [political folk singer] bed and no IM [unofficial Stasi informant] at his kitchen table.¹³

Fischer believed to truly master the forty-year-oppression of a people demanded that the most responsible individuals in the Politburo, the state apparatus and the Stasi, answer for their actions. A member of the parliament, Rainer Eppelmann, who was a Protestant pastor in the former GDR and a central dissident throughout the Socialist regime, agreed with Fischer. Eppelmann further believed most German politicians felt the confrontation with the past forty years was not simply a East German issue, but a problem for the whole nation.¹⁴

People who have not experienced life under such an oppressive regime as the GDR need to keep in mind that the East German people saw themselves as helpless in the face of the government's control. However, in retrospect they were confronted with questions of whether their silence allowed the system to exist in all its forms and how responsible their silence made them indirectly responsible for the offenses which occurred under the SED regime. The former East continued to desperately need to find those most responsible. For some it was in a search for justice and for others it was in an attempt to appease their own feelings of guilt.

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CHAPTER 2

LEADERSHIP ON TRIAL

The need to come to terms with the crimes of the GDR began with the fall of the Berlin Wall in October 1989. The Berlin Wall, which was built in 1961, had divided Germany for almost thirty years, separating families and friends. Until the 1980s, the East bloc appeared able, though economically shaky, to persist for several more decades to come. No one in the West believed there would be a change soon in the constellation of East Europe's power structure. Honecker had confidently announced the Berlin Wall would remain for another hundred years. Therefore, it was surprising to the whole world when in 1989 the First Secretary of the Soviet Union Mikhail Gorbachev introduced Perestroika and Glasnost which promised a more open and friendly attitude to the West and the free market economy. Several leaders of East bloc nations disapproved of Gorbachev's new political route. Among these opponents was Erich Honecker, Party First Secretary of East Germany. Nevertheless, Gorbachev was invited to East Germany for the forty year anniversary of the GDR as the guest of honor. During the festivities Gorbachev challenged East Germany to see the signs of the time and move towards economic and social changes. For the population of East Germany this speech was a "carte blanche" to openly show their discontent with the government. A wave of mass demonstrations demanding more freedom to travel, economic, and political reforms, followed. During the summer, thousands of people left the GDR through Czechoslovakia,

Hungary, and Poland. This was the beginning of the end for the Socialist government and would be referred to as the ‘peaceful revolution.’

Most revolutions are bloody and cruel, killing those who previously led the nation and bringing a change in the political and social structure through a new ideology. East Germany, however, simply replaced the old Politburo members with younger ones, hoping the “fresh blood” would bring the needed economic and political changes. A constitution contains certain beliefs and values placed above the system. The GDR adopted the constitution and penal code with only a few changes. However, adopting the constitution turned out to be the hindering bloc to the prosecution of the SED-leaders. In turn, by keeping the old constitution instead of abolishing it, gave the GDR validity as a nation. On August 31, 1990 the two German governments signed the treaty of the reunification. In this treaty it was agreed that crimes committed during the existence of the GDR were to be punished according to the former GDR penal code. Among the prime candidates among the accused were Erich Honecker, First State Secretary (equivalent to the President), and Erich Mielke, Minister of the State Security (Stasi).¹

In June 1990, just before the first free elections in unified Germany, the court Berlin-Tiergarten issued a warrant for the arrest of Erich Honecker. He was charged with murder on four counts. During the time of his leadership as State Secretary, Honecker had issued an order to shoot at border offenders, those individuals who tried to leave the GDR by sneaking across the border. In the document Honecker ordered:

As before, in violations of the borders, the comrades are to shoot without hesitation or consideration for lives, and the successful use of the weapon is to be rewarded.²

In the following thirty years of the GDR this order cost over two hundred Germans their lives at the East German-West German border. Further, the courts were investigating Honecker and colleagues for economic offenses in the amount of several million marks.

Honecker, already diagnosed with liver cancer, was recuperating from surgery in a Soviet military hospital in Potsdam and remained under Soviet protection after the reunification. The Soviets extended their protection towards Honecker even after a warrant for his arrest on murder charges had been issued. The German government urged the Soviets to return Honecker to the courts but the Soviets ignored it. In March of 1991, Honecker flew to Moscow with the help of Gorbachev. When the coup in Moscow brought a change in leadership and the end to communist power in the Soviet Union, Honecker feared a loss of support and took refuge in the Chilean Embassy. Honecker stayed under the protection of the Chilean Embassy for seven months while the German government continuously demanded his return. Only at the end of July did Honecker return to Germany.

The German population was divided over the trial of Honecker. An opinion poll of January 1992 showed fifty-four percent of the total German population felt their government should demand Honecker's extradition from Moscow. This poll showed an almost equal distribution of voices in East (52%) and in West (54%) in favor of Honecker's return to Germany for the trial. Though, a surprising thirty-three percent of the total German population said "Honecker should be left alone".³

Everywhere in the press, there were cries for prompt extradition. In an article in the Frankfurter Allgemeine a reader voiced her opinion that the trial against Erich Honecker was not enough, but that his wife Margot was equally involved in oppressing

the people of East Germany and consequently was equally guilty. Therefore she also should have to take responsibility and be put on trial. According to this letter to the editor “[Margot] was the one who ordered and directed the indoctrination of the GDR, from the nursing age to the “Free German Youth.” It brain washed [the people] to such a degree that no one stayed unaffected.”⁴ The courts, however, never pursued Margot Honecker even though the German people expressed their strong dislike for her.

In the same newspaper, the commentator stressed the responsibility of Russia to return Erich Honecker to Germany. Russia’s official reply to why they did not comply with the German wish for Honecker’s extradition reasoned that Honecker had been invited into the Chilean Embassy and therefore did not fall under Russian authority. The Moscow government claimed it did not have the right to interfere with Honecker’s stay at the Chilean Embassy. The commentator, however, expressed there was no reason for Russia to hide behind such a weak argument since Moscow was not interfering in an international conflict but in the return of a criminal to his native country. “It is not a matter of interference, but of necessary contribution [] for Honecker to finally return to Germany.”⁵

Some Germans reacted to claims of Honecker’s illness with disbelief. In the above mentioned article, the author plainly stated his doubts of Honecker’s inability to travel due to his health and said he simply had to return. Another article of the same newspaper reported the doubts the German government had about Honecker’s health conditions. The Bundestags representative, Bernhard Vogel, commented to the newspaper that the government still had not received an official medical report about Honecker’s health. Another politician, the CDU-Chairperson, Angela Merkel, also expressed her doubts

about Honecker's illness: "Since Honecker's health is said to be good, there is no reason to delay his return." She further empathized with the East Germans who, according to Merkel, expected Bonn to be more persistent in seeking Honecker's return to Germany.⁶ The East Germans were trusting the West German judicial system to punish the crimes committed against them by the Honecker regime.

While Germany was still waiting for the return of Honecker from Moscow, the CSU [Christian Socialist Union] representative, Claus Jaeger, commented that Germany had continued to show cooperation with the Soviet Union and had even supported the Soviet's participation at the Conference of World Economy. However, Jaeger emphasized that these friendly gestures from the German nation could not continue to be one-sided while Honecker received protection in Moscow, especially when Moscow had requested economic aid from the German government.⁷

This reminder brought a change in the attitude of Moscow towards the "Honecker issue." Moscow was finally beginning to support Germany against the Chilean Embassy for the return of Honecker to Bonn. Moscow criticized Chile's refusal to cooperate with Bonn's demands as an act of unfriendliness and assured that Honecker would be returned immediately if he ever left his refuge in the embassy. The change in Moscow's attitude seemed to have a strong effect upon the Chilean government which immediately became more cooperative. The Chilean Ambassador in Moscow agreed that Honecker needed to return to Germany based on the international laws which prevented Honecker from requesting political asylum. The official Chilean statement claimed:

We have always been appalled by the offenses of the human rights in the former GDR. And we further understand Bonn's and the German population's

intentions to put Honecker on trial for these grave offenses. To give [Honecker] political asylum would be an insult to the German courts and people.⁸

Further, the official stated that the invitation extended to Honecker by Ambassador Clodomiro Almeydas was only to be understood as an act of humanitarianism. “However, this gesture should not be interpreted as an act to undermine justice and international law.”⁹ The German people reacted with confusion to this whole incident. Many felt Honecker was the wrong individual to receive any merciful gesture.¹⁰

The frustration and confusion of the German people and their government with Chile reached its peak during the Spring of 1992. In an attempt to put more pressure upon Chile and speed up Honecker’s return, Bonn decided to withhold economic aid to Chile in the amount of 111 million D-Mark until the goal was reached.¹¹ The resolution to the Honecker affair seemed near, giving the courts the confidence to announce the start-up date for his trial. However, Honecker found another way to delay his return. In a message sent from the Chilean embassy to the Office of Foreign Affairs in Germany, Honecker announced his willingness to “rethink” the situation, if he was allowed to read the prosecution files beforehand.¹² Two days later the Frankfurter Allgemeine reported the German government rejected Honecker’s request because he had been aware of the charges against him for many months. Minister Friedrich Bohl said Honecker’s request “is nothing but a transparent delaying tactic.”¹³

And again, Honecker’s lawyers who meanwhile had been diligently preparing his defense, tried to avoid the actual trial. They filed a dismissal request on Honecker’s behalf based on the claim that he would not have a fair trial due to his former political position.

The lawyers expressed their fear Honecker's trial would turn into political persecution. This accusation was rejected by the courts. They met the challenge of Honecker's lawyers and answered that their client was charged with murder and not political misbehavior.¹⁴ All of Germany, the government, the court and most of the German people were tired and had run out of patience while waiting for Honecker several months. Honecker simply had to return and take responsibility for the crimes he committed with the backing of a government which he had largely created himself. It had been his personal order to build the Berlin Wall.

By November 1991, a whole year had passed since the warrant for the arrest of Honecker had first been issued by the Berlin court. Voices from the German public had also been heard, mainly in disgust about this man who continued to show no regrets towards the way he and his colleagues had led the GDR into ruin. Twenty-six years of oppression and forced separation from the West have left many scarred on both sides of the Wall. Honecker received sympathy only from the few remaining hard-core followers who still believed, disregarding all the facts, that socialism would prevail against capitalism. Until November 1991, the German leader, Chancellor Helmut Kohl, had remained quiet and withheld his personal opinion. His comments about the Honecker trial were usually political in nature in which he refrained from personal judgments. But a whole year of waiting for Honecker's return was even too long for this man. The Frankfurter Allgemeine reported on November 25, 1991 that Kohl had commented during a French TV interview that Honecker's behavior was "shabby." He further stated while Honecker, as head of the state council, had until recently stood by his decisions with pride, he should also now have the courage to defend these same decisions in a German court.¹⁵

Finally, at the end of July 1992, Honecker was flown back from Moscow to Germany and was immediately arrested on his arrival. Ironically, he was put in custody at Moabit prison where forty-four years earlier he had also awaited a trial, that time for treason.¹⁶

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CHAPTER 3

THE TRIALS: PRELIMINARIES

In the trials of the leaders of the former GDR, Germany faced one of the most challenging political, social and legal problems in this decade. Though these men might be morally as guilty as any person could ever be, it was not enough to convict them on ethical principles. They had to be convicted on legal grounds, not moral grounds. The reunification treaty stated that crimes committed during the existence of the GDR had to be judged according to the penal code of that state. This meant the prosecution had to find something against Honecker that was actually illegal under the communist regime. This turned out to be quite difficult because in the GDR an action was only defined as a crime when it threatened or hurt the Socialist regime. Defending the borders against internal political dissidents was therefore not a crime. And any person who wanted to leave the GDR to live in another country was classified a dissident.

In the German court system, the judge is assigned to a trial according to the first letter of the accused's last name. In case of a group of individuals, the name of the oldest accused determines which judge will preside over a case. The judges are randomly assigned to avoid bias towards of the accused. In Honecker's and his colleague's case, Hansgeorg Braeutigam was the presiding judge. A case is assigned a total of three judges which in Honecker's case were Braeutigam, Hans Boss, and Michael Abel. Also every trial has another substitute judge who observes the procedures. This is done in case one

of the main judges is released from the bench due to misbehavior or other reasons. The substitute judge was present for each piece of evidence and testimony. Dr. Kai Dieckmann was assigned as the substitute judge in Honecker's trial. And finally, the trial had two lay assessors.¹

Immediately after reunification, the "committee on government crime" was formed through the federal district attorney's office. The committee's responsibility was to investigate crimes committed by politicians and others in authority positions during the existence of the GDR. The chairman of this committee was District Attorney Christoph Schaefgen. In the earlier prosecution of NS-crimes, a comparable committee of government crimes was not formed until 1958. According to Uwe Wesel, the reason it took so much longer in the case of NS-crimes was due to the fact that in the Federal Republic many judges and attorneys still held positions as they did during the NS-regime. Wesel commented: "[One] does not proceed against political friends with as much vigor."² But the former GDR was not considered a friend and for this reason the prosecution of government crimes took place much quicker.

The court charged a group of men, six total, all members of the national defense council of the GDR, namely Erich Honecker, Erich Mielke, Willi Stoph (Minister President), Heinz Kessler (Minister of Defense), Fritz Streletz (Vice-Minister of Defense), and Hans Albrecht (SED District Secretary). This defense council had been a sub-division of the state council and had acted as a group, which was the reason why they were put on trial collectively. Honecker was the chairperson of the defense council and therefore was also the head of the country. The defense council was the most powerful military organ of the country and according to article 73 of the GDR constitution was responsible for

securing the borders, including securing the border from internal offenses by East German citizens. Uwe Wesel in his book Ein Staat vor Gericht [A Nation on Trial] commented that this aspect of the border and wall defense was “a peculiar way of securing the country.”³

The prosecution limited itself to bringing charges only against this sub-unit of the defense council, instead of the whole state council. Further, the courts decided on the six members named above who still held their offices at the end of the GDR's existence in 1989 because this group of men had made the primary decisions pertaining to the security of the border. The Berlin court limited the charges to only sixty-eight counts of murder in shooting escapees at the border, though the investigation team estimated around two hundred deaths. By the time the trial began, the charges were dropped down to twelve counts of murder. In November the trials against Mielke and Stoph were separated from the main trial, and in January 1993 Honecker was released due to his failing health. The trial ended up with only three defendants and ten charges.⁴

The small number of charges were due to the fact that East Germany failed to document each border penetration by its citizens and the West was often unaware of the outcome of the shootings. The estimated number of those who fell between wall and barbed wire ran around two hundred, although investigation agencies have recently mentioned the possibility of up to four hundred deaths.⁵ This uncertainty is one of the reasons the trial against the Honecker clique started out with four deaths at the Berlin Wall and eight at the border to the Federal Republic of Germany. The prosecution was forced to limit the charges because they depended on eye-witness reports, pictures and other documentation to prove the guilt of the accused which were hard to come by.

During his stay in Moscow Honecker had a chance to reveal how he regarded his personal participation in the events of East German history. The Frankfurter Allgemeine asked Honecker in Moscow if he felt guilty in any way about the decisions he had made as the State Secretary? Honecker denied that his actions as the head of the East German government were in any way wrong, “at least not in the eye of the law.” This answer caused the interviewer to react with indignation: “this man is so stubborn that even now he can not see his guilt.”⁶ Several other East German high officials gave similar statements regarding their lack of responsibility. Over these months the German public grew more and more irritated about this incapability or unwillingness to accept publicly any responsibility.

Several months later, while Honecker was in custody at Moabit, reporter Gisela Friedrichsen had the chance to interview him. The article entitled, “I lived for the GDR,” reflected Honecker’s attitude towards his involvement in the suffering of the Germans in the GDR. The article described Honecker as stubborn and inflexible in regard to his political ideology and the decisions he had made. Friedrichsen writes: “Naturally Honecker regrets nothing, naturally he understands nothing. He holds on tight to his world view [...].”⁷ Her exasperation with Honecker was even more evident in the final paragraph of her article which read slightly sarcastically:

Honecker did not learn anything, not even during his custody period [in jail], as the media criticized. [But] what did they expect? That a 80-year-old [man], who believes he made history, is supposed to have learned [the error of his ways] while awaiting trial?⁸

During the trial Honecker was questioned whether the Berlin Wall was built to keep the enemy out or keep the East Germans in the country. In one of his explanations in

defending the building of the Wall, Honecker argued that the Wall was necessary as a means to keep East Germany from being bled [to death].⁹ This comment referred to the thousands of East Germans who had left their homes and relatives behind and crossed the border to West Germany in an attempt to escape Socialism. These Germans were considered traitors of Socialism and enemies of the state. Those who were caught in their attempt to flee, frequently were sentenced to prison, just like a common criminal. Not surprisingly, in the end Honecker even tried to reject responsibility for the building of the Wall. During an interview, the Frankfurter Allgemeine referred to the Wall as the final project of Honecker's apprenticeship with the Soviet Union. In answer to this statement Honecker replied calmly "every apprentice has a master," thus projecting the brunt of the guilt onto the Soviet Union.¹⁰ This reaction implied Honecker himself had simply been a tool in the hands of the Soviets.

The preparation of the trial, the wait for Honecker's return, and dealing with the question of responsibility took almost one and a half years. In January 1992, Minister of Justice Klaus Kinkel voiced his support for starting the trial against Honecker as soon as possible arguing that the East Germans needed to see justice done quickly. Kinkel declared Honecker to be the person mainly responsible for the injustices done to them and therefore deserved swift punishment. The Frankfurter Allgemeine agreed with Kinkel, stressing that the people of the new states of the former GDR were counting on and trusting in the old states of the Federal Republic of Germany (F.R.G.) to see justice done, but were disappointed over the long waiting period for Honecker's return to Germany. While the German people had waited for his return to Germany, the trials against the border soldiers involved in the killing of East Germans at the border were already in

process. They felt frustrated about the bureaucracy within the judicial system and the ever-growing possibility that the high officials who had given the deathly order might get away unpunished while these little men had been convicted and sentenced to jail.¹¹

According to Kinkel the people of the former GDR had imagined the pursuit of redemption differently--swifter. Many people in the new states fail to understand why it was such a slow and complicated process to convict someone as obviously guilty as Honecker.

According to the 1982 penal code of the GDR, the killing of escapees at the border by gunfire was not illegal. This meant that neither Honecker and his clique nor the border police were guilty according to the GDR penal code. Nevertheless, the prosecution tried to construct a legal basis to charge Honecker and colleagues with those deaths caused through the use of gunfire. However, the use of mines and booby-traps was not discussed in the 1982 penal code and were therefore considered punishable. Therefore the deaths caused by mines and booby traps was the case in the majority of the sixty-eight deaths Honecker and colleagues were charged with. Another problem was the fact that the people who installed the mines might not have intended they be used against their own countrymen. It was the court's responsibility to prove these mines and booby-traps were installed with the council's orders with the intention to secure the border against internal offenders. If they were installed as a defense against the outside, neither the Honecker clique nor the border patrols could have been held responsible for the deaths of East German citizens. The prosecution quite simply had to prove the purpose of the mines was to keep people within the country.¹²

The first problem the court faced was the fact that, although the shooting order was given by Honecker, none of the documents actually carried his signature. From the beginning of the investigation Honecker claimed he never issued an order to shoot at the border and even commended the police not to use gun fire at the demonstrations in October 1989. The investigators searched for months for an order authorizing the use of guns in defense of the border. Finally, a three page document was found by a Magdeburg newspaper. The document supposedly said “the use of gun fire in connections with the demonstrations is forbidden.”¹³ This document however did not pertain in any way to use of gun fire against internal border offenses nor did it prove Honecker’s innocence.

Der Spiegel gave a sarcastic comment about this issue:

[Honecker’s] responsibility for the order to shoot is only now without a doubt proven, according to the court, because the document with his signature has only now been found. Are they trying to tell us that the crimes of a dictator can only be proven through his signature? Do we want to continue to play these games?¹⁴

Also, fortunately for the prosecution and the victims, another document was found that refuted Honecker’s story describing himself as a concerned father of the GDR people who had sought to keep peace under all circumstances. The document was issued on May 3, 1974 by Honecker, who then was the first secretary of the Central Committee of the SED and chairman of the national defense council. The order stated:

As before, in cases of attempted border offenses, gun-fire is to be used without hesitation, [...] and those comrades who successfully used guns are to be rewarded and honored.¹⁵

Another issue centered around the fact that the warrant for arrest issued for Honecker was not for murder in the first degree. An article from Der Spiegel clearly showed the author's disagreement with the courts charges when it quotes article 112 of the GDR penal code and then states any purposeful killing of a person is murder in the first degree "especially when they were committed at the border to put fear into the general population."¹⁶ The border, surrounded with a strip filled with mines and booby-traps called the 'death zone', was without a doubt a means to put fear into the population. This convinced the author that Honecker's warrant should have been for first degree murder.

The courts were also faced with the legal controversy whether Honecker and colleagues were simply accessories or actually culprits. The GDR penal code defined an accessory as a person physically helping in or leading to the murder committed by a second person while a culprit would be the person who pulled the trigger. Legally, as accessories, the court would have been unable to charge these men with murder even in the second degree.¹⁷ In the incidents of the border killings, this meant that only the person who pulled the trigger was a culprit. And if Honecker and colleagues were considered accessories to the crime, they could not be charged with murder in the second degree and especially not with murder in the first degree. After many hours of negotiation the judges agreed to charge Honecker and colleagues as culprits in the sense of the West German penal code. The West German laws declare a person aiding in the killing of another is just as guilty as the one who does the actual killing. This categorized Honecker and his colleagues as culprits and therefore enabled the court to charge them with murder in the first degree. This was another violation of the agreement in the reunification

contract stated all crimes committed in the GDR during Socialist rule were to be tried according to GDR laws. The fact the court decided to charge Honecker and his colleagues as culprits put the trial on shaky legal grounds. It turned out that the Honecker problem was in fact too complex to be solved by the German courts in the reunited nation.

To bolster its case the prosecution then planned to open up the official SED archives. The Frankfurter Allgemeine asked the logical question for most Germans: why did the investigation wait for over a year and a half to open up these archives, especially, when they were likely to contain documents might provide the answers necessary to determine Honecker's and his colleagues guilt? According to the article, the prosecutor Schaefgen blamed the belated investigation on a lack of staff.²⁰

At this stage discussions were going on within the German government regarding granting a general amnesty for all Stasi informants and SED officials including Honecker. Opinions within the SPD-fraction were split over this matter. SPD-politician, Rolf Schwanitz felt letting Honecker go without having to stand trial would "be the wrong political sign at the wrong time." SPD-representative Schwanitz rejected any possible amnesty based on the fact that it might give the impression the government "is hanging the little ones while the big ones get away."²¹ On the other hand, his SPD colleagues Andreas von Buelow and Otto Schily spoke out in favor of an amnesty for Honecker. Von Buelow and Schily doubted the ability of the German courts to deal with the complexity of the "Honecker problem" appropriately. Their arguments though were strongly criticized by the rest of the SPD delegation. Schily continued to stand by his opinion and compared the current problem to the trials against certain Nazis. He explained that the trial against

Honecker had nothing to do with personal or moral guilt but with the nation's inability to show guilt according to the GDR penal code which should be used.²²

The controversies of the trials against the former GDR leadership ultimately turned on the question of legality rather than who was ultimately responsible. This meant, as discussed earlier, the court had to decide upon which penal code the Honecker group was to be judged. Further, usually the heads of nations enjoyed immunity abroad. During the existence of the GDR, West Germany was considered to be a foreign country. The question was, if Honecker was 'abroad' in the sense of the constitution and also if this rule still applied to East Germany that had ceased to exist as a nation. In Honecker's case the court decided that since the GDR no longer formally existed he could no longer call upon his immunity.²³

The next problem the court faced was the physical and mental limitations of the men on trial. Honecker at the age of 80 was suffering from liver cancer and Mielke was already 84 years old at the beginning of the trial. The public went through many emotions during this time due to their desire to see the men judged. Honecker, who had been the General Secretary of the SED and leader of the GDR, was the first person the public wanted to see prosecuted. Since he had been the most powerful person in the country, it was assumed that Honecker was well informed of every political decision made and every order given. He could not hide behind ignorance about the deaths at the border. The next person from the former East German government the public wanted to see judged was Erich Mielke who had been Minister of State Security (Stasi). He was responsible for the telephone and mail surveillance, and for the wide net of informers whose purpose it was to

denounce their neighbors, co-workers and even family members. The Stasi had forced dissidents to divorce their spouses and even give their children up for adoption.

Court procedures also came in for criticism. Uwe Wesel expressed his feelings about the procedures by saying he missed a detailed portrayal of the victims during the trial. The victims were only identified by their names, while their story, their faces, hopes and dreams remained unknown.²⁴ Among those stories' that could have been documented was the case of Chris Gueffroy. This young man and one of his friends, Christian Gaudian, both twenty years of age, attempted to leave the GDR during the night of the 5th of February, 1989. The two men reached the border area in Treptow at around 11:40 p.m. This particular border stretch was patrolled by two pairs of policemen. When Gueffroy and Gaudian climbed over the wall, they set off a motion sensor, which alarmed the first two policemen. The escapees had crawled close to the ground for three hours before they reached the last barrier, a metal fence, where the first patrol opened fire upon them. Gueffroy and Gaudian ran along the fence and tried occasionally to climb across. They had entered the second patrol's stretch who also opened fire. One of the bullets went into Gaudian's foot while Gueffroy was fatally hit in the chest and foot.²⁵ The nightmare did not end here for Gaudian who was sentenced to three years in prison after he had recovered from his injury. The court's reason to imprison Gaudian was that he had 'a character dangerous to society'.²⁶ Gueffroy was the last young man to die at the border before the collapse of the GDR. The relations between East and West had already become more open which made Gueffroy's death an embarrassing incident for the Honecker regime. The GDR government tried as best as it could to cover up Gueffroy's death. For two days, Karin Gueffroy, the mother, was unaware of her son's death. She was taken in

by the Stasi for questioning where she was finally informed of her son's death.²⁷ The border soldiers received a short extra vacation and attended a banquet held in their honor. Since reunification the soldier who was identified as the successful shooter has received a prison sentence.²⁸

Another one of the twelve cases, just as cruel, was that of Klaus Seifert. Seifert was an eighteen-year-old bricklayer from Bibra in Thuringen about three miles from the border. On April 8, 1971 Seifert and a friend took a cast anchor and hid out at the border until nightfall. Around four o'clock in the morning they began to crawl through the first fence. The friend got scared and turned around while Seifert continued his path until he reached the mine field or also appropriately called 'the death zone.' There Seifert was spotted by a border patrol. At the sound of the warning whistle Seifert panicked. He jumped up, climbed the first fence and ran to the second where he stepped on a mine and injured his leg. Though he was hurt Seifert continued and made it across the border into Bavaria. He collapsed in a forested area where he was found several hours later by a hunter. Seifert was brought to a hospital where the doctors amputated his leg above the knee. His condition grew worse and the leg was infected so the doctors amputated at the thigh. Seifert, however, died from the injuries four weeks after his successful escape.²⁸ These are just two cases of the many which are just as horrible. The escapees are usually young men between the age of seventeen to the late twenties who attempted to cross the border.

As the trial finally began, one of the defendants was missing; Willi Stoph had suffered a heart attack the previous night. His lawyer brought an attestation of the doctor declaring Stoph would be incapacitated for a few weeks. The district attorney, however,

was unwilling to accept the attestation of a private doctor and demanded a second opinion from a court approved medical doctor. By Friday of the same week, the court agreed to separate Stoph's prosecution from the main one and to cease procedures for the time of his recovery. This decision was made without hearing all the participating parties, as it should have been done in order to separate the trial.²⁹ This turned out to be only the first faux-pas made by presiding of the judge Hansgeorg Braeutigam.

The second eye-brow raising incident occurred when the prosecution against Mielke also had to be separated because he was already standing trial. Ironically enough, Mielke's trial for the murder of two policemen committed in 1931 was held in the same court room. The court found the 84-year-old man physically unable to stand two lawsuits at the same time. By the end of the first week there were only four defendants left in the court room and the charges were dropped to only ten incidents.

CHAPTER 3 ENDNOTES

1. Uwe Wesel, Ein Staat vor Gericht: Der Honecker Prozess, [A Nation on Trial: The Honecker Trial], (Frankfurt am Main: Eichborn, 1994): 44ff.
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3. Ibid., 31.
4. Ibid., 32.
5. Ibid., 18.
6. Friedrich-Christian Schroeder, "Fuehlen Sie sich schuldig?" [Do you feel guilty?], Frankfurter Allgemeine Zeitung 178, (August 3, 1991): 8.
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8. Ibid., 112.
9. Herbert Ueckermann, "Saftlose Fragen an Honecker," [Lame questions for Honecker], Frankfurter Allgemeine Zeitung 241, (October 17, 1991): 11.
10. Peter Jochen Winters, "Der Mauerbau als Gesellenstueck?" [The building of the Wall as an apprentice project?], Frankfurter Allgemeine Zeitung 247, (October 24, 1991): 5.
11. "Anklageschrift gegen Honecker wird demnaechst vorgelegt," [Prosecution document will soon be presented], Frankfurter Allgemeine Zeitung 80, (April 3, 1992): 3.
12. Uwe Wesel, 29ff.
13. Rudolf Augstein, "Gnade fuer den 'Bluthund'," [Mercy for the Blood Hound], Der Spiegel 50, (December 1990): 32.
14. Ibid.
15. "Gegen eine Amnestie fuer Honecker," [Against an amnesty for Honecker] Frankfurter Allgemeine Zeitung 13, (January 12, 1992): 5.
16. Uwe Wesel, 31.

17. "Honecker muss ausgeliefert werden," [Honecker has to be extradited], Frankfurter Allgemeine Zeitung 162, (July 16, 1991): 4.
18. "Keine Unterstuezung fuer Buelow und Schily," [No support for Buelow and Schily], Frankfurter Allgemeine Zeitung 13, (January 16, 1992): 4.
19. Ibid.
20. Uwe Wesel, 32.
21. Ibid., 18.
22. Ibid., 21f.
23. Ibid., 23.
24. "Aufspueren, festnehmen, vernichten," [Find, arrest, destroy], Der Spiegel 33, (August 1990): 35.
25. Uwe Wesel, 23.
26. Ibid., 25.
27. Ibid., 52.

CHAPTER 4

THE PROSECUTION OF HONECKER

Throughout the trial and until his death in 1994, Honecker was convinced of the rightness of communism. This stubborn attitude found its roots in his childhood.

Honecker's father, a coal miner, had joined the USPD during the times of Kaiser Wilhelm II. The village Wiebelskirchen in which the family Honecker lived, was known as a "red village." The population was mostly socialistic in its political orientation.¹ His father taught Erich and his siblings the meaning of communism including loyalty to the family and to one's class, specifically the proletarian class.²

Adopting his father's political ideas, young Erich Honecker joined the Communist Youth Group (KJVS) but he did not follow in his father's footsteps as a miner. He entered into an apprenticeship as a roofer. Throughout these years he continued to be politically active in the Communist Youth Group. Some of the leaders took an interest in Honecker and encouraged him to go to Moscow to the Communist Youth International school.³ Honecker quit his apprenticeship in 1930 to go the Lenin School in Moscow for one year. The Soviet Union impressed Honecker as the ideal communist nation. He claimed Moscow had an atmosphere of learning that engulfed both the young and the old.⁴

During the 1930s, the Nazi government attempted to surpress the spreading communist movement and banned the party. However, most communist groups continued their work underground. After Honecker returned to Germany in 1933, he joined the

Central Committee (ZK) of the Communist Party (KPD). He worked in the Saar as a Secretary of Agitation and Propaganda and later became the political leader of the Communist Youth Group in the Saar district. During his work as secretary of propaganda, Honecker was arrested for carrying illegal flyers. He was soon released since the police could not prove him guilty. This incident ended Honecker's work in the Saar. He then began working as a carrier for the party. In 1935, Honecker was supposed to meet with another carrier from Prague to accept some communistic materials. The assignment was discovered by the police and Honecker had to abort his mission. The police followed Honecker and arrested him under the suspicion of communist activities. He was sentenced to ten years prison of which he spent the first three years in isolation. In prison Honecker met many other men who were also convicted for their communist affiliations and activities. A number of these fellow prisoners were to be the leading figures in establishing a communist rule in East Germany, for example Robert Menzel, later a member of the Central Committee.⁵

The end of the war in 1945 brought amnesty to the political prisoners who were released with the arrival of the Russian troops. After his release, Honecker became involved as Youth Secretary with the Central Committee of the KPD. A year later the KPD merged with the SPD (Socialist Party of Germany) in the Soviet occupied zone and changed its name to SED (Socialist Unity of Germany). Honecker explained in an interview that the word "unity" implied a unity among the working class, not the unity of the German nation. According to Honecker, the union between communists and socialists was a direct result of their persecution by the Nazis. Many communists and socialists, though slightly different in their political ideology, had been arrested and put into

concentration camps by the Nazis. This experience caused a sense of solidarity among the two groups that contributed to their union in 1946.⁶

In 1955 Honecker went to Moscow for a second time to study at the School for Party Officials. He returned to Berlin after his graduation in 1956 and resumed work as chief of the department of security for the party's ZK. Among his responsibilities was the defense of the GDR against capitalism and the West. At the turn of the decade the tension within the GDR increased: the German population continued to exit the GDR which ultimately led to the building of the Berlin Wall in 1961. Honecker stayed in his position as security chief until 1974 when Walter Ulbricht asked to be replaced due to age and failing health. Ulbricht suggested that Honecker replace him as General Secretary. This suggestion was accepted by the Politburo. Honecker stayed in this position until the fall of the Wall during the revolution of 1989.

The East German regime of Erich Honecker fell without one gun fired or one drop of blood shed. On October 18, 1989 Honecker was released from office and on November 8 the remaining Politburo members resigned. Most of them went home to their families without having experienced any repercussions. Honecker was arrested but only twenty-four hours later he was released due to illness, cancer of the liver. He underwent surgery in a Soviet Military Hospital in Potsdam. Meanwhile the GDR had its first election which put an end to Socialism and ushered in Democracy, even though it was still fragile and imperfect. Both German governments saw the need to act quickly to reunite, in case the Soviet Union or other nations might try to reinstitute the old order in East Germany.

On November 9, 1989 the newly reformed Politburo with Egon Krenz met to discuss the direction their leadership should take. During this meeting a decision was made which proved to be fatal for Krenz and his colleagues. During the evening hours of the same day, the order was given to allow unrestricted travel for East Germans. Millions rushed to the border and the Berlin Wall to cross into West Germany for a visit. Though the incident did not escalate into an expected flood of refugees it marked the end for the SED-regime. Egon Krenz lasted only one month as leader of the GDR, resigning on December sixth.⁷

As we have already seen, Honecker fled to Moscow which delayed the trial more than a year. After his return, his lawyers requested their client be released on bail. The court refused, fearing Honecker might try to flee the country again. The trial finally began November 12, 1992. And now more German voices expressing doubts about the trial's credibility were heard. Though a commentary in Die Welt began with the remark: "Finally, it has begun. . ." the author soon changed his tone. He recounted the pains and hurts of the victims who had waited patiently for justice. The author strongly criticized the fact that the trials against Honecker and colleagues took so long while the border policemen were rather quickly convicted.⁸

One of the paralyzing factors in the lawsuit against Honecker continued to be his declining health. The judges with the advisement of several doctors decided to limit the actual court meetings to twice a week for a mere hour each. The trial under these circumstances was predicted to last until the middle of 1993, while the doctors were convinced Honecker would be dead by the middle of 1992. The judges were not satisfied with this prediction and consulted another doctor. This doctor, without examining

Honecker in person but simply checking his health records, rejected the first prognosis and gave the green light to the court to meet twice a week for three hours each.⁹ And yet another medical doctor was consulted for an opinion about Honecker's health and whether or not he should continue to stay in jail during the trial. The Berlin cancer specialist, Volkmar Schneider, commented to a newspaper:

How long the patient survives during the end phase of liver cancer depends on the tissue type. In case of a liver failure the patient dies within hours. When the diagnosis says the survival rate is critical, the patient will die within half a year.¹⁰

A reporter for the magazine Der Spiegel interviewed the former Senator of Justice Rupert Scholz about Honecker's health. He commented that a person had to show up in court as long as he was still breathing. Sickness was not enough to excuse a person from taking responsibility for his/her behavior. The reporter Gisela Friedrichsen however expressed her skepticism of Scholz's view by questioning "what do we really know about the mental capacity of people over eighty? Do they recognize their responsibility?"¹¹ During the trial, Gisela Friedrichsen observed Honecker closely and drew her own conclusions about Honecker's physical and mental capacity. In her judgment, Honecker was a well practiced public figure who straightened himself up whenever he felt the camera on him. Almost instinctively, he still showed himself to be the politician smiling at the audience, shaking hands with sympathizers or flipping through papers as if he were there to sign a treaty. Honecker's behavior convinced Gisela Friedrichsen that he was simply acting strong, something he had practiced over the years as state secretary of the GDR.¹² Her article gives one of the first opinions that the trial against Honecker, considering his physical condition, might be unfair.

During December 1992, in a court session Honecker demonstrated his usual stubbornness and refused to accept any responsibility for his actions. He continued to defend the GDR-regime and even rejected any moral guilt. Honecker charged the trial was simply a means to discredit the former GDR as an unlawful nation. Further, he felt the trial was “political theatrics,” a continuation of the Cold War. According to Honecker, the Wall had been the only way to avoid an atomic war in Europe “with thousands or [even] millions of casualties.” Honecker further boasted that “he would not experience punishment anyway because of his liver cancer” implying he would die soon and therefore neither the trial nor the sentence would have any impact on history or on him personally.¹³ Honecker took every chance to show his contempt for the whole situation implying several times he and the five defendants were prosecuted, not on legal grounds, but on political. He also rejected the validity of the trial saying “I will not give these accusations the appearance of being justified by defending myself against these obviously unreasonable charges of murder.”¹⁴ After this testimony Honecker was quiet and rarely answered any of the court’s questions, a silent demonstration of his contempt.

The second court day, November 16, brought further contentions that turned this trial into a farce. Honecker’s lawyers requested that the presiding judge, Hansgeorg Braeutigam, be dismissed from the trial. On several occasions Braeutigam publicly described himself as “an active anti-communist.” Further, during the 1970s, Braeutigam had published, under the pseudonym of “Georg Riedel,” in the Berliner Morgenpost that was known to be right-wing.¹⁵ It was questionable if Braeutigam was the adequate person to sit in judgment over Honecker. With Braeutigam as presiding judge, a fair trial for Honecker was unlikely. Also, his behavior in the courtroom was less than professional.

On several occasions Braeutigam spewed out into verbal insults at both the defense team and district attorney. These outbursts were amusing to the audience though they were paralyzing the trial's procedure.¹⁶ Taken together the continuous delaying tactics from the defense team, the constant arguments between prosecution and defense about Honecker's health and the behavior of judge Hansgeorg Braeutigam slowly turned the trial into a parody.

The request for dismissal of Braeutigam from his position was temporarily denied. But on January 5, another incident convinced the two other judges of the necessity to release him. The German court regulations forbid a judge to comment about the trial or have any other personal contact with either the defense or prosecution throughout the duration of the trial. On December 21, 1992 Braeutigam acted against these rules and conversed briefly with Honecker's lawyer during one of the court's breaks. When he was questioned by the other two judges about this incident Braeutigam explained that he had simply handed the defense a letter. It turned out that Braeutigam had asked for an autograph from Honecker on behalf of one of the court workers. The other two judges declared Braeutigam to be prejudiced and therefore incapable of making a clear and unbiased decision in the prosecution of Erich Honecker. A lay assessor was also released for prejudice.¹⁷ It was already obvious that the trial lacked integrity and professionalism. This caused many Germans to question the credibility of the trial's outcome. The trial was surrounded by so many set-backs, how could justice be served?

Again Honecker startled the German public with another stubborn attempt to avoid responsibility. He had his lawyers submit a petition to the Supreme Court asking for his release based on his sickness. The petition argued that Honecker's stay in jail for the

duration of the trial was cruel and violated his human rights as a sick man. In January 1993, the German Supreme Court agreed with Honecker's complaint and allowed him to remain in his home for the remainder of the trial.¹⁸ Finally, the struggle around Honecker's health came to a close. The three judges decided that Honecker's prosecution needed to be separated from the other remaining defendants because deteriorating health limited Honecker's performance and would prolong the trial of the rest.¹⁹ He needed regular breaks throughout the day and on January 9 the doctors had already advised that Honecker should not be in court for more than two hours each day. Then on January 13, 1993 the trial against Honecker was stopped. The court reached the decision that continuing the trial against Honecker would be cruel and unjustifiable. Honecker was released after spending 169 days in custody; as expected, he immediately set out for Chile where he wanted to join his wife and daughter.

The majority of the German politicians and clergymen approved of the decision of the court, according to the Frankfurter Allgemeine.²⁰ Most agreed that the moral guilt of Honecker and his regime was undeniable, even though his release would make him innocent in the eyes of the law. Minister Angela Merkel on the other side expressed her deep disappointment. She mentioned how important it was not to imply that the ones who had made those unquestionably wrong laws, costing hundreds of people their lives, remained free and unpunished while the 'little' [people] paid the price. She related the outcome of the trial should lead to a renewed effort to reconcile the former GDR to the old West German states. Merkel felt that Germany needed to make an honest attempt in unifying the two former nations. The Honecker prosecution had failed as a means to heal the wounds of the former GDR population and bring the people together.²¹

The voices in favor of Honecker's release increased as time passed. Lothar Bisky, PDS-representative, called the decision to release Honecker a "victory of sensibility" and felt it would have been tasteless to sentence a man who was virtually on his deathbed. The favor of the PDS was not surprising, since it is a "reformed" communist party. Also, according to the DKP (German Communist Party), Honecker's release had been way overdue especially since there had never been any legal nor political basis for the trial in the first place.²² On the other side, Herbert Ullmann in the Frankfurter Allgemeine expressed that in his eyes there was no question about Honecker's guilt, blaming him for most of the deaths at the East German/West German border. Protestant church representative, Bishop Hempel, warned Germans not to treat Honecker's release as an end of the attempt to come to terms with the history of the GDR.²³

How the decision to release Honecker effected the people of the former GDR was captured through a public opinion poll from January 1993. The poll questioned Germans above the age of sixteen from both parts of the country. Among the items asked was the person's origin (East or West Germany) and their political affiliation. While the majority of the unified Germans (60%) disagreed strongly with the court's decision, only 44% of East Germans disagreed with the decision. Out of all those questioned only 10 % were undecided. Compared to the 52% only a year earlier who could not wait to see Honecker in front of the judge the number of those still interested in a conviction of Honecker had declined. As expected, persons with a PDS affiliation (the SED successor) agreed with the court's decision to release Honecker. Only 9% of PDS followers disagreed. At the opposite spectrum was the CDU/CSU with a total of 62% disagreeing. Sixty-seven percent of West German CDU/CSU followers disagreed compared to a mere sixty percent

in the East. The discrepancy between East and West Germans continued also for the FDP, SPD and Gruenen/Buendnis 90 (Greens). Surprisingly, the percentage of people affiliated with these parties disagreeing with the court was higher in the West than in the East. The distribution in the SPD group and the Greens/Buendnis 90 reflected the largest gap between East and West Germans. From West Germans following the SPD, 63% disagreed with the court compared with the mere 42% of East Germans. For the Greens/Buendnis 90 fifty-six percent of West Germans disagreed contrasted to only forty-two percent of East Germans.²⁴

The outcome of the opinion poll concerning Honecker's release had been anticipated in the result of an earlier questionnaire done in the summer of 1992. During this questionnaire, East Germans were asked whether the argument over the GDR and Stasi-past should be ended soon. Two years after the unification, only between 44% and 48% of East Germans felt the argument needed to be continued, while 40% favored to bring the discussions to a close.²⁵

After the release of Honecker, the trial continued for the other three defendants, Heinz Kessler, Hans Albrecht and Fritz Streletz. Erich Mielke was still on trial for the murder of the two policemen out of the 1930s, but would be required to answer for the order to shoot at border offenders as soon as the first trial came to a verdict. During the closing arguments, the defense counsel expectantly demanded the release for their clients while the prosecution demanded prison sentences ranging from eight to twelve years. On September 16, the court announced their judgment. Kessler was sentenced to seven and a half years in prison, Streletz to five and a half and Albrecht to four and a half. The courtroom was filled with the defendants' supporters who protested loudly against the

court's decision. The new presiding judge Hans Boss gave an explanatory statement about the sentences. He admitted to the fact that this trial should have occurred before the reunification in the GDR in order to avoid the many difficulties under the unification treaty. Unfortunately, the court had no influence on the political decisions which led to the reunification. Further, Boss agreed that the "order to shoot" did not exist in the form implied by the prosecution, but it was obvious that the border defense guidelines, created by the nation's leaders, led many soldiers to carry them out to the extreme, costing many Germans their lives.²⁶

In retrospect, it can be said that the trial was characterized by bad judgment of the court, unprofessional behavior of the judge Hansgeorg Braeutigam, the mistakes of the prosecution and the continuous procrastination tactics of the defense. This trial showed the incapability of the German legal system to fairly and swiftly pass the judgment on political criminals of a country which had ceased to exist.

CHAPTER 4 ENDNOTES

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CHAPTER 5

THE PROSECUTION OF MIELKE

Erich Mielke was a man of small stature, whose name was virtually unknown beyond the borders of East Germany until 1990, though since then it has become in most of Europe. Most East Germans feared him and the organization he represented--the notorious and frightful Stasi. The authority and political influence this man had possessed made him one of the most mysterious persons of the East German past. How did this man, who in recent pictures appears almost pathetic, become so important and powerful?

Erich Mielke was born in 1907 in a northern suburb of Berlin, the oldest of four children. His father was a simple factory worker who tried hard to support his family during the depression years. Erich's mother died at the birth of the youngest brother. His father did not stay widowed for very long but remarried quickly. During the depression years, Erich's father was barely able to make ends meet.¹ Similar to Honecker's family, every member of the Mielke's was involved in communist groups in Germany. According to Mielke's own testimony he joined the Communist Youth Group at the age of fourteen and became a member of the KPD five years later.²

As a teenager, Mielke briefly attended a college-prep school on a scholarship financed by the Communist Youth Group. He dropped out though after only one year. According to his stepmother, the family could not afford the cost of books and bus fare and therefore was forced to take Erich out of school. She also believed Erich to be an

outstandingly intelligent young boy. This account was disproven by an entry in the school records stating Mielke was released because he was unable to meet the school requirements.³ He then entered a three year apprenticeship at an international transport company within Berlin. He continued to work for this company until he was laid off in 1930, a fate which befell millions of young German men during the depression.

Unemployment was very high in Germany during the early 1930s. Social conflicts were strong and many people began to openly show their discontent with the government. Demonstrations occurred frequently during these days and often led to violence between police and demonstrators. On May 1, 1929 the KPD defied police orders and organized a demonstration. The demonstration escalated and for two days violent confrontations occurred between police and demonstrators. Thirty-one civilians were killed during the confrontations.

The incident that led a group of young communists to plan the assassination of two policemen was the accidental shooting of Fritz Auge. This young man was among a group of people in the town square at the Karl-Liebknecht-Haus. A policeman who was ordered to disperse the group panicked and shot into the crowd killing Fritz Auge. The incident infuriated the people to such a degree that they wanted revenge. A group of young communists decided to carry out their revenge by killing two policemen in retaliation for the young worker who had died.⁴ Mielke was among those who volunteered to assassinate policemen Paul Anlauf and Franz Lenk. After the assassinations, Mielke and his accomplice Ziemer avoided being arrested by escaping to the Soviet Union. Three years later in Germany, several KPD-members were found guilty of conspiracy in the assassination.⁵

In Moscow, Mielke received favors from several other German communists who had taken refuge in the Soviet Union from political persecution in Germany. Mielke was given the opportunity to enter the military school of the Comintern followed by two years of studies at the Lenin School. During this time Mielke took the pseudonym “Paul Bach” because he was convinced that he would have to conceal his real identity until the defeat of fascism in Germany.⁶

In 1936 Mielke joined the communists in Spain against Franco and his fascist regime. After Franco and his followers won the civil war in Spain, Mielke left Spain to work for other communist groups in Belgium and France. He avoided returning to the Soviet Union because news had reached him that several of his German comrades from the Buelowplatz assignment had been arrested in Moscow. These arrests were probably result of Stalin’s purges to clean the party of opponents. At the end of the Second World War, Mielke returned to Berlin to again offer his support to the KPD.⁷

In June of 1945, Mielke became director of the department for “Police and Judiciary” in Berlin-Lichtenberg. He quickly rose up the ranks of the party. In 1950 the department of Police and Judiciary was reorganized into the Ministry of State Security (Stasi). In its reorganized structure the ministry enjoyed complete independence without checks and balance from other state organs. Later, Honecker referred to the Stasi as a “State within a state.” The ministry was given no clear mission or guidelines to follow making it already obvious that its purpose was to ensure the SED’s power position in East Germany. The Stasi (Ministry of State Security) was the “Shield and Sword of the Party” protecting the party from non-communist tendencies in all areas of public and private life.⁸ This newly won independence led to the abuse of power by Mielke that later became the

basis of his prosecution. Mielke had become state-secretary for the ministry of state security in 1955. Two years later his superior was purged and Mielke took his position as head of state security.

East Germany was initially untouched by the purges that swept in the 1950s through the communist bloc as the result of Stalin's paranoia. But soon Mielke initiated purges in the GDR to clean his surroundings of opponents and dissidents. One trial of this kind in East Germany was against Kurt Mueller. Mueller had been the Second Chairperson for the West German KPD delegation who lived in Hannover and should have been out of Mielke's reach. He went to East Berlin on an invitation of his comrades which was a trick to bring Mueller into Mielke's sphere of authority. This invitation should have caused Mueller to be suspicious but instead he felt honored and traveled to East Berlin where he was arrested the moment he arrived. After the collapse of the GDR, Mueller was interviewed about the experience of his arrest and trial. He reported that when he was arrested and held in jail he tried to ask the involved Stasi officer for their justification to arrest him. He demanded his rights as a citizen of West Germany to which Mielke answered: "We make the rules here."⁹ Mielke also used these purges as an opportunity to build a wide net of Stasi informers into the East German society.

These hidden informers were a successful measure to install fear into the general population. A person was never sure if he/she was conversing with an informant or not, and therefore stayed impersonal and guarded toward even his/her closest friends. A more overt sign of the ever-present Stasi were the "Kader" files instituted as a record for East Germans who were under suspicion of being anti-Communist. These files included information about contacts a person had with the West, what mail and telephone calls

he/she received, or if he/she made negative comments about the government to co-workers and friends. Informers were placed into every area of life, e.g. as mail carriers, college professors, students, and even priests and pastors.¹⁰

In his private life Mielke was not very different from his public personality. He was the tyrant towards his wife and children. He took the old Prussian ideals and ordered his family around as if they were enlisted in the army. The laundry had to be folded 'on edge' and even the children's hair had to be cut according to the required military style. During meals, Mielke scolded his children continuously: "Don't make a mess! Don't smack! Eat whatever is on your plate!" Mielke seemed to communicate with his family only through orders and commands making him appear incapable of loving and interpersonal relationships.¹¹

The Stasi-boss was short-tempered and dogmatic. Through his position as the leader of such a powerful and feared organization as the Stasi he had every means to satisfy his ego and to create a picture of himself as a respected and honored political figure. Mielke was excited about every opportunity to give a speech. He was long-winded and liked to fill his speeches with pathos and threats against the enemies of socialism. Applause gave him obvious pleasure, notwithstanding that this applause was ordered by the party.¹²

Mielke reigned in his position with the Stasi until 1989. For many East Germans who were waiting for Mielke's trial, the Stasi building was their main focus for releasing their frustration and anger. On January 15, 1990 this building was stormed by a crowd of East Berliners who "went on a romp, kicking through doorways and thrashing furniture."¹³ On this day, they feared a civil war but the incident turned out to be only a

small riot, an expression of the people's determination to demand changes. The storming of the Stasi building was the most violent expression of the East Germans throughout the fall of the SED-regime. However, the secret police building had on other occasions been the aim of public anger expression, individuals spray-painted slogans across the building walls numerous times wanting to voice their opinions. Among the slogans on the wall building was written: "How long until the guilty ones are finally punished?"¹⁴ The East German government had promised to disband the Stasi, but actually never did.

The Politburo had resigned corporately on November 8, 1989. Mielke had kept a packed suitcase at home to leave East Germany in case of the fall of his regime, but then decided to stay with his son in Berlin after all. During a TV interview with Egon Krenz, the new first State Secretary, Mielke first heard about the new government's attempt to 'clean house' by arresting those former comrades who had misused their position and authority and made personal profit with public assets. This news did not worry Mielke in the least because he did not recognize his own behavior as authority abuse or corruption. He was unable to see the privileges and benefits which he had enjoyed as the Stasi leader as corruption. As he said during a hearing:

Even when I am told that this investigation deals with corruption and abuse of my position, I still have to deny everything and consult with my lawyer. I did enjoy certain privileges in Wandlitz but none of my actions can be considered illegal. Everything that I have done this far I have done for the GDR and socialist cause.¹⁵

The stubbornness and narrow mindedness displayed by Mielke and the other leading figures of the GDR was amazing. During another questioning, Mielke was informed that

the charge for high treason had been added to his case. Here again Mielke displayed incapability to understand the charge.

What you are telling me is incomprehensible. A person who worked faithfully his whole life and fought for our cause. . . towards whom is he supposed to have committed high treason? I was the one who used to investigate cases of high treason.¹⁶

Can it be that through the years these men had mutilated their own sense of morality and integrity to such a degree as to blindly believe in their cause? Or were they just playing the victim better than anyone before them? The answers to these questions will probably go to the grave with these men.

Shortly after the collapse of the GDR, the district attorney in unified Berlin received many complaints against Mielke pressed by different individuals and organizations. The first one came from one of Mielke's former employees from the ministry for state security. The man charged Mielke with corruption and misuse of authority, stating that Mielke used his position to acquire a large estate paid for with tax money. The next accusation concerned Mielke's involvement in helping the SED's accountant of foreign currency, Alexander Schalck-Golodkowski, to leave the GDR for the West after a warrant for his arrest had already been issued. Another accusation brought against Mielke covered the use of money and man power for unnecessary construction projects. One example was the construction of a new winter sports complex for which Mielke used his authority to take five hundred workers out of their usual places of employment for the duration of the project. Not only that but the ice machine for the complex used so much electricity that other larger firms could not function at the same time.¹⁷ These three charges were only a few examples of the multitude of complaints

brought against Mielke. This led the general district attorney to start an official investigation against Mielke on December 5, 1989. In December of the same year, Mielke was arrested for allegedly damaging the economy of the GDR, especially because “he allowed the construction of new buildings that were unnecessarily burdening the state economy.”¹⁸ This charge was only the beginning for the now eighty-three year old man. On January 24, 1990 Mielke’s file was expanded with yet another charge. For the festivities of the fortieth year anniversary of the GDR, Mielke was accused of having taken potential troublemakers into ‘protective’ custody. To this charge Mielke reacted in a manner that was to become so characteristic of him during the trial. He rejected the charge as unjustified and refused to sign the records of the questioning, that would serve to prove the fact that Mielke had been informed of the new charges.¹⁹

Similar to the case against Erich Honecker, the German judiciary system was frustrated trying to charge Mielke with a crime that was not actually considered a crime under the former GDR penal code. The charges of corruption and authority misuse were too difficult of a challenge for the courts to prove and they were not pursued. It was less difficult, however, to charge Mielke with a crime he had committed sixty years earlier, the aforementioned Buelowplatz assignment, the shooting of two policemen in 1930. It is questionable if the murder charge from sixty years ago would satisfy the need for justice in the new German states. The Frankfurter Allgemeine commented:

Anyway, the people in the new states who suffered under the repression apparatus of the ministry of state security--a position Mielke had from 1957 to 1989--do not understand why this man is tried for a crime committed sixty years ago, and not for the offenses he committed against humanity during the SED dictatorship.²⁰

Nonetheless the court decided to prosecute Mielke for these murders, possibly because they thought their chances for a conviction of murder were better than for corruption.

From the very beginning of the investigation, Mielke tried everything in his power to make the investigation and the following trial as difficult as possible. He rejected all responsibility claiming “he had done everything for the party.” Also he insisted that he was too old and physically too fragile to stay in jail or even be prosecuted. He even begged the doctors to find him unfit for trial, but the court physician rejected Mielke’s request. The physician found Mielke to be physically and mentally stable.²¹ In retrospect, Mielke’s behavior reminded one of a spoiled child and appeared somewhat amusing, though at the time it surely was totally inappropriate, especially considering this man demanded to be recognized as a hero of socialism.

Mielke started the trial being absolutely uncooperative. He wore a old leather hat pulled low over his face and refused to take it off in the presence of the judge. Mielke tried to convince the court of his mental instability by refusing to answer questions and randomly calling out his criticism about the situation. His lawyers turned in two appeals based on Mielke’s failing mental abilities, but they were rejected.

After these two motions to declare Mielke unfit for trial were rejected by the court, there was an obvious change in Mielke’s cooperation or better the lack of it. Mielke had been a difficult defendant from the beginning of the investigation. But after the court refused to drop the charges he sulked in silence refusing to answer the prosecution’s questions. His lawyers tried to argue that Mielke was not acting maliciously but was simply too disturbed mentally to comprehend what was going on. Attorney

Hubert Dreyling explained that his client's behavior was reinforced after "[outside] forces" had put pressure upon Mielke to continue his silence. According to Dreyling, the mail threats were not enough to make him back away from his responsibility to defend his client. Dreyling would continue to encourage Mielke to testify since his defense was based on the client's testimony.²²

Dreyling continued to claim that pressure was being put on Mielke in an attempt to keep the defendant silent. Several aspects of the surrounding circumstances reinforced this impression. In the middle of February several important files were stolen from Dreyling's office. Further, Dreyling reported to Der Spiegel that his office had received a flood of threats against Mielke's life. However, there was no hard evidence to support Dreyling's claim, only numerous anonymous letters threatening Mielke which could hardly be seen as 'immense outside pressure.'²³ The mysterious source who allegedly put pressure on Mielke was never revealed.

Mielke was subpoenaed to appear in the Schalck investigation as a witness to help clear up the responsibility of Schalck-Golodkowski. However, instead of being helpful Mielke continued his charade and avoided clear answers. He implied he would answer all the investigator's questions only after his own trial.²⁴ This reinforced the impression that Mielke kept up his silence because he might implicate himself by answering. But finally, "Mielke drops his mask" as the headline of a newspaper called it. Mielke began answering questions, only remaining silent about subjects which might implicate himself. Mielke stopped being loyal towards his former colleagues. Loyalty was one of Mielke's self-praised characteristics. He criticized the other Politburo members who, according to

Mielke, betrayed Socialism, especially Honecker who had fled to Moscow. An article in the Frankfurter Allgemeine stated:

Erich Mielke, the senile old man, who could not remember any thing except the loss of his leather hat, finally dropped his mask on Wednesday evening. In front of the investigating committee [. . .] examining the doings of the former Mielke employee Schlack-Golodkowski, this former Military General and Minister of State Security proved that he is still clever, quick-witted and focused despite of his age of 84 years.²⁵

The article further stressed that Mielke appeared before this committee simply as a witness compared to the on-going trial in which Mielke was portraying himself to be mentally exhausted and sick.²⁶ If Mielke had tried to appear beat and broken, his performance in front of the investigating committee defeated his attempts.

The defendant also became more cooperative in his trial for the murder of the two Prussian policemen in 1930. Mielke realized his former tactic of silence was not getting the desired results. The court had rejected every motion the defense had filed to suspend the charges and stop the trial. Now Mielke proved ready to answer questions about his actions and those of fellow Socialists like Erich Honecker. According to Mielke “there is no one better informed than me. I know exactly what Honecker knew and did [. . .].” He further commented that even if others might have hid in Moscow he was not ready to betray the cause of socialism. He was quoted to deny any responsibility in the shootings at the East German/West German border. Mielke expressed that he had always felt it was better to let those who want to leave, go instead of killing them trying to cross the border.²⁷ This dubious attitude of Mielke to suddenly make himself appear as the last hero of socialism was strongly criticized in an article by the Frankfurter Allgemeine where the

author wrote: “As in other incidents is Mielke trying to portray himself as the ‘caring uncle’ who only wanted order and peace.”²⁸ Obviously, the last few months during which Mielke tried to act as if he was mentally drained and confused had damaged his credibility with the public.

Mielke’s murder trial began in the middle of February 1992 with a surprisingly skeptical audience. The newspapers discussed the feasibility of this trial based on the legal difficulties. First of all the court needed to establish that the death of the two police officers were actually murders in the first degree. While murder in the first degree does not come under statute of limitations in Germany, murder in the second degree does. In Mielke’s case, the court would only be able to put him on trial if it was decided that the deaths of the policemen were murder in the first degree. Further, the killing of a human being was only murder when it is done treacherously. This is only the case if the victim is unarmed and unexpected, which did not apply to the policemen who were expecting violence from the public during those times. The newspapers seemed skeptical about the courts trying to apply the statute of limitations to Mielke, especially if he was tried according to the GDR penal code.²⁹ Since the crime had not occurred under GDR regime but during the Weimar Republic, the case did not actually fall into the GDR’s legal peripheries.

Mielke’s lawyer’s maneuvers were similar to Honecker’s, claiming within the first three days of the trial that Mielke was physically and mentally unable to stand trial. Throughout the prosecution, numerous doctors examined and tested the defendant and determined he was mentally unable to follow the courts procedures and comprehend their meaning in regard to himself.³⁰ The expert opinions on Mielke’s health claimed the

defendant was suffering from several physical ailments, including reactive depression, which could lead to death at any time.³¹ The prosecution however rejected these claims and demanded the trial continue. An article in the Frankfurter Allgemeine expressed the opinion that the legality of withdrawing several charges could not be denied, however “the impression made by the judiciary is questionable,” given the health of the defendant. According to this article, it is unlikely that if after several decades of the intrigues, power struggles and abuse of human beings did not overwhelm the person mentally and physically then why would it suddenly be so overwhelming for this individual to stand in front of a court to justify his actions.³²

The defense’s next maneuver was to ask for the suspension of their client’s charges on the grounds that the crime fell under statute of limitations. Again, the court proved to be set on continuing the trial. During the years of 1947 to 1990, the files that had existed on the Buelowplatz case were in the Soviet Union. The Soviet government refused to release the files to the German government, delaying and complicating the case. This led to the decision of the courts that the statute of limitations was interrupted during those forty-three years and could be considered continued only after the files were handed over to the German authorities.³³ The danger of the court’s interpretation was obvious. Their determination to prosecute Mielke was reflected in their desperate search to find a legal basis on which to continue the prosecution.

The defense team next argued against the validity of the revised warrant issued by an Allied court assistant during the time of Berlin’s occupation by the Allied forces. The original warrant was issued by Nazis during the 1930s. The warrant from the Allied forces was not issued by an actual judge and according to Mielke’s attorney was therefore

not valid. Therefore Mielke's lawyers made the motion to call in an expert for the Allied occupation to help clear up the matter and the Allied court assistant's authority to issue such an order.³⁴ This appeared to be the last helpless act of the defense team to avoid their client's conviction for murder.

Suddenly new files and documents concerning the Buelowplatz shooting appeared. The court received photocopies from a Moscow archive that turned out to be three separate hand-written autobiographies by Mielke. In these autobiographies Mielke had admitted his involvement in the shooting before he had escaped to Moscow. The Russian journalist who had found the material stated there was even more information in an extensive personal file the Russian authorities were unwilling to make accessible to the German court.³⁵ Despite this new information, the defense asked for the release of their client that was again denied. The judges remained immovable.

The trial continued in this manner for several more months until November of 1993. Mielke's lawyer tried desperately to install reasonable doubt in the mind of the judges about the defendant's involvement in the Buelowplatz incident. However, Mielke's claim of innocence left the judges unmoved. On November 26, 1993 the court found the defendant guilty of murder on two counts. Mielke was sentenced to six years in prison and remained in Berlin-Moabit.

However, this was only the end of the first trial, that of the murder of the two policemen. Mielke still had to return to the trial for the deaths at the Berlin Wall in which he was charged with Honecker and colleagues. After the first verdict, Mielke was ordered to attend the second trial. The public now began to show more compassion for this man

who had spent the last five years in jail and was eighty-seven years old. Some questioned his ability to understand what was going on.

For example, Gisela Friedrichsen strongly expressed her doubt about Mielke's mental ability in Der Spiegel:

[His] thoughts are centered on food, sleep, [his] digestion. He probably still feels it, but [he knows] his strength is leaving him. His lawyers have not been able to discuss the charges with him. He simply says: "I am a citizen of the GDR. . . what do they want from me . . . but the hope . . . dying." An accused person of this age is impossible to defend.³⁶

But Mielke did not suffer from any particular sickness, he was simply old. "The world of the big, bad man, Erich Mielke has become very narrow and small and trite,"³⁷

Friedrichsen explained. Mielke's condition was obvious to everyone, but the judges continued the trial. Mielke had to be punished no matter what the cost. Numerous motions to end the trial were filed and every one of them was denied. The court frequently explained their denial as a sign of respect for the victims and their families.

Again, Gisela Friedrichsen expressed rather sharply her disapproval in Der Spiegel. She described the continuing trial as a farce, a means to pacify the victims who were waiting for this senile, old man to be punished.³⁸ Many people in Germany also doubted the feasibility of the trial. Justice was not being served here. And, finally, the second trial was ended in November 1994 without a conviction. Meanwhile, Mielke remained in prison serving his six-year sentence for the murder of the policemen.

The German penal court system requires a convicted person to stay in jail only so long as to give him/her another chance to be reintegrated into society. In case of Mielke, who was at the time of his sentencing was eighty-five years old, this meant he should have

been released rather quickly. Barely two years after the conviction for murder, the court reconsidered Mielke's case based on his age and came to the conclusion that he was too old and physically unfit to remain in jail. The sentence was therefore suspended.

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6. Ibid., 46.
7. Ibid., 54ff.
8. Ibid., 71.
9. Ibid., 82.
10. Ibid., 109.
11. Ibid., 149.
12. Ibid., 146f.
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14. Albert Funk, “Wann werden endlich die Schuldigen bestraft?” [How long until the guilty ones are finally punished?], Frankfurter Allgemeine Zeitung 140, (June 19, 1992): 3.
15. 2. Beschuldigtenvernehmung, Militaer-Oberstaatsanwalt, (Berlin: December 21, 1989) quoted in Jochen von Lang, Erich Mielke (Berlin: Rowohlt, 1991), 264.
16. 3. Beschuldigtenvernehmung, Militaer-Oberstaatsanwalt, (Berlin: January 5, 1990) quoted in Jochen von Lang, Erich Mielke (Berlin: Rowohlt, 1991), 270.

17. von Lang, 191ff.
18. Ibid., 193
19. Ibid.
20. Peter Jochen Winters, "Im Prozess gegen Mielke wandelt die Berliner Justiz auf einem schmalen Grat," [The Berlin Court walks a thin line in the lawsuit against Mielke], Frankfurter Allgemeine Zeitung 39, (February 15, 1992):2.
21. von Lang, 195.
22. "Mielke schweigt vor Gericht weiter," [Mielke remains silent in front of the Court], Frankfurter Allgemeine Zeitung 53, (March 3, 1992): 10D.
23. "Naechsten Mittwoch tot," [Dead by next Wednesday], Der Spiegel 11, (March 1992): 32.
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29. Stefan Bernecker, "Wie schon im Fall Mielke," [The same as in the case Mielke], Frankfurter Allgemeine Zeitung 207, (September 6, 1991): 9.
30. Gisela Friedrichsen, "Enttaeuschung, ja sogar Bitternis," [Disappointment, even Bitterness], Der Spiegel 45, (November 1994): 25.
31. "Prozess gegen Mielke einstellen," [Ceasing Prosecution against Mielke], Frankfurter Allgemeine Zeitung 41, (February 18, 1992): 4.

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34. "Neue Dokumente im Mielke-Prozess," [New Documents in Mielke Trial], Frankfurter Allgemeine Zeitung 35, (February 11, 1993): 6.
35. Gisela Friedrichsen, "Was wollen die von mir?" [What do they want from me?], Der Spiegel 39, (September 1994): 85.
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CHAPTER 6

CONCLUSIONS

Undoubtedly, both Honecker and Mielke were the scapegoats for the SED-regime. After Honecker's release, due to failing health, the attention of the Germans who longed for a conviction turned towards Mielke. The press displayed a much higher interest in his conviction than in Honecker's case. However, in the end, the length of the investigations and trials which took five years was too long to give the relatives of men who had died at the border the satisfaction they deserved. Several West Germans commented during private conversations that Honecker and all of the SED leaders should have been executed, as is fitting for a real revolution. Unfortunately, certain political decisions made the task of prosecuting Honecker and Mielke extremely difficult. For weeks the chance for a trial looked bleak and the people of Germany wondered if it would ever be taken to court. In retrospect, the decision to reunite the country in such a rush became the stumbling block for the courts. The crimes committed by the GDR leadership should have been judged under GDR law before any reunification. The consequences of the rush to reunification became obvious through the struggles of the German judiciary system to prosecute these men. As Uwe Wesel wrote in his book Ein Staat vor Gericht [A Nation on Trial]:

The mistake is found in politics. The unification contract gave the judiciary system an assignment for which it was principally unfit. [. . .] The judiciary system is a suitable mechanism to solve conflicts within its own perimeter

of space and time, to regulate within its own system. It is overwhelmed with judging mistakes committed by another macrosystem. One nation in front of the court of another? That is impossible, except for crimes, so cruel and excessive the culprits can be treated as common criminals.¹

The inability of the German judicial system to mete out punishment quickly and decisively has caused the legacy of the GDR to linger over the future of Germany. The coming generation will need to find a more honest means to reconcile with the past. As efforts of the German courts continued to bring other leaders of the former GDR to trial, including Egon Krenz and his Politburo members, clearly showed, the problems of the past have not been resolved. As Minister of the Interior of Saxony, Heinz Eggert, explained: “The past will be reconciled when the last GDR citizen has died.”² Processing the collapse of the communist regime and unifying Germany has proven itself to be a major challenge for the German people. While the opinions might have been split whether the leaders were adequately dealt with, the frustration about the judicial jungle and the bureaucracy is shared by all of the Germans.

The victims of repression in the GDR and their families wanted justice, the crimes committed by the regime needed to be punished, and all Germans had to take an honest look at themselves and their personal responsibilities. Finally, after five years of waiting for justice, most former East Germans were tired. An article of the Badische Zeitung stated: “Meanwhile the people do not want to hear anything about the subject, Stasi, anymore, [they] want to be left in peace, [. . .]”³

Honecker passed away within a year of his release but the thirst for justice in Germany is not satisfied yet. While most of the voices of the German people have grown

silent due to their frustration of the system, the courts continued to investigate and prosecute other former GDR leaders. Though most people have turned their attention to new topics and matters of life, the victims were still waiting for justice. For many the past was not dead.

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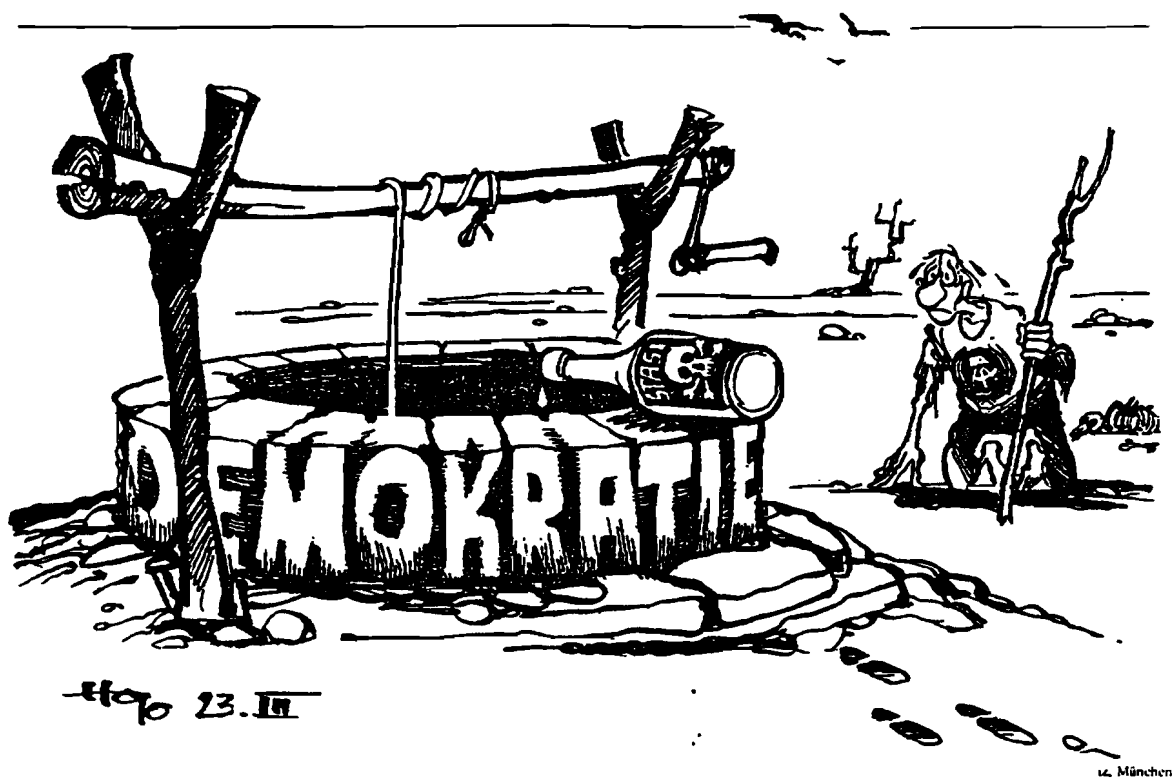
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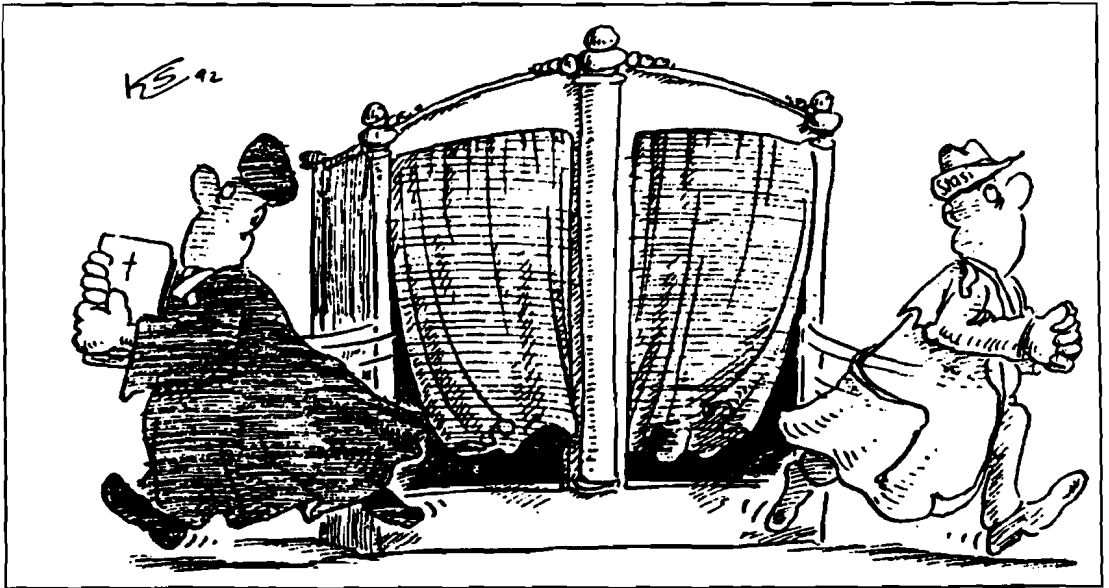
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APPENDIX





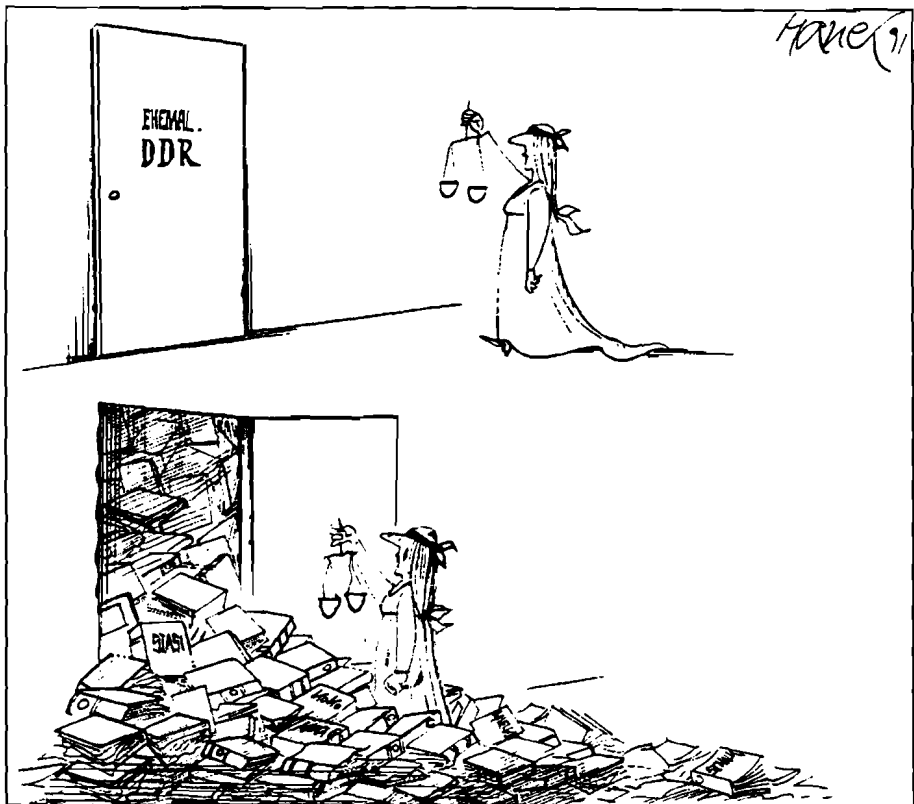
"Never Stasi Amnesty!"



Wer nahm hier wem die Beichte ab?

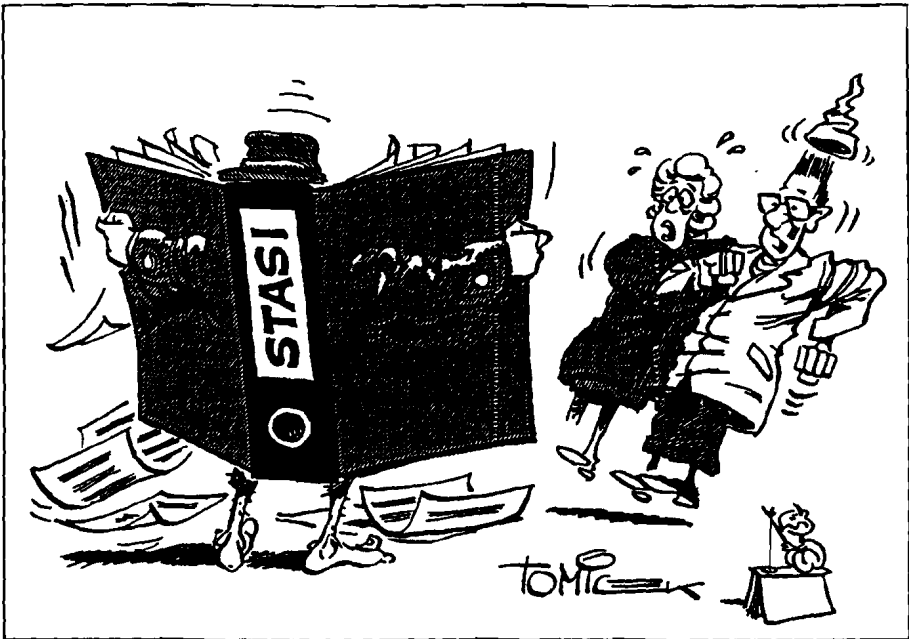
Leipziger Volkszeitung

Who took whose confession here?



Frankfurter Allgemeine

Former GDR



Handelsblatt



Wessiweiß

Zeichnung: Heitzing

"Self-righteous" Westerners
 "Yuck!!! We would have stayed cleaner."

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