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OF
THE MAJOR WAR CRIMINALS

BEFORE

**THE INTERNATIONAL
MILITARY TRIBUNAL**

NUREMBERG

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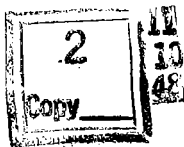


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PROCEEDINGS
25 June 1946 — 8 July 1946

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ONE HUNDRED AND SIXTY-THIRD DAY

Tuesday, 25 June 1946

Morning Session

[The Defendant Von Neurath resumed the stand.]

DR. OTTO NELTE (Counsel for Defendant Keitel): Mr. President, I should like to advise the Tribunal that the first half of the manuscript of my final defense speech in typescript will be ready tomorrow and the second half by next Saturday. I am sorry to say that I personally can furnish only eight copies, six of which are earmarked for the interpreters to facilitate their difficult task. I am sorry that I could not furnish more copies since I personally have no mimeographing machine. I hope the Tribunal will appreciate the fact that after the statement made by the chief prosecutor for the United States on Friday, I cannot make any claims on the technical assistance of the Prosecution.

Therefore, I am asking the Tribunal to decide whether it would be worth while, in order to expedite the presentation, to have the translation of my speech put before them. In this event I would request that the necessary arrangements be made. I am prepared to place my manuscript at the disposal of the Tribunal, under the conditions announced by you, Mr. President. What applies for me personally would, so far as I am advised, apply also for the rest, at least for the majority of Defense Counsel. In order to expedite the proceedings and to reduce the time spent on the presentation of the final defense speeches, it is important to have this point clarified.

THE PRESIDENT: Dr. Nelte, if you would hand in the manuscript to which you have referred, the Tribunal will make arrangements to have it translated into the various languages. I think that will meet the position so far as you are concerned.

DR. NELTE: Yes.

THE PRESIDENT: The Tribunal has an announcement upon the subject, which I am about to read. The announcement is this:

"In view of the discussion which took place on the 13th of June 1946, on the question of time to be taken by Defense Counsel, the Tribunal has given the matter further consideration.

"When the Defense Counsel stated the time they wished to take, the Tribunal observed that some of the defendants required more time than others, and to this extent they did make an apportionment among themselves. The Tribunal feels that the suggested times are much too long and some voluntary restriction should be made.

"Except as to a few of the defendants whose cases are of very wide scope, the Tribunal is of the opinion that half a day to each defendant is ample time for the presentation of his defense; and the Tribunal hopes that counsel will condense their arguments and limit themselves voluntarily to this time. The Tribunal, however, will not permit counsel for any defendant to deal with irrelevant matters or to speak for more than one day in any case. Four hours will be allowed at the beginning for argument on the general questions of law and fact, and counsel should co-operate in their arguments in such a way as to avoid needless repetition."

As heretofore stated, the Tribunal would like to have a translation of each argument in French, Russian, and English submitted at the beginning of the argument. Counsel may arrange for the translation themselves if they so desire; but if they will submit copies of their arguments to the translating department as soon as possible and not less than 3 days in advance of delivery, the translation will be made for them and the contents of the copies will not be disclosed.

That is all.

Yes, Dr. Lüdinghausen.

DR. OTTO FREIHERR VON LÜDINGHAUSEN (Counsel for Defendant Von Neurath): Last night we had stopped in our treatment of the various points raised by the Prosecution. I should like to continue now and to put the following question to you, Herr Von Neurath.

The Prosecution is charging you with the fact that in the Protectorate Germans had a preferential position as compared with Czechs and that you were responsible for that. Will you please comment on this?

CONSTANTIN VON NEURATH (Defendant): The position of Germans in the Protectorate was not a preferential position which was vested with any real preferences and advantages as compared with the Czechs, but it was an entirely different position. The Germans had become citizens of the Reich and, therefore, had the rights of Reich citizens, such as the right to vote in Reichstag elections. The Czechs did not have this right to vote, which is understandable in view of the existing difference—variance between

the German people and the Czech people. There were at no time any actual advantages connected with the position of the Germans in the Protectorate.

Efforts to have preferential treatment were made, of course, in the chauvinistic Party and in nationalist circles. But I always opposed them vigorously and prevented any practical realization of such efforts. In this connection, however, I should like to stress once more that the Czech people did not consider themselves inferior to the German people in any way.

It was a question simply of a different people which had to be treated, politically and culturally, according to its own characteristics. That was also the reason for the maintenance of the so-called autonomy which meant nothing more than the separation of the two nationalities with a view toward securing for the Czechs their own way of living; and it is evident that this autonomy had to be kept within certain limits, dictated by the prevailing necessities of the Reich as a whole, especially in times of war.

DR. VON LÜDINGHAUSEN: Now, I should like to deal with the individual points raised in the Czech indictment, or rather the points found in the Czech report, which is the basis for this charge. In this report it is asserted that the freedom of the press was suppressed. Is that correct and what role did Herr Von Gregory play in the treatment of the press?

VON NEURATH: Herr Von Gregory had been the press attaché at the German Legation in Prague and was subordinate to the Propaganda Ministry. Then he came, as chief of my press department, to my administration and controlled the Czech press according to the directives of the Propaganda Ministry in Berlin. The Czech press, of course, was not free—no more than the German press. Control of circulation and other measures, especially censorship measures, were the same.

DR. VON LÜDINGHAUSEN: The Czech report further raises the charge that the local Czech administrative offices were in many cases dissolved and then reorganized and key positions filled with officials and town councillors who were German or Czech collaborators. Is that correct?

VON NEURATH: These were communities with a considerable German minority, particularly in Moravia. That they should also have a representation in the local administration seemed to me a natural thing. Prague, for instance, had a Czech mayor and a German assistant mayor. This could hardly be objected to. With regard to the attempts of the Germans in the various cities or districts to take a part in the local administration to an extent that did not seem justified by their numerical strength, I intervened and

rejected them. In the municipal administrations of purely Czech districts, such as in West Bohemia, there were generally no German representatives at all. But on the other hand, there were German-speaking enclaves, such as the region of Iglau, where the Germans were dominant in numbers and thus, of course, in influence as well.

DR. VON LÜDINGHAUSEN: The Czech report accuses you of having—in this way and through the appointment of higher land councillors (Oberlandräte)—germanized the Czech administration, and this report bases its accusations on a statement which you allegedly made to the former Bohemian Landespräsident, Bienert, in which you said, "All that has to be digested in 2 years time."

VON NEURATH: I do not recall having made such a statement. And I cannot imagine having uttered it. Here we are concerned with the co-ordination of the Czechs—of the Czech with the German administration. The Oberlandräte were not appointed by me, but their office was created as a controlling agency by the Reich Government by the decree of 1 September 1939 in connection with the setting up of German administrations and the Security Police. When the Oberlandräte appeared before me to give their reports, I told them time and again that they were not to do any administrative work themselves but were to supervise only. The Czech method of administration was frequently superior to the German, I told them.

DR. VON LÜDINGHAUSEN: With regard to this I should like to refer to Document Number Neurath-149 of my document book, the decree on the organization of the administration and the German Security Police, dated 1 September 1939. In Paragraphs 5 and 6 the appointment and the duties of these Oberlandräte are described more in detail. A quotation of this document might be redundant.

The Czech indictment further contains a statement by Herr Bienert to the effect that on the problem of the co-ordination of the Czech administration you had remarked to him something like: "That must be carried out strictly; after all, this is war." At the same time Bienert stated in his interrogation that the purpose of this measure, that is, the co-ordination of the Czech and the German administration, had been to assure Germany of a peaceful hinterland during the war.

Will you kindly also comment on this.

VON NEURATH: It is possible that I told Bienert something along these lines. However, I cannot remember it at this date. But it can be taken for granted that in the sphere of administration, as in every other sphere in the Protectorate also, the necessities of war were the main concern. Restrictions of the autonomy in the Czech national administration have to be considered from this point of

view. That it was my constant endeavor to keep the country quiet in the interest of the Reich, and therewith in the interest of all, can hardly be held against me. Apart from that, I should like to remark that the introduction of restrictions on the autonomy was already contained explicitly in the decree setting up the Protectorate.

DR. VON LÜDINGHAUSEN: In this connection I should like to refer to the order contained in my document book under Number Neurath-144, Document Book Number 5. The order was issued by the Führer and Reich Chancellor on the Protectorate of Bohemia and Moravia and is dated 16 March 1939. Under Article 11 it was even then stipulated that the Reich could incorporate departments of the administration of the Protectorate into their own administration. The Czech report further refers to a statement made by the former Czech Minister Havelka dealing with the persecution of the members of the Czech Legion of the first World War insofar as they held public office. What can you tell us about this question of the Legionnaires?

VON NEURATH: The Czech Legion had been founded in Russia during the first World War. It was composed partially of volunteers, partially of the balance of Czech regiments which had belonged to the old Austro-Hungarian Army and had become prisoners of war in Russia. These Czech Legionnaires enjoyed a certain exceptional position after the founding of the Czech Republic. In part they were filled with strong chauvinistic resentment toward the Reich which dated back to the time of the nationalities fights. This, the so-called Legionnaire mentality, was a catchword in Bohemia; and in times of political unrest it could signify a certain political danger. By the way, this preferential position which the Legionnaires enjoyed was widely attacked in the Protectorate by the Czechs themselves. Therefore an effort was made, and by Frank particularly, to remove the Legionnaires from public office. But this took place only in the crassest cases and only insofar as those Legionnaires had joined the Czech Legion voluntarily, that is, it did not apply to those who were members of the former Austro-Hungarian Army. From the very beginning I tried to make this discrimination, which approximately corresponds to the situation—or corresponds with the distinction—which today is made in Germany between the voluntary members of the SS and the Waffen-SS.

DR. VON LÜDINGHAUSEN: The Czech indictment is further accusing you of having supported the Czech Fascist organization Vlayka. It bases this charge on a memorandum which you yourself wrote concerning a discussion which you had with Hacha, the President of Czechoslovakia, on 26 March 1940. According to this memorandum you told Hacha that the personal and moral qualities of the Vlayka leaders were well known to you; in any case, you had to

confirm the fact that this movement, this organization, was the only one which had taken a positive stand toward the Reich and toward collaboration with the Reich. How about that?

VON NEURATH: The Vlayka movement was the same as the collaborationists in France. This movement worked to bring about a German-Czech collaboration and, in fact, long before the Protectorate was established. But the leaders of this movement were, in my opinion, rather dubious characters, as I showed in the words to Hacha quoted above. These leaders threatened and slandered President Hacha and members of the Czech Government among others. State Secretary Frank had known these men from former times and he wanted to support them merely in consideration of their former co-operation with him. However, I refused to do this, just as I refused the various applications of these people to visit me.

On the other hand, it is possible that Frank supported them from a fund which Hitler had placed at his disposal without my knowledge and about which Frank was under obligation not to tell me anything.

DR. VON LÜDINGHAUSEN: What attitude, now, did you take to the dissolution of parties—of political parties—and of trade unions?

VON NEURATH: That was like the control of the press, a necessity which resulted from the system, from the political system of the Reich. In any event, through this step taken by President Hacha and despite the measures taken by Germany, no country suffered less from the war than the Protectorate. The Czech people were the only ones in middle and eastern Europe who could retain their national, cultural, and economic entity almost to its full extent.

DR. VON LÜDINGHAUSEN: Now I should like to turn to the point raised by the Prosecution which is concerned with an alleged cultural suppression. What can you tell us about the handling of Czech educational affairs?

VON NEURATH: The Czech universities and other institutions of higher education, as has been stated before, were closed at Hitler's order in November 1939. Again and again, at the request of President Hacha and of the Protectorate Government, I appealed directly to Hitler to have these schools reopened. But due to the dominating position of Herr Himmler, I had no success. The consequence of the closing of the universities, of course, was that a large number of young people who otherwise would have become university students now had to look for work of a manual sort. The closing of the institutions of higher learning also had repercussions on the secondary school level. This had already been heavily burdened after the

separation of the Sudetenland in the autumn of 1938, for the entire Czech intelligentsia from this region had returned to the Czech-speaking area, or what was later the Protectorate. Hence for the young people from the secondary schools there was hardly any employment left. It was about the same situation which is now prevailing in Germany. Concerning the closing of Czech lower schools and other planned efforts to restrict Czech youth in their cultural freedom and their educational possibilities, I know nothing.

DR. VON LÜDINGHAUSEN: Did you yourself approve of the closing of Czech institutions of higher learning ordered by Hitler?

THE PRESIDENT: Dr. Von Lüdinghausen, he said that he tried to intervene and get rid of Hitler's order.

DR. VON LÜDINGHAUSEN: If that is sufficient for the Tribunal then he need not answer the question further.

THE PRESIDENT: Don't you think that is sufficient?

DR. VON LÜDINGHAUSEN: Yes, I just wanted to have it expressed once again in a somewhat stronger way; however, if the Tribunal is satisfied with the clarification of this problem, I am completely satisfied.

THE PRESIDENT: It would not make it any better if it was said twice.

DR. VON LÜDINGHAUSEN: Yes, if you—but, it is sufficient.

[Turning to the defendant.] Do you know anything about an alleged plan, mentioned in the Czech report, to turn the Czech people into a mass of workers and to rob them of their intellectual elite?

VON NEURATH: No. Only a madman could have made a statement like that.

DR. VON LÜDINGHAUSEN: The Czech indictment, or report, asserts that through your agencies, that is, with your consent and endorsement, destruction and plundering of Czech scientific institutions took place. On Page 58 of the German text, Page 55 of the English of this report, USSR-60, it says:

"The Germans occupied all universities and scientific institutions. They immediately got hold of the valuable apparatus, instruments, and scientific installations in the occupied institutions. The scientific libraries were plundered systematically and methodically. Scientific books and films were torn up or taken away. The archives of the academic Senate, the highest university authority, were torn up or burned; and the card indexes destroyed and scattered to the four winds."

What can you tell us in regard to this?

VON NEURATH: In this connection, I can say only that I never heard of any plundering and destruction of the sort described either

in Prague or later. The Czech Hochschulen, or institutions of higher education, were closed together with the universities in the year 1939 at Hitler's order. The buildings and installations of the Prague Czech University, as far as I know, were partly put at the disposal of the German university which had been closed earlier by the Czechs, since, after the Czech Hochschulen were closed, they could not be used any longer for Czech scientific purposes.

DR. VON LÜDINGHAUSEN: Do you know anything at all about this . . .

THE PRESIDENT: I did not understand that answer. As I got it, "The buildings, in part, were put at the disposal of German universities which had been closed by the Czechs."

VON NEURATH: In Prague. In Prague was the oldest German university; it had been closed by the Czechs after the last war, and after the establishing of the Protectorate it was reopened; and, as far as I know, some of the equipment and buildings were used for this German university.

THE PRESIDENT: Go on.

DR. VON LÜDINGHAUSEN: Do you know anything else about the removal of scientific equipment, collections, objects of art, and so forth?

VON NEURATH: The only case about which I have any knowledge concerned the removal of historically valuable old Gobelins from the Maltese Palace in Prague. These were removed by a member of the Foreign Office in Berlin, allegedly by order of the chief of protocol; and this was done at night, secretly, and without my knowledge or the knowledge of my officials. As soon as I learned of this I contacted the Foreign Office, and I requested immediate restoration. Whether restoration was made, I do not know; that was only in 1941, and meanwhile I had left Prague.

DR. VON LÜDINGHAUSEN: May I here . . .

VON NEURATH: I know nothing about other incidents. Apart from that, I specifically prohibited the removal of art objects from the Protectorate to the Reich.

DR. VON LÜDINGHAUSEN: In this connection, I should like to submit an extract from the interrogation of the former State Secretary Frank, dated 10 June 1945. This is Number Neurath-154 of my Document Book Number 5, and I should like to ask the Tribunal to take notice of this statement.

[Turning to the defendant.] What happened to the objects of art and the furniture, which were Czech State property and with which the Czernin Palace in Prague, which you used as your official residence, was furnished?

VON NEURATH: This house was the former official residence of the Czech Foreign Minister, and the partly valuable furnishings belonged to the Czech State. Since there was no inventory of any sort of these items, before moving in in the fall of 1939, I called in the Czech director of the castle administration and the Czech art historian, Professor Strecki; and I had a very exact inventory taken. One copy of this inventory was left in my office and another one was deposited with the administration of the castle. After I left Prague in the autumn of 1941, I had a record made through my former caretaker and again in the presence of a representative of the castle administration, Professor Strecki, that the articles which were mentioned in the inventory were actually still there.

THE PRESIDENT: I don't think we need details of the inventory, but there is one thing I should like to ask. The translation came through to me that the inventory was made in the fall of 1938. Was that right?

VON NEURATH: 1939. I only wanted to mention that naturally I did not take any of these articles.

DR. VON LÜDINGHAUSEN: Another point raised by the Czech indictment deals with the confiscation of the so-called Masaryk houses in various cities and with the destruction of Masaryk monuments and monuments erected to other personalities famous in Czech history. What do you know about that?

VON NEURATH: While I was in office, some of these Masaryk houses were closed by the Police because they were centers of agitation against Germany. The destruction or the removal of Masaryk or other Czech national monuments I had specifically prohibited. Apart from that, I expressly permitted the laying of wreaths at the grave of Masaryk at Lanyi, which Frank had prohibited, and this actually took place on a large scale.

DR. VON LÜDINGHAUSEN: It is further asserted that Czech literature was suppressed and muzzled to a large extent.

VON NEURATH: The printing and dissemination of Czech anti-German literature was prohibited of course, just as the further dissemination of English and French works was prohibited in the entire Reich during the war. Aside from that, all this material was treated according to the direct orders of the Propaganda Ministry. However, while I was in office, there were still many Czech book stores and book-publishing concerns which published books by Czech authors in large numbers and disseminated them. The selection of Czech books of every type in the book stores was considerably larger than the selection of German books.

DR. VON LÜDINGHAUSEN: Could you say anything about the suppression of Czech cultural life, of theaters, movies, and so forth, to which the Prosecution refers?

VON NEURATH: There was no question at all of a limitation of the cultural autonomy of the Czechs, aside from the university problem. In Prague a great number of large Czech theaters of every description were open all the time, especially the Czech opera and several theaters. On the other hand there was only one permanent German theater with daily performances. There was a constant production of many Czech plays and operas, and the same applied to music. The well-known Czech Philharmonic Orchestra at Prague played Czech music primarily and was absolutely independent regarding its programs.

THE PRESIDENT: Dr. Lüdinghausen, we don't need details. The defendant says that theaters and cinema theaters were allowed and there was only one German theater. We don't want any further details about it.

DR. LÜDINGHAUSEN: Very well, Mr. President. I asked about these matters only because they are rather extensively dealt with in the Indictment.

[Turning to the defendant.] And what about the film industry, Herr Von Neurath?

VON NEURATH: The same applied to the movie industry. It was even especially active.

DR. VON LÜDINGHAUSEN: Now, I should like to turn to the alleged suppression of religious freedom, of which you are being accused in the Czech indictment. The Czech indictment speaks of a wave of persecution which inundated the churches and which started immediately when the German troops marched in to occupy the country. What about that?

VON NEURATH: A systematic persecution of the churches is quite out of the question. The population was quite free as concerns public worship, and I certainly would not have tolerated any restrictions along this line. The former Under State Secretary Von Burgsdorff has testified to that point here already. It may be true that in individual cases pilgrimages or certain religious processions were prohibited by the Police, even though I personally do not remember it clearly. But that took place only because certain pilgrimages, consisting of many thousands of people, were exploited as political demonstrations at which anti-German speeches were made. At any rate, that had actually occurred several times and had been brought to my knowledge. It is true that a number of clerics were arrested in connection with the action at the beginning of the war, which we have already mentioned here. But these

arrests did not take place because the men were clerics but because they were active political opponents or people who were political suspects. In cases of this nature I made special efforts to have these people released.

My personal connections with the archbishop of Prague were absolutely correct and amicable. He and the archbishop of Olmütz specifically thanked me for my intervention on behalf of the Church, as I remember distinctly. I prevented any measure against the public worship of the Jews. Every synagogue was open to the time I left in the autumn of 1941.

DR. VON LÜDINGHAUSEN: In connection with the last point, I should like to put one more question about the position of Jews in the Protectorate. What can you tell us about it?

VON NEURATH: The legal position of the Jews had to be coordinated with the position of the Jews in the Reich, according to instructions from Berlin. The directives with regard to this had been sent to me already in April of 1939. Through all sorts of inquiries addressed to Berlin, I tried and succeeded in not having the laws go into effect until June 1939, so as to give the Jews the opportunity to prepare themselves for the imminent introduction of these laws.

The so-called Nuremberg Laws were introduced into the Protectorate, too, at that time. Thereby the Jews were removed from public life and from leading positions in the economic life. However, arrests on a large scale did not take place. There were also no excesses against Jews, except in a few single instances. The camp at Theresienstadt was not erected until long after my time of office, and I prevented the erection of other concentration camps in the Protectorate, too.

DR. VON LÜDINGHAUSEN: The Czech report accuses you of personally carrying through anti-Jewish measures. They maintain that, first of all, you charged the Czech Government, that is to say the autonomous government, with the carrying through of the anti-Jewish laws and that when Ministerpräsident Elias refused to do so, you personally took the necessary steps.

VON NEURATH: As I said just now, the introduction of the anti-Jewish laws came about on Hitler's direct order, that is to say through the competent authorities in Berlin. The representation...

THE PRESIDENT: Dr. Von Lüdinghausen, why do you want to go over all this again? The defendant has given the evidence that he succeeded in putting off the laws until June 1939 and that then the Nuremberg Laws were introduced. He has given us the various qualifications which he said he made; and then you read him the

Czech report and try to get him to go over it all again, it seems to me. It is now quarter past 11.

DR. VON LÜDINGHAUSEN: All right, then, I shall consider the first question sufficiently answered and we shall not deal with the matter of confiscation either.

[Turning to the defendant.] The Czech report further accuses you of the dissolution of the organizations of the YMCA and YWCA, and the confiscation of their property in favor of German organizations.

VON NEURATH: I must admit that I do not recall these confiscations at all. If this dissolution and confiscation took place before I left, it must have been a police measure only.

DR. VON LÜDINGHAUSEN: The Czech report further mentions the destruction of Czech economic life and the systematic plundering of Czech stocks of raw materials and accuses you in that regard. What are the facts with regard to that?

VON NEURATH: With the establishment of the Protectorate, the Czech economy almost automatically was incorporated into the German economy. The export trade, for which Czech industries had worked to a considerable degree, was stopped for the duration of the war, that is to say, it had to trade with the Reich.

The Czech heavy industries, especially the Skoda Works and the arms industry, as direct war industries, were taken over to supplement German armaments production by the Delegate for the Four Year Plan.

At the beginning I tried especially to avoid selling out of the Protectorate, which would have been hard on the population. An effective means for that purpose was the maintenance of the customs boundaries which existed between Czechoslovakia and Germany. After heated conflicts with the Berlin economic departments, I succeeded in having the customs barrier maintained up to October 1940, for another year and a half, though it had already been rescinded on 16 March 1939.

I believe I am also accused of having been responsible for the removal of raw materials and the like. In that connection I should like to say that the office of the Delegate for the Four Year Plan was the only authority which could take such measures.

DR. VON LÜDINGHAUSEN: In this connection I should like to refer to the decree which has already been submitted, the decree dated 16 March 1939, Number Neurath-144 of my Document Book Number 5. In this decree I should like to call special attention to Articles 9 and 10.

[Turning to the defendant.] You are further charged with and accused of the fact that the rate of exchange of Czech kronen to

marks was established as 10 to 1, for in this way the buying out of Czechoslovakian goods was said to have been favored. Are you responsible for the establishing of this rate?

VON NEURATH: No. In the decree of 16 March 1939 dealing with the establishment of the Protectorate—a decree in the drafting of which I did not take part in any way—it was already stipulated that the rate of exchange would be determined by the Reich Government. As far as I know, the same rate was the customary one at the stock exchange and in trade before the incorporation of the Sudetenland into the Reich as well as afterwards. An official rate had to be determined, of course, and this was done through the decree issued by the authorities in Berlin.

DR. VON LÜDINGHAUSEN: In connection with the decree dated 16 March 1939, which was just mentioned and which is to be found under Number Neurath-144 of my Document Book Number 5, I should like to call your attention especially to Article 10 which sets forth: "The ratio of the two currencies, the Czechoslovakian and the German, to each other will be determined by the Reich Government."

[Turning to the defendant.] The Czech report further accuses you of the fact that railroad rails allegedly were removed and taken to Germany. Do you know anything about this matter?

VON NEURATH: I know nothing about this matter and I think this is certainly an error. I know only that in the year 1940 there were negotiations between the German Reich railroads and the Czech State railroads concerning the borrowing of railroad cars and of engines against remuneration. But the stipulation in this case was that this rolling stock could be spared by the transport system in the Protectorate. Aside from that, the railroads in the Protectorate were not under my supervision; but they were directly subordinate to the Transportation Ministry in Berlin.

DR. VON LÜDINGHAUSEN: I should like to refer to Article 8 of the decree which I have just mentioned, a decree which is found under Number Neurath-144 of my Document Book 5.

[Turning to the defendant.] It is further asserted that the Reich Commissioner at the Prague National Bank stopped all payments for abroad and confiscated all the stocks of gold and of foreign currencies of the National Bank.

Did you have anything to do with this matter?

VON NEURATH: I had nothing at all to do with these matters. The Reich Commissioner for the Prague National Bank was appointed directly by the Reichsbank in Berlin, or rather by the Ministry of Finance; and he got his orders from them.

DR. VON LÜDINGHAUSEN: The Czech report states further that you are to be blamed, or are to be made co-responsible, for the alleged confiscation of the Czech banks and industrial undertakings by the German economy.

VON NEURATH: The German banks, and to an extent the German industries as well, had a real interest in getting a firm foothold in the economic life of the Protectorate. However, this was something which applied long before the establishment of the Protectorate. Therefore it was not strange that the big German banks, in particular, used the opportunity to acquire Czech stocks and securities; and in this way the controlling interest in two Czech banks together with their industrial holdings were transferred to German hands in a manner which was economically quite correct.

I believe the Union Bank is mentioned in the Czech report, a bank which was taken over by the Deutsche Bank; and I know in this case quite coincidentally that the initiative did not originate on the German side, but rather from the Czech Union Bank itself. But neither I nor my agencies tried to foster this development in any way. Apart from that all these enterprises had Czech general directors, and in very few cases were German officials taken in. By far the largest part of all industrial enterprises remained purely Czech as before.

DR. VON LÜDINGHAUSEN: What was the situation with regard to the alleged coercive measures which the Prosecution maintains were used against Czech agriculture? Can you tell something about this and about your attitude and the measures you took?

VON NEURATH: This chapter belongs to the whole scheme of plans by the Party and SS, relative to Germanization, which have already been mentioned. The instrument of this German settlement policy was to be the Czech Land Office (Bodenamt), which in itself was a Czech office, which was a survival of the former Czech office for agrarian reform. Himmler first of all assigned to the Land Office an SS Führer as its provisional leader.

THE PRESIDENT: The Tribunal does not want to know all the details about this. The Czech report apparently alleges coercion in agriculture. The defendant says that it was due, if any, to the Party and the SS; and he had nothing to do with it. What is the object of his giving us all these details about the history of agriculture in Czechoslovakia? You must realize the Tribunal...

DR. VON LÜDINGHAUSEN: Yes, but I should like to point out one thing only.

[Turning to the defendant.] The Land Office, which was acting in the interests of National Socialism, was restaffed by you with

new personnel after a long struggle. I considered it important to clarify this too.

Mr. President, I should like to make a general remark. I said yesterday that my examination would last another hour. But yesterday, when I left the session, I found another document book to the indictment which has forced me to deal in greater detail with individual questions here. And for this reason, a reason which I could not foresee, I will have to take additional time.

THE PRESIDENT: Very well, the Tribunal has not taken up the question of time at the moment.

Why do you have to go into some questions of—I do not know what the word is, "Amt"—to do with agriculture? Why do you want to go into that? He, the defendant, said he had nothing to do with it.

DR. VON LÜDINGHAUSEN: Yes, in a way he was connected with it, Mr. President, insofar as these agricultural efforts were made through the Land Office.

THE PRESIDENT: If he was connected with it let him explain it. I thought he said the Party and the SS did it.

DR. VON LÜDINGHAUSEN: Yes, but via the Land Office, and he prevented this.

Perhaps you can tell us briefly about this, Herr Von Neurath.

VON NEURATH: I believe that according to the statements of the President of the Court, that is hardly necessary. As a matter of fact, I had no direct connection with the Land Office. I only succeeded in having a rather unpleasant leader of this office, a member of the SS, removed.

DR. VON LÜDINGHAUSEN: During your period of office as Reich Protector, was there any compulsory transportation of workers to the Reich?

VON NEURATH: No. In this connection I shall also be brief.

Compulsory labor did not exist at all while I was in the Protectorate. There was an emergency service law which was issued by the Protectorate Government and applied to younger men who were employed in urgently needed work in the public interest in the Protectorate. Compulsory deportations of workers to the Reich did not occur in my time. On the contrary, many young people reported voluntarily for work in Germany, because labor conditions and wages were better in the Reich than in the Protectorate at that time.

DR. VON LÜDINGHAUSEN: How did your resignation from office—and this is my last question—your leaving your office as Reich Protector come about?

VON NEURATH: First of all I should like to tell you why I remained as long as I did, in spite of all these occurrences and difficulties. The reason for it was that I was convinced, and I am still convinced today, that I had to stay as long as I could reconcile this with my conscience, in order to prevent this country, which was entrusted to Germany, from coming under the definite domination of the SS. Everything that happened to the country after my departure in 1941 I had actually prevented through my presence; and even if my work was ever so much limited, I believe that by remaining I not only rendered a service to my own country but to the Czech people as well, and under the same circumstances I would not act differently even today.

Apart from this I believed that in time of war, especially, I should leave such a difficult and responsible office only in case of the utmost necessity. The crew of a ship does not go below deck and fold their hands in their laps if the ship is in danger.

That I could not comply with the wishes of the Czechs 100 per cent is something that will be understood by everybody who had to deal with politics in a practical and not merely theoretical way. And so I believe that by my persevering in office I prevented much of the misery which befell the Czech people after I left. This opinion was also shared by a large number of the Czech population, as I could gather from the numerous letters which were addressed to me by the Czech people later on.

DR. VON LÜDINGHAUSEN: And how did it happen that you left, that you resigned from your office?

VON NEURATH: On 23 September 1941 I received a telephone call from Hitler asking me to come to headquarters immediately. There he told me that I was being too mild with the Czechs and that this state of affairs could not be continued. He told me that he had decided to adopt severe measures against the Czech resistance movement and that for this purpose the notorious Obergruppenführer Heydrich would be sent to Prague. I did everything in my power to dissuade him from this but was not successful. Thereupon I asked permission to resign, since I could never be responsible for any activity of Heydrich's in Prague. Hitler refused my resignation but permitted me to go on leave. I flew back to Prague and on the following day I continued my journey home. At the same hour that I left Prague, Heydrich arrived.

Then I wrote to Hitler from my home and again asked to resign immediately. When in spite of a reminder I did not receive any answer I repeated my request, and at the same time I explained that under no circumstances would I return to Prague, that I had dissolved my office and I refused to act as Reich Protector from now on. I was not officially relieved from my office until October 1943.

DR. VON LÜDINGHAUSEN: Mr. President, I should like to conclude my examination of the defendant with a brief quotation from the Czech indictment.

THE PRESIDENT: Just one moment, was your going on leave made public?

VON NEURATH: Yes.

DR. VON LÜDINGHAUSEN: Yes, I was just going to quote that, Mr. President. In that text of the Czech indictment it says:

"When at last in the second half of September the underground Czech revolt committees, with the help of the BBC, began a successful boycott campaign against the German controlled press, the German authorities seized the opportunity to aim a heavy blow at the Czech population. On 27 September 1941 radio station Prague gave out the following report:

"Reich Minister Baron von Neurath, Reich Protector of Bohemia and Moravia, has found it necessary to ask the Führer for a long leave in order to restore his impaired health.'"

Then in conclusion it says:

"Under these circumstances the Führer agreed to the request of the Reich Protector and charged SS Obergruppenführer Heydrich with the direction of the office of Reich Protector of Bohemia and Moravia during the time of the illness of Reich Minister Von Neurath."

With this my examination is ended, Mr. President.

THE PRESIDENT: From September 1941 until October 1943, did you live on your own estates, or what?

VON NEURATH: Yes, Mr. President.

DR. VON LÜDINGHAUSEN: My examination is over.

THE PRESIDENT: The Court will adjourn now.

[A recess was taken.]

THE PRESIDENT: Do any of the defendants' counsel wish to ask the witness any questions?

DR. EGON KUBUSCHOK (Counsel for Defendant Von Papen): Is it known to you that immediately before Germany left the League of Nations, Von Papen followed Hitler to Munich to persuade him to remain in the League of Nations?

VON NEURATH: Yes, that is known to me. In fact, I myself induced him to do so.

DR. KUBUSCHOK: During the time he was Vice Chancellor in 1933 and 1934, did Von Papen protest in the Cabinet against unfriendly acts of the German policy toward Austria, as for instance, the introduction of the 1,000-mark embargo?

VON NEURATH: Yes, that line was continuously followed by him and by other ministers and naturally by myself, too.

DR. KUBUSCHOK: Did Hitler mention to you that this attitude of Papen's in the Austrian problem induced him to transfer the mission in Vienna to Papen after the murder of Dollfuss?

VON NEURATH: Yes, Hitler did speak about that.

DR. KUBUSCHOK: Did Hitler discuss with you the reasons why he addressed the letter of 26 July 1934 to Papen, announcing that Papen would be sent to Austria?

VON NEURATH: Yes, but the way it happened was as follows: When Hitler told me about his intention to send Papen to Vienna, I reminded him that, in order to give the latter any weight, he should first of all, after the events of 30 June, clear up the relationship between himself, Hitler, and Papen, and clear it up publicly. This letter which was read here in Court can be traced to that.

DR. KUBUSCHOK: In 1937 you paid a visit to the Austrian Government which led to demonstrations. Were you and Von Papen surprised by these demonstrations, and did you agree with them?

VON NEURATH: The demonstrations were a complete surprise to me, especially because of their tremendous size. They certainly did not please me, because they cast a certain shadow on the discussions between Herr Von Schuschnigg and myself.

DR. KUBUSCHOK: Then, the last question: Before Schleicher's Government was formed there was a meeting of the Cabinet on 2 December 1932. The day before Papen had been given orders by Hindenburg to send the Parliament on leave and to form a new government. Is it correct that Papen reported on this matter to the Cabinet and that Schleicher, as Reichswehrminister, made a statement to the effect that this would lead to civil war and that the forces of the Wehrmacht were too weak to cope with such a civil war?

VON NEURATH: Yes, I remember this occurrence very accurately. We were all somewhat surprised at Schleicher's statement. However it was so well founded that we had to accept it as true.

DR. KUBUSCHOK: Thank you.

THE PRESIDENT: Do any other defendants' counsel wish to ask any questions?

[There was no response.]

The Prosecution?

SIR DAVID MAXWELL-FYFE (Deputy Chief Prosecutor for the United Kingdom): At the time about which Dr. Kubuschok has just been asking you, in the second half of 1932, did you know that President Von Hindenburg, the Defendant Von Papen, and General Von Schleicher were discussing and considering very hard what would be the best method of dealing with the Nazi Party?

VON NEURATH: No. As I have already testified, I had no connection in that respect. I knew absolutely nothing about all these negotiations.

SIR DAVID MAXWELL-FYFE: I want to make it clear, I am not suggesting you were in the negotiations. But didn't you know that the problem as to how to deal with the Nazi Party was exercising the minds of the President and the Defendant Von Papen and General Von Schleicher; that it was a very urgent problem in their minds?

VON NEURATH: Yes, I knew that.

SIR DAVID MAXWELL-FYFE: And again, do not think, Defendant, I am suggesting that you were in the negotiations. You may take it—well, I will make all the suggestions perfectly clear.

You knew that in the end the method which commended itself to President Von Hindenburg, to the Defendant Von Papen, and to General Von Schleicher was that there should be a government with Hitler as Chancellor, but well brigaded by conservative elements, in harness with conservative elements; that was the plan that was ultimately resolved on? You knew that much, I suppose, didn't you?

VON NEURATH: Yes, but the plan was not quite like that. At that time, the time you are talking about, there was only mention of the fact that we were obliged to bring the Nazi Party into the Government.

SIR DAVID MAXWELL-FYFE: But eventually, when the Nazi Party came in, on 30 January 1933, the plan was that it would be well harnessed to conservative elements. That was the idea in President Von Hindenburg's mind, was it not?

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: And you were one of the conservative and stable elements, if I understand you rightly; isn't that so?

VON NEURATH: Yes. It has been explained here that it was the special wish of President Von Hindenburg that I should remain in the Government.

SIR DAVID MAXWELL-FYFE: In order to keep Hitler's Government peace-loving and respectable. Is that a fair way of putting it?

VON NEURATH: Yes, so as to prevent Hitler's revolutionary movement in general from exercising their methods too much within the Government, too.

SIR DAVID MAXWELL-FYFE: And, Defendant, you have told us that up to this time you had been a diplomatist. When you became a Minister, did you not think that you had some responsibility for keeping the Government respectable and peace-loving as a Minister of the Reich?

VON NEURATH: To be sure, but the question was only how far it was in my power to accomplish this.

SIR DAVID MAXWELL-FYFE: I don't want to go into the workings of your mind too much, I just want to get this clear. You realized that as a Foreign Minister, and as a well-known figure to all the Chancelleries of Europe, that your presence in the Government would be taken throughout Europe as a sign of your approval and your responsibility for what the Government did, did you not?

VON NEURATH: I doubt that very much. Perhaps one might have hoped so.

SIR DAVID MAXWELL-FYFE: Well now, just let's consider it. Is it your case that up to November of 1937 you were perfectly satisfied with the peace-loving intentions and respectability of the Government?

VON NEURATH: I was convinced of the peaceful intentions of the Government. I have already stated that. Whether I was satisfied with the methods...

SIR DAVID MAXWELL-FYFE: What about respectability? By "respectability" I mean the general standard of decency that is required by any government, under which its people are going to be reasonably happy and contented. Were you satisfied with that?

VON NEURATH: I was by no means in agreement with the methods, above all in connection with the domestic policy.

SIR DAVID MAXWELL-FYFE: Well, I would just like to look at that for a moment. Did you know about the "Brown Terror" in March of 1933, some 6 weeks after the Government was formed?

VON NEURATH: I only knew of the boycott against the Jews, nothing else.

SIR DAVID MAXWELL-FYFE: Do you remember the affidavit that has been put in evidence here, made by the American Consul, Mr. Geist, Document 1759-PS, Exhibit USA-420?

VON NEURATH: May I see it?

SIR DAVID MAXWELL-FYFE: Well, just let me remind you. It is a long affidavit, and there are only one or two parts I want to put to you.

Mr. Geist gives detailed particulars of the bad treatment, the beating, and assaulting, and insulting, and so on, of Jews as early as March 1933. Did you know about that?

VON NEURATH: I know of these occurrences; I do not know this affidavit, I have not seen it, but I do know about the occurrences from complaints made by foreign diplomatic representatives. And according to them—and as concerns my attitude to these events—I repeatedly applied to Hitler and urgently implored him to have them stopped. But I do not know anything more about the details.

SIR DAVID MAXWELL-FYFE: Just leaving that affidavit for the moment, as Foreign Minister, you would receive—you did receive, did you not, a synopsis or account of what was appearing in the foreign press?

VON NEURATH: Yes, that I did but whether I received all of those things I do not know.

SIR DAVID MAXWELL-FYFE: Just let me take an example. You had been Ambassador at the Court of St. James from 1930 to 1932, if my recollection is right; had you not?

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: And you realized—whether you agreed with what was in them or not—the *London Times* and the *Manchester Guardian* were newspapers that had a great deal of influence in England, didn't you?

VON NEURATH: Yes, yes.

SIR DAVID MAXWELL-FYFE: Did you know that in April 1933 both these newspapers were full of the most terrible stories of the ill-treatment of Jews, Social Democrats, and Communists in Germany?

VON NEURATH: Yes, that is quite possible. I cannot remember it any more now; but those were certainly the very cases which I brought up before Hitler, drawing his attention to the effect that this was having abroad.

SIR DAVID MAXWELL-FYFE: Well, I just want to consider the extent which these papers were alleging. As early as the 12th of April 1933 the *Manchester Guardian* was saying:

"The inquirer, by digging only an inch below the surface, which to the casual observer may seem tranquil enough, will, in city after city, village after village, discover such an abundance of barbarism committed by the Brown Shirts that modern analogies fail..."—describing them as an instrument—"... of a Terror that although wanton is systematic—wanton in the sense that unlike a revolutionary Terror it is

imposed by no outward necessity, and systematic in the sense that it is an organic part of the Hitlerite regime."

Did you know that this and quotations like these were appearing in responsible British papers?

My Lord, that is D-911, which is the collection of extracts and, with Mr. Wurm's affidavit, will be Exhibit GB-512.

[Turning to the defendant.] Did you know that was the line that was being taken, that it was systematic in the sense of being an organic part of the Hitler regime?

VON NEURATH: No, in that sense certainly not.

SIR DAVID MAXWELL-FYFE: Did you know that the British paper, the *Manchester Guardian*, was quoting, "...an eminent German conservative, who is in close touch with the Nationalist members of the German Government, and certainly more sympathetic to the Right than to the Left..." has given the number of victims as 20,000—as many as 20,000 in April? Did you know that the figure was being put that high?

VON NEURATH: No, and I do not believe it, either.

SIR DAVID MAXWELL-FYFE: Well, let us see what the German press was saying.

On the 24th of April 1933 the *Times* was quoting the *Hamburger Fremdenblatt*, which, in turn, was invoking official sources and stating that there were 18,000 Communists in prison in the Reich and that the 10,000 prisoners in Prussia included many social intellectuals and others.

Would the *Hamburger Fremdenblatt*, which had a very long career as a newspaper, if it misquoted official sources under your Government in April 1933, have misrepresented the position? It would not, would it?

VON NEURATH: That I do not know, but I do know that a lot of trouble is always being stirred up by means of figures.

SIR DAVID MAXWELL-FYFE: But Defendant, here is a figure quoted, as far as I know, by a responsible Hamburg paper, as an official figure, requoted by the London *Times*, which is the principal paper in England. Wasn't that sufficiently serious for you to bring it up in the Cabinet?

VON NEURATH: I am very sorry, but with all respect to the papers—and even the London papers—they do not always tell the truth.

SIR DAVID MAXWELL-FYFE: No. That is a perfectly reasonable comment. Newspapers, like everyone else, are misinformed. But when you had a widespread account of terrible conditions giving large numbers, did you not, as one of the respectable elements

in this Government, think that it was worthy of bringing it up in Cabinet and finding out whether it was true or not?

VON NEURATH: How do you know that I did not do that?

SIR DAVID MAXWELL-FYFE: That is what I am asking. Did you bring it up, and what was the result when you did?

VON NEURATH: I have already told you before that I always remonstrated about these incidents, with Hitler—not in the Cabinet, but with Hitler.

SIR DAVID MAXWELL-FYFE: That is not what I asked you. You see, Defendant, what I asked you was why you did not bring it up in the Cabinet. Here was a Cabinet established with conservative elements to keep it respectable. Why did you not bring it up in the Cabinet and try and get the support of Herr Von Papen, Herr Hugenberg, and all the other conservative gentlemen in the Cabinet of whom we have heard? Why did you not bring it up?

VON NEURATH: For the very simple reason that it seemed to be more effective to tell Hitler directly.

SIR DAVID MAXWELL-FYFE: In April 1933, some 2 months after it was formed, are you telling the Tribunal that you did not think it was worth while to bring a matter up in the Reich Cabinet? Within 2 months of Hitler coming into power, it had become so "Führer-principled" that you could not bring it up in the Cabinet?

VON NEURATH: I repeat—and after all I alone should be the one to judge—that I considered direct representations made to Hitler more effective.

SIR DAVID MAXWELL-FYFE: I see. Well, now, I just want—I do not suppose you were interested, but did you know about the putting into concentration camps of any of the gentlemen that I mentioned to the Defendant Von Papen: Herr Von Ossietzski or Herr Mühsam or Dr. Hermann Dunker, or any of the other left-wing writers and lawyers and politicians? Did you know that they had gone to a concentration camp from which they never returned?

VON NEURATH: No.

SIR DAVID MAXWELL-FYFE: You did not know at all?

VON NEURATH: No.

SIR DAVID MAXWELL-FYFE: At any rate, you knew—as your documents have shown—when you went to London in June, you knew very well how, at any rate, foreign opinion had crystallized against Germany because of the treatment of the Jews and the opposition parties, did you not, when you went to the world economic conference in June?

VON NEURATH: Yes. That was mentioned by me in a report that was read in Court.

SIR DAVID MAXWELL-FYFE: Now you say that your reaction was to go to Hitler and protest. I just want to look at what the existing documents show that you did. Now, let us take April, first of all. Would you look at Document D-794?

[*The document was handed to the defendant.*]

My Lord, it is Document Book 12a, Page 8. It will be Exhibit GB-513.

Now, this is a letter from you to Hitler dated the 2d of April 1933:

"The Italian Ambassador telephoned me last night and informed me that Mussolini had declared himself prepared to deny, through the Italian delegations abroad, all news about the persecution of the Jews in Germany that had been distorted by propaganda, if we should consider this course useful. I thanked Herr Cerruti, also on your behalf, and told him that we would be glad to accept his offer.

"I regard this friendly gesture of Mussolini's as important enough to bring it to your notice."

What did you think had been distorted by propaganda?

VON NEURATH: Yes, please read this part. Here it says, "the news had been distorted by propaganda." That is what it is about.

SIR DAVID MAXWELL-FYFE: That is what I was so interested in, Defendant. What did you think had been distorted, and how much knowledge had you, so that you could decide whether the news had been distorted or not?

VON NEURATH: That I really cannot tell you any more today.

SIR DAVID MAXWELL-FYFE: You knew that Jews had been beaten, killed, taken away from their families, and put into concentration camps and that their property had been destroyed and was beginning to be sold under value. You knew that all these things were happening, did you not?

VON NEURATH: No; certainly not at that time. That they were beaten, yes, that I had heard; but at the time no Jews were murdered or perhaps only once in one individual case.

SIR DAVID MAXWELL-FYFE: Well, so you see that the *Times* and *Manchester Guardian* of that date gave the most circumstantial examples of typical murders of Jews? You must have seen that; you must have seen that the foreign press was saying it. Why did you think that it was distorted? What inquiry did you make to discover whether it was distorted?

VON NEURATH: Who—who—who—who gave me information about—about—about—murders?

SIR DAVID MAXWELL-FYFE: I am putting it to you that it was in the foreign press. I have given you the two examples from the press of my own country; and obviously from what Signor Mussolini was saying, it was in the press of other countries. You must have known what they were saying. What inquiries did you make to find out whether it was true or not?

VON NEURATH: I used the only way possible for me, namely through the police authorities concerned.

SIR DAVID MAXWELL-FYFE: Did you ask Himmler, or did you ask the Defendant Göring?

VON NEURATH: Most certainly not.

SIR DAVID MAXWELL-FYFE: What? You asked Himmler? Or did you ask the Defendant Göring? Why not? Why not? He was the head, inventing the Gestapo and the concentration camps at that time. He would have been a very good man to ask, would he not?

VON NEURATH: The man who could have given me information was the chief, the supreme head of the Police, and it was in no way personally...

SIR DAVID MAXWELL-FYFE: Did you ask the Defendant Frick?

VON NEURATH: In any case, I did not ask him personally.

SIR DAVID MAXWELL-FYFE: Now...

VON NEURATH: Certainly not personally.

SIR DAVID MAXWELL-FYFE: May I suggest to you that I do not want to take up time? Why did you not take the trouble to ask Göring or Frick or anyone who could have given you, as I suggest, proper information?

Would you look at Document 3893-PS?

[The document was handed to the defendant.]

The Tribunal will find it at Page 128 of Document Book 12a. My Lord, that will become Exhibit GB-514.

This is the *Völkischer Beobachter*, quoting you on the 17th of September 1933, on the Jewish question:

“The Minister had no doubt that the stupid talk abroad about purely internal German affairs, as for example the Jewish problem, will quickly be silenced if one realizes that the necessary cleaning up of public life must temporarily entail individual cases of personal hardship but that nevertheless it served only to establish all the more firmly the authority of justice and law in Germany.”

Was that your view in September 1933, of the action against the Jews and against the left-wing sympathizers up to that time, that it was a "necessary cleaning up of public life," which would, of course, temporarily involve "individual cases" of hardship, and that was necessary "more firmly" to establish "the authority of justice and law in Germany"? Was that your view?

VON NEURATH: I told you during—during—during my—I think it was the day before yesterday in answer to the question of what my attitude was toward the Jewish problem, that in view of the inundation and domination of public life in Germany by Jews which occurred after the last war, I thought it absolutely right to have these things either eliminated or restricted. That is what I am referring to here.

SIR DAVID MAXWELL-FYFE: So that it is right—I mean, you are not running away from what you said on the 17th of September 1933—that you thought the treatment of the Jews in 1933 a "necessary cleaning up of public life" in Germany? Are we to take it that your view then is your view now, and you do not deviate from it at all? Is that right?

VON NEURATH: That is still my view today, do you not see, only it should have been carried out by different methods.

SIR DAVID MAXWELL-FYFE: All right. Well, we will not go into discussions of it.

Am I to take it that you knew and approved of the break-down of political opposition?

VON NEURATH: No, that is...

SIR DAVID MAXWELL-FYFE: Well, then, let us take it by stages. Did you believe in the prescribing, the making illegal of the Communist Party?

VON NEURATH: In those days, most certainly, because you have heard, have you not, that we were facing civil war.

SIR DAVID MAXWELL-FYFE: Very well. You agreed with that. Did you agree with the breaking down and making illegal of the trade unions?

VON NEURATH: No.

SIR DAVID MAXWELL-FYFE: What did you do to protest against the breaking down of the trade unions?

VON NEURATH: That was in a sphere—this sphere did not concern me at all. I was Foreign Minister and not Minister of the Interior.

SIR DAVID MAXWELL-FYFE: I see. Well, again, I am not going to argue with you. You thought it was perfectly right as

Foreign Minister to remain and give your support and authority to a government which was doing something of which you disapproved, like breaking down the trade union movement. Is that how we are to take it?

VON NEURATH: Yes. Did you ever hear that a minister . . .

SIR DAVID MAXWELL-FYFE: Now what about . . .

VON NEURATH: I would like to say, did you ever hear that every cabinet minister must leave the cabinet if he does not agree with one particular thing?

SIR DAVID MAXWELL-FYFE: Every cabinet minister for whom I have any respect left a cabinet if it did something of which he morally disapproved, and I understood from you that you morally disapproved of the breaking down of the trade union movement. If I am wrong, correct it. If you did not disapprove, say so.

VON NEURATH: I did not think that it was immoral. It was a political measure, but not an immoral one.

SIR DAVID MAXWELL-FYFE: Then let us take Number 3, take the Social Democratic Party, that was a party which had taken a great share in the Government of Germany and of Prussia for the years since the war. Did you think it right, morally right, to make that party illegal, and unable to take any further share in the carrying on of the country?

VON NEURATH: No, certainly not. But I do not at all know . . .

SIR DAVID MAXWELL-FYFE: Let us get it clear. Did you think it right or not?

VON NEURATH: I just told you "No" but I do not at all know whether you . . .

SIR DAVID MAXWELL-FYFE: What did you do to protest against that? What did you do to protest against the dissolution of the Social Democratic Party?

VON NEURATH: The most I could do against this dissolution was to state my objections.

SIR DAVID MAXWELL-FYFE: To whom did you state your objection against the dissolution of the Social Democratic Party?

VON NEURATH: To Hitler, again and again.

SIR DAVID MAXWELL-FYFE: Again and again you didn't raise the dissolution of the parties, the opposition parties? You never raised that in the Cabinet; that is right, isn't it?

VON NEURATH: I cannot remember whether this question was discussed in the Cabinet; I do not know any more.

SIR DAVID MAXWELL-FYFE: I see. All right. Let us just pass to another aspect and still on 1933. I just want you to have in mind what was happening in 1933. Did you know that after you had announced that Germany was leaving the Disarmament Conference and the League of Nations, that orders for military preparations to deal with the possibility of war, as consequent on that action had been got out?

VON NEURATH: No. In 1932-1933 I knew nothing about it.

SIR DAVID MAXWELL-FYFE: In 1933, yes, it started—in Document C-140, Exhibit USA-51—on the 25th of October 1933. Now, Defendant, you were Foreign Minister. Are you telling the Tribunal that neither had Hitler nor Marshal Von Blomberg—I think he was Reichswehrminister—that none of them told you, as a result of this action, “we shall have to have the preparations ready in case sanctions, including military sanctions, are imposed on Germany.” Did none of them tell you that that was to be the result of your move in foreign policy?

VON NEURATH: No, nor was there any action to be feared.

SIR DAVID MAXWELL-FYFE: I see. Well, now it is rather—you will agree with me—it is rather odd not to inform the Foreign Minister of the possible consequences of his policy in the military preparations you are taking to deal with it; it is rather odd, isn't it in any system of government, of totalitarian, democratic, or anything you like, it is rather odd not to tell the Foreign Minister what you are doing in the way of military preparations, to deal with his policy, isn't it?

VON NEURATH: I certainly had to decide on the opinion as to whether any danger threatened from our withdrawal from the League of Nations and the Disarmament Conference, that is, I had to decide whether this might have any probable consequences. The military had their own opinion, and presumably—but I do not know, anyhow, I was not informed; but there were certain discussions amongst the General Staff, I assume.

SIR DAVID MAXWELL-FYFE: Well, now, I just want to sum up for 1933 and I want to do that quickly. May I take it, that up to the end of 1933, despite these matters which I have put to you, that you were perfectly satisfied with the respectability and peace-loving intentions of the Government; is that right?

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: Well, now, just let us turn to 1934. You remember your conversation with Mr. Dodd, the American Ambassador, which you mentioned in your Document Book Number 1, at Page 54. It was on the 28th of May 1934; and Mr. Dodd

had told you, apparently, what he had said to Hitler about the way Americans are trying to control profiteering by great financial interests. He said he was glad that—then he says that you said that you were glad that he had informed Hitler and then Mr. Dodd added “that the Chancellor had not agreed with me.” Then he says:

“Von Neurath was silent for a moment after my remarks. It was plain that he was entirely of my way of thinking. He begged me to say to Washington that the outbreak was entirely contrary to the German Government purpose, but he did not commit himself on Hitler.”

What did you mean by that, “. . . that the outbreak against Jews was entirely contrary to German Government purpose . . .”?

VON NEURATH: By that I wanted to say that the members of the Cabinet, the majority of them, were against these methods. Apart from that, I can add that I had just asked Mr. Dodd to go and see Hitler personally so as to give backing to the suggestions I was making to Hitler. I took him there.

SIR DAVID MAXWELL-FYFE: But did you know, in May 1934, that the German Government was going in for systematic and virulent anti-Semitism, didn't you know that?

VON NEURATH: Anti-Semitic propaganda, I knew mainly from Herr Goebbels' speeches.

SIR DAVID MAXWELL-FYFE: Yes; well, let us pass to something a little more concrete. Had you any reason for disliking General Von Schleicher or General Von Bredow?

VON NEURATH: No.

SIR DAVID MAXWELL-FYFE: What was the effect on your mind of these two gentlemen and Frau Von Schleicher being killed in the blood purge of the 30th of June 1934?

VON NEURATH: I hardly need to answer that. Of course, I was repulsed by it, that is clear; but then I told you the other day that unfortunately in the case of such a revolt, innocent people always have to suffer as well.

SIR DAVID MAXWELL-FYFE: I see. But just let us get it clear. You told the Tribunal the other day that you thought—and had some reason for thinking—that there was a movement in the SA, that is, a movement led by Röhm and Ernst, and I suppose people that you would consider undesirable, of that sort. What reason had you to suppose that General Von Schleicher and General Von Bredow had been in a conspiracy, if any?

VON NEURATH: I had no reason at all, and I do not believe today that they were plotting.

SIR DAVID MAXWELL-FYFE: Did you hear about the unfortunate way in which Herr Von Papen kept on losing secretaries at the same time? You remember, you know.

VON NEURATH: Exactly the same.

SIR DAVID MAXWELL-FYFE: Do you know that Herr Von Bose and Jung were killed, Von Tschirschky was arrested, and two other gentlemen were also arrested? Did you hear about that?

VON NEURATH: Yes, I did, through Herr Von Papen.

SIR DAVID MAXWELL-FYFE: And did you regard the blood purge of the 30th of June as just another element in the necessary cleaning up of public life?

VON NEURATH: To the extent that it was carried out with all the outrages and murders of innocent people, most certainly not.

SIR DAVID MAXWELL-FYFE: Why did you go on in a government that was using murder as an instrument of political action?

VON NEURATH: I have already told you twice that in the case of such revolutions such mishaps cannot be avoided, most unfortunately.

SIR DAVID MAXWELL-FYFE: I see. Well, now, let us take just another of your 1934 experiences. You knew about the terroristic acts that were going on in Austria in May and June of 1934, did you not? And by "terroristic acts"—don't let us have any doubt about it—what I mean is causing explosions in Austrian public utilities and railways and things like that. I mean dynamite. I don't mean anything vague. You knew that such acts were going on in Austria in May and June 1934, did you not?

VON NEURATH: Yes, I heard about it, and I always opposed that sort of thing because I knew that it was done by Nazis; and let me say once more, mostly by Austrian Nazis.

SIR DAVID MAXWELL-FYFE: What position did Herr Köpke have in your Ministry on the 31st of May 1934?

VON NEURATH: He was the Ministerial Director.

SIR DAVID MAXWELL-FYFE: Ministerial Director: Quite a responsible position, was it not?

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: Do you remember Herr Köpke reporting to you on the 31st of May 1934, on a visit of Baron von Wächter?

VON NEURATH: No, I cannot remember that.

SIR DAVID MAXWELL-FYFE: Well, just think; you know. Baron von Wächter was one of the leaders of the Putsch against

Dollfuss 6 weeks later on the 25th of July. Don't you remember Herr Köpke making a report to you and you passing it on to Hitler?

VON NEURATH: No, I cannot remember that.

SIR DAVID MAXWELL-FYFE: Let's refresh your memory if you don't remember it. Would you look at Document D-868? It will become Exhibit GB-515. Just look at it. I will read it over, but just look at the signatories carefully; and if you will be good enough to look at the top, I think you will find on the original, there are your own initials; and on the left hand side there is a note: "The Reich Chancellor has been informed 6/6." That is on the 6th of June. That is initialed "L" by Lammers—Dr. Lammers. Then there is a note below that: "From the Reich Chancellor on 6th June," also initialed by Lammers I think. And on the other side you will see there is a note which is certainly initialed "Lammers." "Habicht is coming today... L 6/6." And this memorandum comes back from the Reich Chancellor to the Foreign Office on the same day. Now just let's see what report you were getting from Austria and passing on to Hitler. We will omit, unless you want it particularly, a description of Baron von Wächter's fresh, youthful appearance in Paragraph 1; but it goes on to say:

"His statements were obviously made in full consciousness of serious responsibility. His estimation of the affairs and personalities that came under review was clear and definite. Herr Von Wächter drew up for me, too, a picture of the situation in Austria which was, in some of its colors, even darker and more serious than it had appeared to us here up till now. The extremist tendencies of the National Socialists in Austria were constantly on the increase. Terrorist acts were multiplying. Regardless of who actually undertook the demolitions and other terrorist acts in individual cases, each such act provoked a new wave of extremism and also of desperate acts. As Herr Von Wächter repeatedly and sadly stressed, uniformity of leadership was lacking. The SA did what it wanted and what it, for its part, considered necessary. The political leadership at the same time introduced measures which sometimes meant the exact opposite. Thus the great terrorist action, as the result of which the railway lines leading to Vienna were blown up, was by no means committed by Marxists but by the Austrian SA and indeed against the wishes of the political leadership which, as he believed, did not participate in any way either in the act or its preparation. Such is the picture as a whole. In detail, in individual provinces and districts, the confusion was, if possible, even greater."

Then he says that the main seat of unrest is Carinthia, and where conditions were worst. And then he says:

"Herr Von Wächter thought that here improvements must be introduced most speedily, that is, by means of the centralization of all forces active in the interests of National Socialism both in and outside Austria. Personal questions should play no part here. The decisive word in this connection could, of course, be given only by the Führer himself. He, Wächter, was in complete agreement with Herr Habicht on all these matters. As far as he knew, Herr Habicht had already succeeded in having a brief conversation with the Reich Chancellor today."

Now just let's pause there for a moment. Herr Habicht was appointed about that time press attaché at the German Embassy in Vienna. The appointment of Herr Habicht as press attaché would be done either by you or with your approval, would it not? It was under your department?

VON NEURATH: Right now I no longer know if Herr Habicht—Herr Habicht was the National Socialist leader (Landesleiter) for Austria in Munich and whether or not he went to Vienna as press attaché I do not know.

SIR DAVID MAXWELL-FYFE: Well, you can take it that he went to Vienna as press attaché at this time, at the end of May 1934; and what I am asking you is, was it not either at your order or with your approval that he was given a post which gave him diplomatic immunity in the middle of his plottings?

VON NEURATH: If Herr Habicht was really there, this happened neither with my knowledge nor with my approval; but presumably it was arranged by the Ministry of Propaganda to whom these press men were subordinated.

SIR DAVID MAXWELL-FYFE: Well, you will agree with me, Defendant, that this is not a very pleasant document; it does not describe a very pleasant state of affairs. Let me remind you, this came from your Ministerial Director to you and went on to the Führer and came back from Dr. Lammers with a note: "Habicht is coming today." Surely as...

VON NEURATH: To the Führer?

SIR DAVID MAXWELL-FYFE: Yes, yes.

VON NEURATH: Besides, Mr. Prosecutor, I want to point out to you that here only the Austrian National Socialists are being discussed. With them I had nothing at all to do.

SIR DAVID MAXWELL-FYFE: What I am pointing out to you is that the document, this Foreign Office document goes to the

Reich Chancellery; it comes back on the 6th of June with a note from Dr. Lammers saying, "Habicht is coming today." You must have known all about Habicht on the 6th of June. It is mentioned in this report.

VON NEURATH: Not at all. I have this note from Lammers which means that Habicht was coming to see the Reich Chancellor. And this report from my Ministerial Director I immediately passed on to the Reich Chancellor to show him what the conditions were in Austria. That was the reason.

SIR DAVID MAXWELL-FYFE: But you remember Herr Von Papen giving evidence a few days ago; and when I asked him who were the leading Reich German personalities who influenced the Putsch in Austria in July 1934, he thought for a long time and the only leading Reich German personality that he could remember as influencing the Putsch was this very Herr Habicht?

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: Well then, what I am putting to you is—and pausing there to get it—that you knew very well, on the 6th of June 1934, that Herr Habicht, this leading Reich personality according to the Defendant Von Papen, was organizing revolution in Austria, didn't you?

VON NEURATH: Whatever makes you suppose a thing like that? Herr Habicht never came to see me. He went to see the Reich Chancellor.

SIR DAVID MAXWELL-FYFE: You saw this report. This is a report of your Ministerial Director. I have just read what Von Wächter thought.

VON NEURATH: There is not one word about Herr Habicht in it.

SIR DAVID MAXWELL-FYFE: Yes, I just read that to you. May I remind you:

"The decisive word in this connection could of course be given only by the Führer himself. He, Wächter, was in complete agreement with Herr Habicht on all these matters."

In other words, what Wächter is putting to the Foreign Office were the views of Habicht no less than himself.

VON NEURATH: Yes, that is certainly in there. Well, all these terrorist acts and all these disturbances which are described in this document were brought to the attention of the Reich Chancellor by myself.

SIR DAVID MAXWELL-FYFE: Well now, just look what the report says at the foot of the page:

"But when nothing happened in the meantime, and on the other hand the countermeasures of the Austrian Government

grew more brutal and severe from day to day, the radical elements made themselves felt once more and came forward with the statement that the Chancellor had issued his order only for tactical reasons and was inwardly in agreement with every manly act of opposition and had in view, as his own political aim, merely the weakening of Dollfuss' hateful system, though in a way which should be as unobtrusive as possible to the outside world. They are now working with this argument."

Listen to the next bit, his suggestion to you, the nearest warning of trouble which any Foreign Minister ever heard of:

"One constantly stumbles on this idea during discussions and it is secretly spreading. A change must be made soon and a uniform leadership created. Otherwise, as Herr Von Wächter concluded his impressive description, a disaster may occur any day which would have the worst possible consequences in foreign policy, not only for Austria alone, but above all for Germany herself."

And then, dramatically, in the middle of the conversation, Herr Von Wächter receives a telephone message that he had better not go back to Vienna or he will be arrested on his arrival; and within 6 weeks he had started the Putsch and Chancellor Dollfuss had been shot. Do you remember now? Did you not appreciate, at the beginning of June 1934, that there was the greatest danger of an uprising and trouble in Austria?

VON NEURATH: Yes, quite definitely so. That is the very reason why I sent the report to the Chancellor. I could not interfere in Austria.

SIR DAVID MAXWELL-FYFE: Perhaps you can tell me, on the question on which the Defendant Von Papen was unable to specify, who, in your opinion, were the other prominent Reich German personalities who were behind the Dollfuss Putsch in Austria? You say you were not. Who, in your opinion, were these personalities that Herr Von Papen mentions as being behind the Dollfuss Putsch?

VON NEURATH: I know absolutely none. I know only Habicht, and him I knew only as a person against whom I protested to Hitler because of his inflammatory actions. Apart from him I did not know any Reich Germans. The others were all Austrian National Socialists who have been mentioned innumerable times during the Trial but whom I did not know.

SIR DAVID MAXWELL-FYFE: I am not mentioning them. I am mentioning the Defendant Von Papen's prominent Reich German personalities, and I am trying very hard to find out who they were

Are you taking the same line, that the only one you can remember is the press attaché, Herr Habicht? Is that all you can help the Tribunal in this matter?

VON NEURATH: I have already said—and that will have to suffice—I do not know anyone.

SIR DAVID MAXWELL-FYFE: Is it your opinion that your Minister, Dr. Rieth, knew nothing about this, despite what Mr. Messersmith says on that point? Do you think Dr. Rieth knew nothing about the Putsch?

VON NEURATH: I cannot tell you to what extent Herr Rieth was informed. You know, however, that when he acted ostentatiously later on that I recalled him right away. Apart from that, I always forbade the ministers to meddle in such matters.

SIR DAVID MAXWELL-FYFE: You haven't any doubt in your own mind that Dr. Rieth knew all about the impending Putsch, have you?

VON NEURATH: Oh yes, I have considerable doubts that he knew all about it. I do not believe so because his whole character was not at all like that.

SIR DAVID MAXWELL-FYFE: Well now, at any rate, you knew on the 25th of July that the Austrian Nazis had made this Putsch and had murdered Dollfuss?

VON NEURATH: That is not exactly a secret.

SIR DAVID MAXWELL-FYFE: No, I know it. A lot of these things were not secrets. What I am interested in was your knowledge—when you found out.

VON NEURATH: Afterward, yes.

SIR DAVID MAXWELL-FYFE: But didn't that give you any qualms about remaining in a government which had extended its policy of murder from at home to abroad, through the Party elements in Austria?

VON NEURATH: If I were responsible for every single murderer, for every single German murderer who was active abroad, then I would have had a lot of work to do, would I not?

SIR DAVID MAXWELL-FYFE: You knew, Herr Von Neurath—and I shall remind you how in a moment—you knew that the Austrian NSDAP was in close touch with, and acting under, the orders of Hitler all the time when Hitler was head of your Government; you knew that perfectly well, didn't you?

VON NEURATH: He was the chief of the NSDAP. It is quite natural that they were collaborating with him.

SIR DAVID MAXWELL-FYFE: Yes. Now there is just one other point . . .

VON NEURATH: Yes. I want to tell you another thing: I continuously remonstrated with Hitler, together with Herr Von Papen, about the fact that this Herr Habicht was doing the things he was.

SIR DAVID MAXWELL-FYFE: We will take that up in a moment. I just want to get one point of fact. Does this accord with your recollection: I have been through all the reports of the Defendant Von Papen; and apart from three personal reports, two dealing with Herr Von Tschirschky and one dealing with abuse of Hitler, which is of no political significance, we have 28 reports. Nineteen of these reports are marked as being copies to the Foreign Office. Is that in accord with your recollection, that three out of four of Herr Von Papen's reports would come to you to be seen by you?

VON NEURATH: That I cannot tell you at this late day.

SIR DAVID MAXWELL-FYFE: You are quite right, Herr Von Neurath. You wouldn't know how many went to you, but you say you saw a considerable number of Herr Von Papen's reports. I think there were 19; I am sure you can take it that they are marked—19 are marked, "Passed the Foreign Office".

VON NEURATH: I do believe you, yes; but the question is how many were submitted to me, for I did not receive every individual report from every ambassador or minister abroad. Otherwise, I would have been drowned in paper.

SIR DAVID MAXWELL-FYFE: I quite agree; but what I asked you was, did you receive these from Herr Von Papen, who was supposed to be in a rather special position dealing with a very difficult problem? Did you receive a considerable number of reports from Herr Von Papen to Hitler as passed to you?

VON NEURATH: I can tell you only that I received some reports but certainly not all. I cannot tell you more than that today.

SIR DAVID MAXWELL-FYFE: My Lord, perhaps this would be a convenient time to break off.

THE PRESIDENT: We will adjourn at this time.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

SIR DAVID MAXWELL-FYFE: I just want to get two or three facts clear about 1935 before I put some questions to you.

On the 10th of March Germany announced the establishment of an air force and on the 16th of March I think you, among others, signed the law introducing compulsory military service. You explained all that to us; I don't want to go over it again, but I just want to ask you about the Secret Reich Defense Law of the 21st of May 1935. Would you look at General Thomas' comment on it.

My Lord, it is at Page 52 of Document Book 12. It is about Page 71 of the German document book.

THE PRESIDENT: Number 12a or b?

SIR DAVID MAXWELL-FYFE: Number 12, My Lord. That is the original one; Page 52, My Lord.

"The Central Directorate of the supreme Reich authorities, ordered in case of war, has influenced the development and the activity of the war economy organization to such an extent that it is necessary to discuss this matter in detail. The foundations had already been laid for the central organization of the supreme Reich authorities in the event of a war prior to 1933 in many discussions and decrees, but it was radically altered when the National Socialists came into power, and especially by the death of Reich President Von Hindenburg. The latest orders were decreed in the Reich Defense Law of 21 May 1935, supposed to be published only in case of war but already declared valid for carrying out war preparations. As this law fixed the duties of the Armed Forces and the other Reich authorities in case of war, it was also the fundamental ruling for the development and activity of the war economy organization." (Document 2353-PS)

And you will remember that on the same day the Defendant Schacht had been made Plenipotentiary for War Economy.

Did you appreciate at the time, Defendant, that that law was the fundamental ruling for the development and activity of the war economy organization?

VON NEURATH: Yes, but only in case of a war, that is, in case of mobilization.

SIR DAVID MAXWELL-FYFE: You see that the point that I am putting to you is that it had already been declared valid for carrying out war preparations. Didn't you understand that it was a big step forward for war preparations?

VON NEURATH: Not at all. It was not a big step forward at all. It was only the establishing of the necessary measures in case of a war. In every country you have to guarantee the co-operation of the various offices in the event of an attack.

SIR DAVID MAXWELL-FYFE: That is your view. Now, at this time, up to May 1935, is it correct that the German Foreign Office was still staffed by diplomats or Foreign Office officials of the older school and had not yet been invaded by the products of the Bureau Ribbentrop?

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: Did you receive any warnings from your own staff as to the happenings in Austria, or the rearmament, the declaration of the air force, and the conscription?

VON NEURATH: I was advised about happenings in Austria, as can be seen from the report which you submitted to me. The re-establishment of the Armed Forces was a decision which was made in the Cabinet, and of course I knew about that.

SIR DAVID MAXWELL-FYFE: Yes, but—I am sorry, probably I did not put the proper emphasis on the word. When I said warning I meant a real warning from your officials that these happenings were making Germany regarded abroad as being bloodthirsty and warmongering. Did you get any warnings from your officials?

VON NEURATH: Certainly not, for that was not the case, and if any assertions like that were being made abroad, they certainly were not true.

SIR DAVID MAXWELL-FYFE: Now, would you look at Document 3308-PS, the affidavit of the interpreter Paul Schmidt.

My Lord, it is Page 68 of Document Book 12a, and it is Page 65 or 66 of the German version, Paragraph 4.

[Turning to the defendant.] Now, just let me read you Paragraphs 4 and 5, as to what Herr Paul Schmidt says:

"4. The attempted Putsch in Austria and the murder of Dollfuss on 25 July 1934 seriously disturbed the career personnel of the Foreign Office because these events discredited Germany in the eyes of the world. It was common knowledge that the Putsch had been engineered by the Party, and the fact that the attempted Putsch followed so closely on the heels of the blood purge within Germany could not help but suggest the similarity of Nazi methods, both in foreign and in domestic policy. This concern over the repercussions of the attempted Putsch was soon heightened by a recognition of the fact that these episodes were of influence in leading to the Franco-Soviet Consultative Pact of 5 December 1934, a defensive

arrangement which was not heeded as a warning by the Nazis."

Defendant, let's take that. In these three points, is it correct, as Herr Schmidt says, that the attempted Putsch and the murder of Dollfuss seriously disturbed the career personnel in the Foreign Office?

VON NEURATH: Not only the career personnel of my office were disquieted over this but I, of course, was also disquieted.

SIR DAVID MAXWELL-FYFE: And taking the last sentence: "This concern"—that is the disturbance by the Putsch—"over the repercussions of the attempted Putsch was soon heightened by a recognition of the fact that these episodes"—blood purge and the Putsch—"were of influence in leading to the Franco-Soviet Consultative Pact of December 5, 1934, a defensive arrangement which was not heeded as a warning..."

Is that correct, that among your staff the concern was heightened by recognizing that the blood purge and the Putsch had alarmed France and the Soviet Union as to the position of Germany and led to the consultative pact?

VON NEURATH: No, that is a personal opinion of the interpreter Schmidt.

SIR DAVID MAXWELL-FYFE: No, with respect to you, Defendant, it is not. What interpreter Schmidt is saying is that that was the opinion of your experienced staff in the Foreign Office and that is what I am putting to you. Is he not right in saying that your experienced staff were concerned that these events had had their effect on the consultative pact?

VON NEURATH: Not in the least.

SIR DAVID MAXWELL-FYFE: Well, at any rate...

VON NEURATH: I can only repeat, the two things had no connection with each other.

SIR DAVID MAXWELL-FYFE: Is he correct in his last statement that that arrangement was not heeded as a warning by the Nazis?

VON NEURATH: That I cannot say; I do not know.

SIR DAVID MAXWELL-FYFE: Well, now, just look at the next paragraph.

"The announcement in March of the establishment of a German Air Force and of the introduction of conscription was followed on 2 May 1935 by the conclusion of a mutual assistance pact between France and the Soviet Union. The career personnel of the Foreign Office regarded this as a further

very serious warning as to the potential consequences of German foreign policy, but the Nazi leaders only stiffened their attitude toward the Western Powers, declaring that they were not going to be intimidated. At this time the career officials at least expressed their reservations to the Foreign Minister, Neurath. I do not know whether or not Neurath in turn related these expressions of concern to Hitler."

Now, just let us take that. Did—do you agree that the career personnel of the Foreign Office regarded the Franco-Soviet pact as a further very severe, very serious warning as to the potential consequences of German foreign policy?

VON NEURATH: I do not know in the name of which personnel Herr Schmidt is making these statements. But I, at any event, heard nothing to the effect that my career personnel had expressed these opinions.

SIR DAVID MAXWELL-FYFE: Well, here is Herr Schmidt saying, "The career officials, at least, expressed their reservations to the Foreign Minister, Neurath." That is you.

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: Are you saying that Herr Schmidt, who after all was a career official although he was an interpreter for a great deal of the time—are you saying that Herr Schmidt is not stating what is accurate when he says that your permanent officials expressed their concern to you?

VON NEURATH: But quite decidedly. How could Herr Schmidt, who was only an insignificant civil servant at that time, know what my career personnel told me and in addition, how could Schmidt judge this? And I should also like to add that Schmidt said here, before this Court, that this affidavit, or whatever it may be, was submitted to him after a serious illness and that he personally knew absolutely nothing more about the contents. That now . . .

SIR DAVID MAXWELL-FYFE: You may rest assured, the Tribunal will correct me if I am wrong, that I put these paragraphs to Herr Schmidt and he agreed with them when he was giving evidence before this Tribunal.

But now just look at one other statement at the end of Paragraph 6. Well, we'll just—we will read Paragraph 6, because I want to ask you about the end:

"The re-entry of the German military forces into the Rhineland was preceded by Nazi diplomatic preparation in February. A German communiqué of 21 February 1936 reaffirmed that the Franco-Soviet Pact of mutual assistance was incompatible with the Locarno Treaties and the League Covenant. On the

same day Hitler argued in an interview that no real grounds existed for conflict between Germany and France. Considered against the background statements in *Mein Kampf*, offensive to France, the circumstances were such as to suggest that the stage was being set for justifying some future act. I do not know how far in advance the march into the Rhineland was decided upon. I personally knew about it and discussed it approximately 2 or 3 weeks before it occurred. Considerable fear had been expressed, particularly in military circles, concerning the risk of this undertaking. Similar fears were felt by many in the Foreign Office. It was common knowledge in the Foreign Office, however, that Neurath was the only person in Government circles consulted by Hitler who felt confident that the Rhineland could be remilitarized without armed opposition from Britain and France. Neurath's position throughout this period was one which would induce Hitler to have more faith in Neurath than in the general run of 'old school' diplomats, whom he (Hitler) tended to hold in disrespect."

Well, now, if this minor official, of whom you just talked, knew about and discussed the march into the Rhineland some 2 or 3 weeks before it occurred, how much before it occurred had you discussed it?

VON NEURATH: Herr Schmidt must have been clairvoyant, for 2 or 3 weeks in advance even I did not know anything about it. I heard of it about 1 week before Hitler's decision, and if I—if it says here that I—that it was generally known in the Foreign Ministry that I was the only one in the Government circles consulted by Hitler who was confident that the Rhineland could be remilitarized without armed opposition from Britain and France, it certainly turned out that I was right.

SIR DAVID MAXWELL-FYFE: You were right—but is it true that you were the only person in Government circles who thought that it could be occupied without interference by Britain and France? Is that true?

VON NEURATH: I am not in a position to say whether I was the only one, but at any rate, I was convinced of this on the basis of my knowledge of international conditions.

SIR DAVID MAXWELL-FYFE: And so that at any rate, whatever the limitations of Paul Schmidt, he knew what your position was quite accurately. Was he not right about it in the last sentence, that your position throughout the period was one which would make Hitler look to you rather than to the rest, the other figures of pro-Nazi diplomacy and foreign affairs, because you were the person who was encouraging him? Is that not the position?

VON NEURATH: I did not encourage him in any way, but I described the situation to him as I saw it, and it was later proved that I had been right.

SIR DAVID MAXWELL-FYFE: Well now, I just want you to deal with one other point, which is really 1936, but we will deal with it as I have been dealing with Austria.

You have said once or twice that you objected very strongly to the description of the Austrian treaty, the treaty between the Reich and Austria of the 11th of July as being a subterfuge or a façade. That is right; is it not? You objected very strongly to that view?

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: Do you know that Hitler had given instructions to the Gauleiter of the Austrian NSDAP to carry on the struggle at the same time as the treaty was signed?

VON NEURATH: No, I do not know anything about that.

SIR DAVID MAXWELL-FYFE: Just let me remind you. I do not want to put anything that seems unfair.

My Lord, it is Document Book 12, Page 97.

[Turning to the defendant.] This is the report of Dr. Rainer, whom the Tribunal has had the advantage of seeing, and if you will look at the end of one paragraph he says:

“The agreement of 11 July 1936 was strongly influenced by the activities of these two persons.”—That is Defendant Seyss-Inquart and Colonel Glaise-Horstenau—“Papen mentioned Glaise-Horstenau to the Führer as being a trusted person.”

Now the next paragraph:

“At that time the Führer wished to see the leaders of the Party...”

THE PRESIDENT: Sir David.

SIR DAVID MAXWELL-FYFE: I am sorry, My Lord.

THE PRESIDENT: Do you say 97 of Document Book 12?

SIR DAVID MAXWELL-FYFE: I did, My Lord, yes. Yes, My Lord; it is the third paragraph and begins, “At that time...”

THE PRESIDENT: Oh yes, I see it.

SIR DAVID MAXWELL-FYFE: If Your Lordship please:

“At that time the Führer wished to see the leaders of the Party in Austria, in order to tell them his opinion on what Austrian National Socialists should do.” (Document Number 812-PS)

THE PRESIDENT: I am afraid it was another "at that time" that we were looking at. Could you give us some other indication?

SIR DAVID MAXWELL-FYFE: My Lord, it is in the middle.

THE PRESIDENT: It is on 98 in ours.

SIR DAVID MAXWELL-FYFE: I am so sorry, My Lord. The paging must be different. I beg Your Lordship's pardon.

[Continuing.] "At that time the Führer wished to see the leaders of the Party in Austria in order to tell them his opinion on what Austria National Socialists should do. Meanwhile Hinterleitner was arrested, and Dr. Rainer became his successor..."

Mind you, this is the man who is making this statement.

"... successor and leader of the Austrian Party. On 16 July 1936 Dr. Rainer and Globocznik visited the Führer at the Obersalzberg, where they received a clear explanation of the situation and the wishes of the Führer. On 17 July 1936 all illegal Gauleiter met in Anif near Salzburg, where they received a complete report from Rainer on the statement of the Führer and his political instructions for carrying out the fight. At the same conference the Gauleiter received organizational instructions from Globocznik and Hiedler."

Did you not know—did Hitler not tell his Foreign Minister, who had just supervised the conclusion of this treaty, that he intended to give the illegal Gauleiter instructions as to how to carry on the fight? Didn't he tell you that?

VON NEURATH: No, he did not tell me that, but I do remember—I believe it was the same Dr. Rainer who appeared here as a witness—who stated that Hitler summoned him and other Gauleiter and told them that in the future they were to observe strictly the agreements of 1936. By the way, the matter that you just quoted is not mentioned at all in the document which was submitted to me.

SIR DAVID MAXWELL-FYFE: No, that's not mentioned. What is mentioned is the political instructions for carrying out the fight and the organizational instructions from Globocznik. At any rate, you knew nothing about that?

VON NEURATH: No.

SIR DAVID MAXWELL-FYFE: Well, it is rather difficult for you to judge whether the treaty is made sincerely if you do not know the instructions that are given to the illegal Party in Austria by Hitler, is it not?

VON NEURATH: Yes, naturally.

SIR DAVID MAXWELL-FYFE: Well now, just let's deal with one or two other points. I would just like you to look at what Mr. Messersmith says at the end of 1935. You remember this statement—I will give you the reference in a moment—that:

"... Europe will not get away from the myth that Neurath, Papen, and Mackensen are not dangerous people and that they are 'diplomats of the old school.' They are in fact servile instruments of the regime and just because the outside world looks upon them as harmless, they are able to work more effectively. They are able to sow discord just because they propagate the myth that they are not in sympathy with the regime."

Now, can you tell us up to the date on which Mr. Messersmith wrote that—on October 10, 1935—of a single instruction of Hitler's that you had not carried out?

VON NEURATH: I did not quite understand. A single instruction...

SIR DAVID MAXWELL-FYFE: My Lord, I am sorry; I mislaid the reference. It is Document Book 12, Page 107. That is the reference to it.

[Turning to the defendant.] You see, Mr. Messersmith is there saying that you and the Defendant Von Papen and Von Mackensen are servile instruments of the regime. Now, I am just asking you whether you could tell us up to the date that Mr. Messersmith wrote, on 10 October 1935, any instruction of Hitler's that you had refused to carry out.

VON NEURATH: Not only one, but quite a few. I have testified as to the number of times I contradicted Hitler, and I have expressed myself about what Mr. Messersmith is assuming here again—about the importance of Mr. Messersmith's affidavit.

SIR DAVID MAXWELL-FYFE: Defendant, I put it this way: Up to October 10, 1935, what did you tell the Tribunal was the most serious thing that Hitler had ordered you to do and you had refused to carry out? What was the most serious—the one that mattered most?

VON NEURATH: Well on the spur of the moment, that is a question that I cannot answer. How should I know what the most serious question was which I opposed? I opposed all sorts of things.

SIR DAVID MAXWELL-FYFE: If you can't remember what you think is the most serious, I shan't trouble you with it any more, but I want...

VON NEURATH: Well, you are quite welcome to submit it to me, but don't produce an allegation out of a clear sky without giving me the chance to refute it.

SIR DAVID MAXWELL-FYFE: I was asking you to tell us, but I will pass on to what another American diplomat put. I would like to ask you about Mr. Bullitt's report, with which I gather you agree. My Lord, that is L-150, and it is at Page 72 of the Document Book 12.

My Lord, I hope that there is no difference of the paging—72 of mine.

THE PRESIDENT: Yes; it is 74.

SIR DAVID MAXWELL-FYFE: Yes, it is 74. I am sorry, My Lord.

[Turning to the defendant.] Now, it is the second paragraph there. After saying that he had a talk with you, he says:

“Von Neurath said that it was the policy of the German Government to do nothing active in foreign affairs until ‘the Rhineland had been digested.’ He explained that he meant that until the German fortifications had been constructed on the French and Belgian frontiers, the German Government would do everything possible to prevent rather than encourage an outbreak by the Nazis in Austria and would pursue a quiet line with regard to Czechoslovakia. ‘As soon as our fortifications are constructed and the countries of Central Europe realize that France cannot enter German territory at will, all those countries will begin to feel very differently about their foreign policies and a new constellation will develop...’”

You agree you said that?

VON NEURATH: Yes, yes, certainly. Yesterday or the day before I testified in detail about what that was supposed to mean. Moreover, it does not make any difference.

SIR DAVID MAXWELL-FYFE: I would like to see if you agree with the meaning I suggest. That is that as soon as you had got your fortifications in sufficiently good order on your western frontier, you would proceed to try and secure an Anschluss with Austria and to get back the Sudetenland from Czechoslovakia. Isn't that what it means?

VON NEURATH: No, no, not at all. That is quite clear in the document. What I meant by this and what I expressed was that these countries, particularly Czechoslovakia and France, would change their policy toward Germany, because they could no longer march through Germany so easily.

SIR DAVID MAXWELL-FYFE: You appreciate, Defendant, what I am putting to you? I think I made it quite clear—that at the time that you were facing the Western Powers with the remilitarization

of Germany and the Rhineland—that is in 1935 and 1936—you were then giving assurances to Austria, which Hitler did in May 1935, and you made this treaty in 1936. As soon as you had digested your first steps, you then turned against Austria and Czechoslovakia in 1938. I am suggesting, you see, that you were talking the exact truth and prophesying with a Cassandra-like accuracy. That is what I am suggesting—that you knew very well that these intentions were there.

VON NEURATH: What?

SIR DAVID MAXWELL-FYFE: You say you didn't?

VON NEURATH: Not at all, not at all, not at all! That is an assumption on your part, for which there is absolutely no proof.

SIR DAVID MAXWELL-FYFE: We will not argue it further because we will come on to just one other point before we proceed to 1937.

You have told the Tribunal, not once but many times, that you did not support the Nazi attitude toward the Christian churches, of oppressing the churches. That is I have understood you correctly, have I not?

VON NEURATH: Yes, indeed.

SIR DAVID MAXWELL-FYFE: Now, and you say that you resisted and actively intervened against the repression of the Church. Would you just look at Document 3758-PS.

My Lord, that will become Exhibit GB-516. My Lord, Your Lordship will find it in Document Book 12a, Page 81.

[Turning to the defendant.] This is an entry which must have been fairly early in 1936 in the diary of the Reich Minister of Justice:

“The Reich Foreign Minister transmits, with a personal note for confidential information, a letter from Cardinal State Secretary Pacelli”—that is the present Pope—“to the German Ambassador in the Vatican, in which he urges an act of pardon for Vicar General Seelmeyer. He, the Reich Foreign Minister, remarks to this that after the heavy attacks on German justice by the Holy See in the note of 29 January, there is no reason in his opinion to show any deference to the Vatican. He recommends it, however, since for foreign policy reasons it is to our interest not to let our good personal relations with Pacelli cool off.”

Now, Defendant, will you tell me anything that showed the slightest personal interest in the fate of Father Seelmeyer, or were you only concerned with showing a firm front to the Vatican and not losing your good relations with Cardinal Pacelli?

DR. VON LÜDINGHAUSEN: Mr. President, the document has just been submitted to me; I have had no opportunity whatsoever to look this document over and inform myself about it. Likewise, I do not know of there having been any talk about a diary of the Reich Minister of Justice up to now in this Trial. Therefore, I am not in a position to judge how the Reich Minister of Justice could have made this entry in his diary at all.

Since these notes have apparently been taken out of their context, it is not possible for me to form any kind of a picture of the significance of the entry as a whole, and naturally it is even less possible for the defendant to do so.

Therefore, I must protest against the admissibility of this question and against the submission of this document.

SIR DAVID MAXWELL-FYFE: This is a perfectly good captured document. It is a copy of the original diary of the Reich Minister of Justice, and it is therefore admissible against the defendant.

THE PRESIDENT: Dr. Von Lüdinghausen, you can see the original document.

SIR DAVID MAXWELL-FYFE: My Lord, actually, I am just told by my American colleagues that this diary has been used before, that extracts were put in in the case against the Defendant Von Schirach.

VON NEURATH: Mr. President, I have no objection . . .

THE PRESIDENT: One moment.

DR. VON LÜDINGHAUSEN: I could not understand a word, Mr. President. I am sorry, I could not understand. I can hear now.

THE PRESIDENT: When you make an objection, you should see that the instrument is in order.

What I said was that you can see the original document. And I am told now that the original document has been used before, and that therefore there is nothing to prevent its being used in cross-examination. It is a captured document, and you can see the original.

DR. VON LÜDINGHAUSEN: I did not know that, Mr. President.

SIR DAVID MAXWELL-FYFE: What I am putting to you, Defendant, is that your statement to the Minister of Justice shows no concern for the individual priest about whom the complaint had been made; it is merely concerned with your relations with the Vatican and with Cardinal Pacelli, as he then was. Is that typical of your interferences? Is this typical of your interferences for the sake of ill-treated priests?

VON NEURATH: I naturally cannot remember this case any more, but the way it stands there in the entry I was perfectly justified. According to the entry, I said that we had no reason to show any special consideration after the then Cardinal State Secretary, or Pope had attacked German justice, but that, as Foreign Minister I considered it important not to disturb our relations with Pacelli. I cannot see what conclusions you want to draw from this.

SIR DAVID MAXWELL-FYFE: Well, I don't want to trespass on the ground of my Soviet colleagues, but you know that the Czech report accuses you, with complete impartiality as far as sect is concerned, of your Government ill-treating the Catholics, Protestants, Czech National Church, and even the Greek Church in Czechoslovakia. You know that all these churches suffered during your protectorate—do you agree that all these churches suffered under your protectorate?

VON NEURATH: No, not at all.

SIR DAVID MAXWELL-FYFE: All right, I won't go into the details, but I am suggesting to you that your care about the various religious confessions did not go very deep.

VON NEURATH: That is again an assertion on your part which you cannot prove.

SIR DAVID MAXWELL-FYFE: Well, I would just like to put one thing. You remember telling the Tribunal this morning of the excellent terms that you were on with the archbishop of Prague?

VON NEURATH: I said that I had good relations with the archbishop.

SIR DAVID MAXWELL-FYFE: I would just like you to look at this copy.

My Lord, this is a copy, but General Ecer assures me that he can get the original from the Czech Government files. I received it only a half hour ago. General Ecer, who is here from Czechoslovakia, says that he can vouch for the original.

I'd like the defendant to look at it. Is that a letter which you received from the archbishop?

My Lord, it is Document D-920, and it will be Exhibit GB-517:

"Your Excellency, very esteemed Herr Protector of the Reich:

"Your last letter has filled me with such sorrow because I could not but gather from it that not even Your Excellency is prepared to believe me—that I lost consciousness and had to call university Professor Dr. Jirasek, who remained beside my sickbed for an hour—he is coming again today, together with the specialist on internal diseases . . ."

And then he gives his name.

"Your Excellency may be sure that I shall always do what I can to please you. But please, have mercy on me, too, and do not demand that I should act against the laws of the Church.

"Yours, *et cetera*, Karl Cardinal Kaspar, M. P. prince archbishop."

Do you remember that?

VON NEURATH: I cannot say what this refers to. I have no idea; there is nothing in it, and I cannot tell you what it referred to.

SIR DAVID MAXWELL-FYFE: You can't remember this occasion when the prince archbishop wrote to you and told you the effect, the illness that he had suffered from and beseeched you not to ask him to do something against the laws of the Church? It doesn't remain in your mind at all, does it?

VON NEURATH: No.

SIR DAVID MAXWELL-FYFE: All right, we'll leave that. Well now, I want you to just tell me this, before we pass on to the later occurrences in 1937. You remember you dealt yesterday with your speech—I think it was to the German Academy of Law. You remember the speech, in August, of 1937? I can give you a reference. Would you like to look at it?

VON NEURATH: I only need the reference to where I spoke.

SIR DAVID MAXWELL-FYFE: You remember it, I only wanted to save time. Don't you remember? I will put it to you if you like. It is the speech of the 29th of August 1937, and I will give you the reference in one moment. What I wanted to ask you was this—you said:

"The unity of the racial and national will created through Nazism with unprecedented *élan* has made possible a foreign policy by means of which the chains of the Versailles Treaty were broken."

What did you mean by "the unity of the racial will" produced by Nazism?

VON NEURATH: By that I probably meant that all Germans were unified more than ever before. At this date I can no longer tell you what I meant by this, either. But nevertheless I was merely establishing a fact.

SIR DAVID MAXWELL-FYFE: I see. Now tell me. That was in August 1937. You told the Tribunal the effect that the words of Hitler, on the 5th of November 1937, had upon you, and your counsel has put in the statement by Baroness von Ritter. After these words...

VON NEURATH: In November?

SIR DAVID MAXWELL-FYFE: Yes, November of 1937.

VON NEURATH: Yes, indeed.

SIR DAVID MAXWELL-FYFE: Now, after these words had had that effect, with whom did you discuss them among the people who had been present at the Hossbach interview?

VON NEURATH: This speech was not made at Berchtesgaden at all. That is a mistake; it was at Berlin, this address.

SIR DAVID MAXWELL-FYFE: I didn't say Berchtesgaden; I said at the Hossbach conference. We call it the Hossbach conference because he took the minutes.

VON NEURATH: I have already told you yesterday with whom I spoke, General Von Fritsch, and with Beck, who was then Chief of the General Staff; and I also testified that we agreed at that time jointly to oppose Hitler and the tendency which he had revealed in this speech.

SIR DAVID MAXWELL-FYFE: Did you speak about it to Hitler?

VON NEURATH: Yes. I testified yesterday in detail that I did not have a chance to speak with Hitler until 14 or 15 January, because he had left Berlin and I could not see him. That was the very reason why I asked for my resignation at that time.

SIR DAVID MAXWELL-FYFE: Did you speak about it to Göring or Raeder?

VON NEURATH: No.

SIR DAVID MAXWELL-FYFE: Now I want you to just tell me one word or two about this Secret Cabinet Council to which you were appointed after you left the Foreign Office.

Would you look at the first sentences of the report of that meeting on the 5th of November?

My Lord, it is Page 81 in the English Document Book 12, and Page 93 of the German document book.

It is only the first two sentences, Defendant:

"The Führer stated initially that the subject matter of today's conference was of such importance that its detailed discussion would certainly, in other states, take place before the Cabinet in full session. However, he, the Führer, had decided not to discuss this matter in the larger circle of the Reich Cabinet because of its importance."

Then, if you will look at the people who were there: There is the Führer; the Minister for War; the three Commanders-in-Chief; and the Minister of Foreign Affairs.

Now, Defendant, supposing that in February or March 1938, Hitler had wanted to discuss Austria before the same Council, the same limited number of people. Just let us see who would have taken the places of the people who were there. Instead of Von Blomberg and Von Fritsch, you would have had the Defendant Keitel as Chief of the OKW, and Von Brauchitsch as Commander-in-Chief, would you not?

VON NEURATH: Yes, I believe so.

SIR DAVID MAXWELL-FYFE: As a matter of fact, Raeder and Göring maintained their positions; the Defendant Von Ribbentrop had taken yours; and you were president of the Secret Cabinet Council. Lammers was secretary of the Cabinet, and Goebbels had become more important as Minister of Propaganda.

Well now, I would just like you to look and see who the people were that formed the Secret Cabinet Council.

Your Lordship will find that on Page 8 of Document Book 12; and it is Page 7 of the German document book.

[Turning to the defendant.] Now, do you see who they are? There are the Defendant Von Ribbentrop, the Defendant Göring, the Führer's Deputy, Hess, Dr. Goebbels, and the Chief of the Reich Chancellery, Lammers, Von Brauchitsch, Raeder, and Keitel. You are saying, if I understand you, that this Secret Cabinet Council had no real existence at all. Is that your case?

VON NEURATH: Yes.

SIR DAVID MAXWELL-FYFE: Why were you receiving special funds for getting diplomatic information as president of the Secret Cabinet Council?

VON NEURATH: I did not receive any. I should like to know...

SIR DAVID MAXWELL-FYFE: Oh, didn't you?

VON NEURATH: No.

SIR DAVID MAXWELL-FYFE: Well, let us just have a look at this. Would you look at Document 3945-PS?

My Lord, it is 129 in Document Book 12a. It will be Exhibit GB-518.

If you will look at the letter of the 28th of August 1939 from Lammers to you:

"In conformity with your request, I have had the sum of 10,000 Reichsmark, which had been placed at your disposal for special expenses in connection with the obtaining of diplomatic information, handed to Amtsrat Köppen.

"I enclose the draft of a certificate showing how the money was used, with the request to send me the certificate after execution, at the latest by the end of the financial year."

And if you will turn over to the next page, 131, you will see that at the end of March, which was toward the end of the financial year, you signed a certificate saying:

"I have received 10,000 Reichsmark from the Reich Chancellery for special outlays entailed in obtaining diplomatic information."

Now, will you tell us why you were getting special expenses for obtaining diplomatic information?

VON NEURATH: Yes, I can tell you that. That is an expression used at the request of Lammers who had the treasury of the Reich Chancellery under him, so that I could meet the expenses of my office; that is, for one typist and for one secretary. And in order to justify this to—I do not know which authority, what this authority is called, to the Finance Ministry—I had no special budget—Herr Lammers asked me to use this expression. That can be seen from a certificate which is also in there.

SIR DAVID MAXWELL-FYFE: That is all right. I am going to refer to the other letters. But why was it necessary that the expenses of your one secretary and one typist should not be audited? As it shows on pages . . .

My Lord, the pages are 134 and 135.

VON NEURATH: I just said that . . .

SIR DAVID MAXWELL-FYFE: On Page 134 you will see there is a letter from you to Lammers: "In my bureau there is a need to incur special expenses, to audit which it does not appear to me advisable."

Why wasn't it advisable to audit the expenses of your typist and secretary?

VON NEURATH: I can no longer tell you that just now. But at any rate, I did not use any more money for diplomatic information; but these are merely office expenses which I figured in there. And so at the end of this letter which you have submitted to me there is . . .

SIR DAVID MAXWELL-FYFE: Well now . . .

VON NEURATH: Please, let me finish my statement.

SIR DAVID MAXWELL-FYFE: Certainly.

VON NEURATH: There is a report here to me, from my—from this secretary, in which he says—no, this is not the letter I thought it was.

SIR DAVID MAXWELL-FYFE: Well, now, if you are finished, I anticipated you might say it was office expenses. Would you look at Document 3958-PS?

My Lord, that will be Exhibit GB-519.

[*Turning to the defendant.*] I submit, that shows you your office expenses were carried on the ordinary budget, the letter of 8 April 1942 to you.

THE PRESIDENT: Is that in the book?

SIR DAVID MAXWELL-FYFE: My Lord, yes; I am so sorry. It is 140. I beg Your Lordship's pardon.

[*Turning to the defendant.*] That is a letter to you which says:

"The Reich Minister for Finance has agreed that the budgetary needs announced by you for the financial year 1942 be shown in Special Plan 1. I therefore have no objections to having the necessary expenditure granted—even before the establishment of Special Plan I—within the limits of these amounts, namely:

"For personal administrative expenditures, up to 28,500 Reichsmark; for official administrative expenditures, up to 25,500 Reichsmark; total 54,000 Reichsmark."

That was providing for your office and personal expenditures during the same period for which you were getting these additional sums. So I am suggesting to you that if these sums of 10,000 marks which you got every now and then were not for office expenditures, I would like you to tell the Tribunal what they really were for.

VON NEURATH: Yes, I would be very pleased if I were also told about this, for I no longer know.

SIR DAVID MAXWELL-FYFE: Well, they are your letters, and you got the money. Can't you tell the Tribunal what you got it for?

VON NEURATH: No, I cannot right now. Perhaps I can tell you afterward.

SIR DAVID MAXWELL-FYFE: Possibly it was for obtaining diplomatic information, it says—

My Lord, Dr. Von Lüdinghausen makes the point that the letter I put was in 1939. Of course, there were other letters. I have not troubled the Tribunal with each one, but there is another letter in which there is a reference to a payment on the 9th of May 1941, and, of course, another reference to a payment on the 30th of June 1943. My Lord, these are Pages 133 and 134. I am sorry; I did not give the details. Perhaps I ought to have indicated that.

THE PRESIDENT: The letter on Page 137, which may have some bearing, is a letter from the man signed "K"—from the man who made the previous applications?

SIR DAVID MAXWELL-FYFE: Yes.

Perhaps would you like to look at that, Defendant? It is Document 3945-PS, a letter of the 14th of July 1943, signed "K":

"When I went into the matter of the special funds, the competent people in the Reich Chancellery showed an entirely understanding attitude in this matter and asked for a written application from Your Excellency. When I replied that I did not wish to produce such an application before success was guaranteed, they asked for a little more time for a further exchange of views. After a few days I was told that I could produce the application without hesitation, upon which I handed over the letter which I had previously withheld. The amount requested has been handed to me today and I have duly entered this sum in my special cashbook as a credit."

VON NEURATH: Yes, but in spite of this . . .

SIR DAVID MAXWELL-FYFE: Well, now does that help you? Can you tell the Tribunal what were the outlays, the special outlays for the obtaining of diplomatic information for which you received this money?

VON NEURATH: I am very sorry; I absolutely cannot—I can no longer recall this matter at all. And the remarkable part is that this letter is dated the 14th of July 1943, when I no longer had any functions whatsoever, when I had left altogether. At this moment, I do not know.

SIR DAVID MAXWELL-FYFE: That is very strange, you know. In a further letter, in Document 3958-PS, on 8 January 1943, and in succeeding letters on the 4th of March and the 20th of April, the end of your occupation of the premises of 23 Rheinbabenallee is explained there and when your expenses ceased when you went to live in the country. I was just going to ask you about that—a little about that house. If you will just look at the affidavit of Mr. Geist, the American consul . . .

My Lord, that is Document 1759-PS, Exhibit USA-420.

[Turning to the defendant.] I referred to this this morning, and the passage that I want you to tell us about is in the middle of a paragraph.

My Lord, it is at the foot of Page 11 of the affidavit in the English version.

THE PRESIDENT: Do you have the separate document?

SIR DAVID MAXWELL-FYFE: Yes, My Lord, it is at the foot of Page 11. The paragraph begins:

"Another instance of the same nature occurred with regard to my landlord . . ."

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: My Lord, if Your Lordship goes on another 10 lines, after explaining about his landlord having to give up his house to the SS, he says:

"I know that on many occasions where it was thought necessary to increase the pressure, the prospective purchaser or his agent would appear accompanied by a uniformed SA or SS man. I know because I lived in the immediate neighborhood and knew the individuals concerned, that Baron von Neurath, one time Foreign Minister of Germany, got his house from a Jew in this manner. Indeed, he was my next-door neighbor in Dahlem. Von Neurath's house was worth approximately 250,000 dollars."

[Turning to the defendant.] Was that 23 Rheinbabenallee?

VON NEURATH: Yes, yes . . .

SIR DAVID MAXWELL-FYFE: Who acquired it for you, so that the president of the nonexistent Secret Cabinet Council could have it as an official residence? Who acquired it?

VON NEURATH: I did not understand that. Who did what?

SIR DAVID MAXWELL-FYFE: Who acquired 23 Rheinbabenallee? Who got it?

VON NEURATH: I can tell you about that. In the year 1937, when Hitler was erecting the large buildings for his Reich Chancellery, he told me one day that I would have to move from my apartment, which was situated behind the Foreign Office, because he wanted the garden for his Reich Chancellery, and the house would be torn down.

He said that he had given instructions to the Reich Building Administration to find other living quarters for me. The Reich Building Administration offered me various expropriated Jewish residences. But I refused them. But now I had to look for a house myself, and my personal physician, to whom I happened to mention this matter, told me that he knew of a place in Dahlem, that was Number 23 Rheinbabenallee, where he was house physician to the owner. This owner was Lieutenant Colonel Glotz, who was the brother of a close friend of mine. I informed the Reich Building Administration about this and told them that they should get in touch with this gentleman. In the course of the negotiations, which were conducted by the Reich Building Administration, a contract of sale was drawn up for the price quoted by Mr. Geist, and the price was in marks, not in dollars. This sum, at the request of Lieutenant Colonel Glotz, was paid to him in cash, and on his wish I persuaded the Finance Minister to have this money transferred to Switzerland.

I might remark that I was still Foreign Minister at the time. Afterward, I remained in this house for the simple reason that I did not find another one, and Herr Von Ribbentrop, my successor, moved into the old Presidential Palace.

Then in the year 1943 this house was destroyed. At the moment, therefore, I still cannot explain what these moneys were for and whether they were official payments made by the Reich Treasury. With the best intentions, I cannot tell you. But the statements made by Mr. Geist here are completely wrong as I have just stated. I did not buy or have this house transferred from a Jew, but from the Christian Lieutenant Colonel Glotz.

SIR DAVID MAXWELL-FYFE: You tell us that you passed the money on to Switzerland on his account?

VON NEURATH: I? Yes. Because Herr—Herr Glotz went to Switzerland. I believe, indeed, his wife was non-Aryan.

SIR DAVID MAXWELL-FYFE: I see. I would just like to put the next sentence and then I will leave this document:

“I know too that Alfred Rosenberg, who lived in the same street with me, purloined a house from a Jew in similar fashion.”

Do you know anything of that?

VON NEURATH: I do not know how Herr Rosenberg acquired his house.

SIR DAVID MAXWELL-FYFE: Now, Defendant, I want you to come now to March of 1938. Perhaps I can take this shortly if I have understood you correctly. You know that the Prosecution complained about your reply to the British Ambassador with regard to the Anschluss. As I understand you, you are not now suggesting that your reply was accurate; but you are saying that that was the best of your information at the time, is that right?

VON NEURATH: Yes, that is quite correct. It is true. That was an incorrect statement but I just did not know any better; do you see?

SIR DAVID MAXWELL-FYFE: You say that you did not hear—that neither Hitler nor Göring told you a word about these ultimatum which were given first of all to Herr Von Schuschnigg and secondly to President Miklas; you were told nothing about that? Is that what you are telling?

VON NEURATH: No, at that time—at that time I knew nothing. I heard about them later.

SIR DAVID MAXWELL-FYFE: My Lord, I am going to leave that. I am not going into that incident in detail—we have been

over it several times—in view of the way that the defendant is not contesting the accuracy.

THE PRESIDENT: I should like to know when he heard of the true facts.

SIR DAVID MAXWELL-FYFE: I am much obliged.

[Turning to the defendant.] When did you hear of the true facts of the Anschluss?

VON NEURATH: I heard the details for the very first time here, when this report of Legation Counsellor Hewel was submitted to me. Prior to this time I probably heard that there had been pressure exerted on Herr Schuschnigg, but nothing else. I actually learned the exact details for the first time here in Nuremberg.

SIR DAVID MAXWELL-FYFE: I only want to get it quite clear. You say that between the 11th of March and your coming to Nuremberg, you never heard anything about the threat of marching into Austria, which had been made by the Defendant Göring, or Keppler, or General Muff on his behalf? You never heard anything about that?

VON NEURATH: No, I heard nothing of that sort.

SIR DAVID MAXWELL-FYFE: Well, then I do want to ask you about the assurance that you gave to M. Mastny, the Czechoslovak Minister in Berlin. I would like you to look at Document TC-27 which you will find in Document Book 12, Page 123 of Document Book 12. The passage that I want to ask you about is in the sixth paragraph. After dealing with the conversation with the Defendant Göring about the Czechoslovak mobilization, it goes on:

“M. Mastny was in a position to give him definite and binding assurances on this subject”—that is, the Czechoslovak mobilization—“and today”—that is, the 12th of March—“spoke with Baron von Neurath, who, among other things, assured him on behalf of Herr Hitler that Germany still considers herself bound by the German-Czechoslovak Arbitration Convention concluded at Locarno in October 1925.”

Now, you have told the Tribunal—we have had the evidence of Baroness von Ritter—that the meeting on the 5th of November had this very disturbing effect on you and in fact produced a bad heart attack. One of the matters that was discussed at that meeting was attack, not only on Austria but also on Czechoslovakia, to protect the German flank. Why did you think, on the 12th of March, that Hitler would ever consider himself bound by the German-Czechoslovak Arbitration Treaty which meant that he had to refer any dispute with Czechoslovakia to the Council of the League of Nations or the International Court of Justice? Why on earth did you think

that that was even possible, that Hitler would submit a dispute with Czechoslovakia to either of these bodies?

VON NEURATH: I can tell you that quite exactly. I already testified yesterday that Hitler had me summoned to him on the 11th for reasons that I cannot explain up to this day and told me that the march into Austria was to take place during the night. In reply to my question, or rather to my remark that that would cause great uneasiness in Czechoslovakia, he said that he had no intentions of any kind at this time against Czechoslovakia and that he was—he even hoped that relations with Czechoslovakia would be considerably improved by the invasion or occupation of Austria.

From this sentence and from his promise that nothing would happen, I concluded that matters would remain as they were and that, of course, we were still bound to this treaty of 1925. Therefore, I was able to assure M. Mastny of this with an absolutely clear conscience.

SIR DAVID MAXWELL-FYFE: Did you believe a word that Hitler said on the 12th of March? Did you still believe a word that Hitler said on the 12th of March 1938?

VON NEURATH: Yes, still at that time.

SIR DAVID MAXWELL-FYFE: I thought Von Fritsch was a friend of yours; wasn't he?

VON NEURATH: Who?

SIR DAVID MAXWELL-FYFE: Colonel General Von Fritsch; he was a friend of yours?

VON NEURATH: Yes, indeed.

SIR DAVID MAXWELL-FYFE: You did not believe that he had been guilty of homosexuality did you?

VON NEURATH: No, never.

SIR DAVID MAXWELL-FYFE: Well, didn't they—didn't you know that he had been subject in January 1938 to a framed-up charge?

THE PRESIDENT: Will you please answer instead of shaking your head.

VON NEURATH: Yes, I knew that, of course; and I learned of it and the fact that this charge was a fabrication of the Gestapo but not of Hitler, at least in my opinion.

SIR DAVID MAXWELL-FYFE: Well, didn't you know that those—these unsavory matters concerning Field Marshal Von Blomberg and Colonel General Von Fritsch had been faked up by members of the Nazi gang, who were your colleagues in the Government?

VON NEURATH: Yes. The details were unknown to me, of course.

SIR DAVID MAXWELL-FYFE: You see, you remember that at the time of Munich, when you came back to the field—came back into activity for some time, President Benes did appeal to this German-Czechoslovak Arbitration Convention and Hitler brushed the appeal to one side. Do you remember that? In September 1938?

VON NEURATH: No; that, I do not know, for at that time I was not in office any longer and I did not get to see these matters at all. I do not know about that.

SIR DAVID MAXWELL-FYFE: Well, you don't know; of course, it was in the German press and every other press that he appealed to this treaty and Hitler refused to look at it; but you say that you honestly believed on the 12th of March that Hitler would stand by that Arbitration Treaty; that's what you said?

VON NEURATH: Yes, I had no misgivings.

SIR DAVID MAXWELL-FYFE: My Lord, that might be a convenient moment to break off.

[A recess was taken.]

SIR DAVID MAXWELL-FYFE: Defendant, you spoke yesterday with regard to the memorandum of Lieutenant General Friderici. Do you remember in that memorandum he referred to a memorandum of yours on how to deal with Czechoslovakia?

Well, now, I would like you just to look at Document 3859-PS, so that the Tribunal can see your attitude toward the Czechs from your own words.

My Lord, that is at Page 107 of Document Book 12a.

[Turning to the defendant.] I will read first your letter to Lammers of the 31st of August 1940.

My Lord, that will be Exhibit GB-520.

[Turning to the defendant.] You say:

"Dear Herr Lammers: Enclosed I send you the memorandum which I mentioned in advance in my letter of 13 July 1940 . . . about the question of the future organization of the Bohemian-Moravian country. I enclose another memorandum on the same question, which my Secretary of State K. H. Frank has drawn up independently of me and which, in its train of thoughts, leads to the same result"—I ask you to note the next words—"and with which I fully agree. Please present both memoranda to the Führer and arrange a date for a personal interview for myself and State Secretary Frank. As I

have heard from a private source that individual Party and other offices intend to submit proposals to the Führer for separating various parts of the Protectorate under my authority, without my knowing these projects in detail, I should be grateful to you if you would arrange the date for my interview early enough for me, as the competent Reich Protector and one who understands the Czech problem, to have an opportunity, together with my State Secretary, to place our opinions before the Führer before all sorts of plans are suggested to him by other people."

Now, I would just like to take what I hope will be the gist of your own memorandum. If you will turn it over—this is your memorandum—take the first paragraph, Section I:

"Any considerations about the future organization of Bohemia and Moravia must be based on the goal which is to be laid down for that territory from a state-political (staatspolitisch) and ethnic-political (volkspolitisch) point of view.

"From a state-political standpoint there can be but one aim: total incorporation into the Greater German Reich; from an ethnic-political standpoint to fill this territory with Germans."

And then you say that you point the path; and if you go on to Section II, in the middle of Paragraph 2, you will find a subparagraph beginning—

My Lord, it is the top of Page 109, Your Lordship's copy:

"These 7.2 million Czechs, of whom 3.4 millions live in towns and communities of under 2,000 and in the country, are led and influenced by an intelligentsia which is unduly puffed up in proportion to the size of the country. This part of the population also tried, after the alteration of the constitutional situation of this area, more or less openly to sabotage or at any rate postpone necessary measures which were intended to fit the circumstances of the country to the new state of affairs. The remainder of the population, that is small craftsmen, peasants, and workmen, adapted themselves better to the new conditions."

Then, if you go on to Paragraph 3, you say:

"But it would be a fatal mistake to conclude from this that the Government and population behaved in this correct manner because they had inwardly accepted the loss of their independent state, and incorporation into Greater Germany. The Germans continue to be looked upon as unwelcome intruders and there is a widespread longing for a return to the old state of affairs, even if the people do not express it openly.

"By and large, the population submit to the new conditions but they do so only because they either have the necessary rational insight or else because they fear the consequences of disobedience. They certainly do not do so from conviction. This will be the state of affairs for some time to come.

"But"—go on to Section III—"as things are like that, a decision will have to be taken as to what is to be done with the Czech people in order to attain the objective of incorporating the country and filling it with Germans as quickly as possible and as thoroughly as possible.

"The most radical and theoretically complete solution to the problem would be to evacuate all Czechs completely from this country and replace them by Germans."

Then you say that that is not possible because there are not sufficient Germans to fill it immediately.

Then, if you go on to Paragraph 2, to the second half, you say—My Lord, that is the last six lines of Page 110:

"It will, where the Czechs are concerned, rather be a case on the one hand of keeping those Czechs who are suitable for Germanization by individual selective breeding, while on the other hand of expelling those who are not useful from a racial standpoint or are enemies of the Reich, that is, the intelligentsia which has developed in the last 20 years. If we use such a procedure, Germanization can be carried out successfully."

Now, Defendant, you know that in the Indictment in this Trial we are charging you and your fellow defendants, among many other things, with genocide, which we say is the extermination of racial and national groups, or, as it has been put in the well-known book of Professor Lemkin, "a co-ordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups with the aim of annihilating the groups themselves." What you wanted to do was to get rid of the teachers and writers and singers of Czechoslovakia, whom you call the intelligentsia, the people who would hand down the history and traditions of the Czech people to other generations. These were the people that you wanted to destroy by what you say in that memorandum, were they not?

VON NEURATH: Not quite. Here there are . . .

SIR DAVID MAXWELL-FYFE: But just before you answer, what did you mean by saying, in the last passage that I read to you, "...expelling those who are not useful from a racial standpoint or are enemies of the Reich, that is, the intelligentsia which has developed in the last 20 years"? Did you mean what you said? Were you speaking the truth when you said it was necessary to expel the intelligentsia?

VON NEURATH: To that I can answer only "yes" and "no." First of all, I should like to say that from this report it becomes apparent that the memorandum was written by Frank. I joined my name to it, and this was on 31 August 1940. The memorandum which I—the memorandum which is referred to in the Friderici report is from a—is dated later I think, although I do not know offhand.

SIR DAVID MAXWELL-FYFE: I think you will find—I will give you, in a moment, the letter from Ziemke, who transmits Hitler's view, and I think you will find that it is this memorandum that Hitler is dealing with. I will show you Frank's memorandum in a moment. I am suggesting to you now, as you say to Lammers, that you enclosed your memorandum and you enclosed another memorandum, of which I will read you the essential part in a moment, which is the memorandum of Karl Hermann Frank. But this is a . . .

VON NEURATH: They are both by Frank.

SIR DAVID MAXWELL-FYFE: I'll show it—no; but look at your own letter of the 31st of August: "Enclosed I send you the memorandum," and you go on: "I enclose another memorandum . . . which my State Secretary K. H. Frank has drawn up independently of me . . . with which I fully agree." I am suggesting to you, you know that this is your—this is your memorandum referred to as the—in the Friderici document . . .

My Lord, that is Page 132 of Document Book 12.

[Turning to the defendant.] . . . where General Friderici says, "After ample deliberation the Reich Protector expressed his view about the various plans in a memorandum." I am suggesting to you that this is your memorandum which you sent on to Lammers for submission to the Führer. Are you saying—are you really going to tell the Tribunal that this is not your memorandum?

VON NEURATH: No, I do not want to say that at all. At the moment I really do not know any longer. I did not write it, but I agreed with its contents; the letter to Lammers says so.

SIR DAVID MAXWELL-FYFE: Well now, if you agreed with its contents, what did you mean by saying that you would have to expel the intelligentsia, except that you were going to break down the Czechs as a national entity and expel the people who would keep going that history and tradition and language? Isn't that why you wanted to expel the intelligentsia?

VON NEURATH: I never mentioned the word "destroy," but said that the intelligentsia . . .

SIR DAVID MAXWELL-FYFE: I said "expel" . . .

VON NEURATH: I see.

SIR DAVID MAXWELL-FYFE: ... which is your own word.

VON NEURATH: The class of the intelligentsia was the greatest obstacle to co-operation between Germans and Czechs. For that reason, if we wanted to achieve this co-operation, and that was still the aim of our policy, then this intelligentsia had to be reduced in some way and principally their influence had to be diminished, and that was the meaning of my explanation.

SIR DAVID MAXWELL-FYFE: Yes, you said to achieve your policy, but by achieving your policy you meant to destroy the Czech people as a national entity with their own language, history, and traditions, and assimilate them into the Greater German Reich. That was your policy, wasn't it?

VON NEURATH: My policy was, first of all, to assimilate Czechoslovakia, as far as possible. But in the final analysis that could not have been achieved for generations. The first thing to do was to bring about co-operation so as to have peace and order.

SIR DAVID MAXWELL-FYFE: Well, now before I put to you the memorandum of Frank with which you entirely agree, would you look at Paragraph VII of your own memorandum?

My Lord, it is Page 113 of Document Book 12a.

[Turning to the defendant.] In Section VII you say:

"If one considers the gigantic tasks facing the German nation after a victorious war, the necessity for a careful and rational utilization of Germans will be apparent to everyone. There are so many tasks that have to be tackled at once and simultaneously that a careful, well-thought-out utilization of the Germans who are suitable for carrying out these tasks is necessary.

"The Greater German Reich will have to make use of the help of foreigners on a large scale in all spheres and must confine itself to appointing Germans to the key positions and to taking over branches of public administration where the interests of the Reich make it absolutely necessary..."

You were, in this memorandum, blueprinting the plans for dealing with the Czechs after the war on the basis of the German victory; that is, that they should disappear as a nation and become assimilated to the German Reich. Wasn't that what was in your mind?

VON NEURATH: To make the Czechs disappear as a nation was altogether impossible. That was not possible at all. But they were to incorporate themselves more closely into the Reich, and that is what I mean by the word "assimilate."

Moreover, it is also stated in this memorandum—earlier, much earlier—that from the racial point of view—if you want to use that unpleasant expression—there was an extraordinarily large number of Germans within Czechoslovakia.

SIR DAVID MAXWELL-FYFE: Well now, just turn over and see how the—your State Secretary's memorandum with which you entirely agree—how that runs.

My Lord, Your Lordship will find the beginning of that is enclosure Number 2 on Page 115.

[Turning to the defendant.] The State Secretary states his problem. He says, in the second sentence:

“The question as to whether the Protectorate, with a Reich Protector as its head, is suitable for settling the Czech problem and should therefore be retained or whether it should now give place to some other form of government is being raised by various people and is the cause of this memorandum. It will briefly: (A) Indicate the nature of the Czech problem; (B) analyze the present way in which it is being dealt with; (C) examine the proposed alterations from the point of view of their suitability, and finally: (D) express an independent opinion on the whole question.”

Well now, I would like you just to look at your State Secretary's independent opinion with which you entirely agree.

THE PRESIDENT: Oughtn't you to read the last two lines?

SIR DAVID MAXWELL-FYFE: Oh yes, My Lord, I'm sorry.

“On a correct decision depends the solution of the Czech problem. We thus bear the responsibility for centuries to come.”

Now, My Lord, Frank's own opinion starts on Page 121 in Section D of the memorandum, and he begins by saying:

“The aim of Reich policy in Bohemia and Moravia must be the complete Germanization of area and people. In order to attain this there are two possibilities:

“I. The total evacuation of the Czechs from Bohemia and Moravia to a territory outside the Reich and settling Germans in the freed territory; or

“II. If one leaves the majority of the Czechs in Bohemia and Moravia the simultaneous application of a great variety of methods working toward Germanization, in accordance with an X-year plan.

“Such a Germanization provides for: 1) The changing of the nationality of racially suitable Czechs; 2) the expulsion of racially unassimilable Czechs and of the intelligentsia who

are enemies of the Reich, or 'special treatment' for these and all destructive elements; 3) the recolonizing of the territory thus freed with fresh German blood."

Now, I want you just to turn to where your State Secretary gets down to concrete suggestions as to this policy of Germanization. Remember that you entirely agree, in your letter to Lammers.

If Your Lordship will turn to Page 123, there is a heading "Youth; fundamental change in education; extermination of the Czech historical myth."

[Turning to the defendant.] That is the first point: Destroy any idea they might have of their history, beginning with the time of St. Wenceslaus, nearly a thousand years ago. That is your first point.

"Education toward the Reich idea; no getting on without perfect knowledge of the German language; first doing away with the secondary schools, later also with the elementary schools; never again any Czech universities, only transitionally the *Collegium Bohemicum* at the German university in Prague; 2 years compulsory labor service.

"Large-scale land policy, creation of German strongpoints and German bridges of land, in particular pushing forward of the German national soil from the north to the suburbs of Prague.

"Campaign against the Czech language, which is to become merely a dialect as in the 17th and 18th centuries, and which is to disappear completely as an official language.

"Marriage policy after previous racial examination.

"In attempts at assimilation in the Reich proper, the frontier Gause must be excluded.

"Apart from continuous propaganda for Germanism and the granting of advantages as an inducement, severest police methods, with exile and 'special treatment' for all saboteurs. Principle: 'Zuckerbrot und Peitsche.'"—What is that "Zuckerbrot und Peitsche"?

"The employment of all these methods has a chance of success only if a single central Reich authority with one man at its head controls its planning, guiding, and carrying out. The direct subordination of the 'master in Bohemia' to the Führer clarifies the political character of the office and the task, and prevents the political problem from sinking down to an administrative problem."

In other words, it was essential to this policy that you should keep your job as Reich Protector and Frank should keep his as State Secretary, and the Gauleiter of the Danube should not be able to interfere and take away Brno as the capital of his Gau.

Defendant, do you tell this High Tribunal, as you told Dr. Lammers, that you entirely agree with what I suggest to you are dreadful, callous, and unprincipled proposals? Do you agree with these proposals?

VON NEURATH: No, I do not agree in the least.

SIR DAVID MAXWELL-FYFE: Well, why did you tell Lammers you did? Why, when things were going well, did you tell Lammers that you did agree with them?

VON NEURATH: Later I made an oral report to the Führer about this. Apart from that, the statements which you just made show quite clearly that this first memorandum was written by Frank, who then added the second memorandum to it, and if you say, as you said at the end just now, that it was my purpose to remain in office as Reich Protector, then I can only tell you that the purpose, if there was a purpose in this connection, was that Frank wanted to become Reich Protector. However, from the point of view of the contents of this memorandum, I can certainly no longer identify myself with them today, nor did I do so on the occasion when I reported to the Führer. This becomes clear from the testimony which I gave yesterday. This testimony . . .

SIR DAVID MAXWELL-FYFE: Well, I'm not concerned with your testimony yesterday; I am concerned with what you wrote in 1940 when you wrote—and I will read the words again; I have read them three times:

"I enclose another memorandum on the same question which my State Secretary, K. H. Frank, has drawn up independently of me"—independently of me—"and which in its train of thoughts leads to the same result, and with which I fully agree."

Why did you . . .

VON NEURATH: I have just now told you that I no longer agree with these statements today, and that at the time when I verbally reported to the Führer, I did not support these statements either, but to the contrary, I made the proposals to him which I explained yesterday and to which I received his agreement.

THE PRESIDENT: Sir David, are these documents correctly copied? Because you see that in the letter of the 31st of August 1940 there is a reference in the margin, "Enclosure 1; Enclosure 2."

SIR DAVID MAXWELL-FYFE: Yes, My Lord.

THE PRESIDENT: Therefore, the letter identifies the document.

SIR DAVID MAXWELL-FYFE: Yes, My Lord, that is so. The one is, as I am suggesting, the defendant's; the other is Frank's.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: And you have mentioned, Defendant, about what—that you dealt with them otherwise to the Führer. I suggest to you that that is not true, that is not true that you dealt with them otherwise to the Führer. I am putting it quite bluntly that it is not true.

VON NEURATH: In that case I must regret to say that you are lying. For I—I must know. After all, I must know whether I talked to the Führer. I delivered a verbal report to him in person and Frank was not present.

SIR DAVID MAXWELL-FYFE: Well now, just let us look at the report, at your report. Your Lordship will find it on Page 7.

We will see whether it is true or not.

THE PRESIDENT: Page what?

SIR DAVID MAXWELL-FYFE: Page 7, My Lord. It is Document D-739 of the same book, 12a; it is Exhibit GB-521.

Now, this is a memorandum, a secret memorandum of the representative of the Foreign Office in the Office of the Reich Protector, of the 5th of October.

[Turning to the defendant.] You will remember your letter was the 31st of August. It says:

“Regarding the reception of the Reich Protector and State Secretary Frank by the Führer, I have learned the following from authentic sources:

“To begin with, the Minister of Justice, Gürtner, gave a report on the Czech resistance movement, during the course of which he maintained that the first trial of the four chief ringleaders would shortly take place before the Peoples' Court.

“The Führer objected to this procedure and declared that execution squads were good enough for Czech insurgents and rebels. It was a mistake to create martyrs through legal sentences, as was proved in the case of Andreas Hofer and Schlageter. The Czechs would regard any sentence as an injustice. As this matter had already entered the path of legal procedure it was to be continued with in this form. The trials were to be postponed until after the war, and then amidst the din of the victory celebrations, the proceedings would pass unnoticed. Only death sentences could be pronounced, but would be commuted later on to life imprisonment or deportation.

"Regarding the question of the future of the Protectorate, the Führer touched on the following three possibilities:

"1. Continuation of Czech autonomy in which the Germans would live in the Protectorate as co-citizens with equal rights. This possibility was, however, out of the question as one had always to reckon with Czech intrigues.

"2. The deportation of the Czechs and the Germanization of the Bohemian and Moravian area by German settlers. This possibility was out of the question too, as it would take 100 years.

"3. The Germanization of the Bohemian and Moravian area by Germanizing the Czechs, that is, by their assimilation. The latter would be possible with the greater part of the Czech people. Those Czechs against whom there were racial objections or who were anti-German were to be excepted from this assimilation. This category was to be weeded out.

"The Führer decided in favor of the third possibility; he gave orders via Reich Minister Lammers, to put a stop to the multitude of plans regarding partition of the Protectorate. The Führer further decided that, in the interests of a uniform policy with regard to the Czechs, a central Reich authority for the whole of the Bohemian and Moravian area should remain at Prague.

"The present status of the Protectorate thus continues."

And look at the last sentence:

"The Führer's decision followed the lines of the memoranda submitted by the Protector and State Secretary Frank."

Now, Defendant, although you answered me so sharply a moment ago, that document says that after the reception of the Reich Protector and the State Secretary, the representative of the Foreign Office in your office says that the decision of the Führer followed the lines of the memoranda put forward by you and your State Secretary Frank. Why do you say that I am wrong in saying it is untrue that a different line was followed by the Führer? It is set out in that document.

VON NEURATH: To that I have the following reply to give: First of all, the document shows that the Führer touched upon the following three eventualities with reference to the question of the future of the Protectorate. They are the three possibilities which I said yesterday I had proposed. The document also shows, though not directly, that the cause for this Führer conference was primarily quite a different one than merely deciding the question of the Protectorate. On the contrary, the Minister of Justice was present and a legal question in regard to the treatment of the members of

the resistance movement was the cause for the discussion and Frank came to Berlin for this reason. I had been to Berlin before that and I talked to the Führer, not about the memorandum, which I had in my hand, but about my misgivings in general and the future of our policy in the Protectorate. My report included those proposals which are mentioned here under 1, 2, and 3.

It says there at the end, "The decision followed the lines of the memoranda submitted by the Protector and State Secretary Frank." That remark was added by Herr Ziemke or whoever had written the document, but what I said yesterday about the policy is correct. And even if I admit that at that time in the letter to Lammers I did identify myself with these enclosures it was nevertheless dropped.

SIR DAVID MAXWELL-FYFE: Well, I want to remind you that in the passage which I referred to last in your memorandum, as opposed to that of Frank, you were putting forward the organization of the Greater German Reich. I take it in this way, that you envisaged yourself that in the event of a German victory in the war the Czech part of Czechoslovakia would remain part of a Greater German Reich.

VON NEURATH: No, I beg your pardon. It had already been incorporated and here it is also expressly stated that it should remain in that condition, as a protectorate but as a special structure.

SIR DAVID MAXWELL-FYFE: Well now, I just—are you saying that your policy, after this period—this was in the autumn of 1940—that your policy towards the Czechs was sympathetic?

VON NEURATH: I do not think it changed except when there were strong resistance movements there.

SIR DAVID MAXWELL-FYFE: Well now, why was it that you forbade, in the middle of 1941, any reference of the handling—to the discussion of the handling and treatment of all questions about the German-Czech problem? Why did you forbid its discussion?

VON NEURATH: To prevent these problems which were the cause of this memorandum from arising again and again, namely the problem of individual parts of the Protectorate being torn away and added to the lower Danube or the Sudeten country with a general resettlement. That was the purpose of my report to the Führer, as I explained yesterday, so as to put a stop to that discussion once and for all.

SIR DAVID MAXWELL-FYFE: But you also—you particularly prohibited, did you not, any public statements addressed to the Czech population? Well, let us look at the document.

It is Document Number 3862-PS, My Lord. Your Lordship will find it at Page 126 of Document Book 12a. My Lord, it becomes Exhibit GB-522.

[Turning to the defendant.] It is for distribution through your various offices and you say:

“For the motive stated I order that in the future, when arrangements and publications of any kind concerning the German-Czech problem are made, the views of the whole population are more than ever to be directed to the war and its requirements while the duty of the Czech nation to carry out the war tasks imposed on it jointly with the Greater German Reich is to be stressed.

“Other questions concerning the German-Czech problem are not suitable subjects for public discussion at the present time. I wish to point out that, without detriment to my orders, administrative handling and treatment of all questions about the German-Czech problem are to be in no way alluded to.”

Then the last paragraph:

“Requisite public statements about the political questions of the Protectorate and in particular those addressed to the Czech population are my business and mine alone and will be published in due time.”

Why did you want to prohibit so severely the addressing of any public statements to the Czech population?

VON NEURATH: That is addressed not only to the Czech population, but especially to the Germans, and just for this reason—that was some special event which I no longer remember—it says here “for the motive stated I order that”—when there was again a discussion about the future of the Protectorate or something was published. That was the reason and I pointed out that that is why it was forbidden.

SIR DAVID MAXWELL-FYFE: Well now, I suggest to you about the—your proposals and Frank's speak for themselves. I want you to help me on one other matter.

Do you remember after the closing of the universities that the question arose, what was to happen to the students? There were about 18,000 students who were, of course, out of work because they could not...

VON NEURATH: I beg your pardon, I beg your pardon. There were not so many; there were at the most 1,800 in all.

SIR DAVID MAXWELL-FYFE: No, you got it—with the greatest respect either you are wrong or your office. According to the note from Group X of your office:

"According to the data at my disposal the number of students affected by the closure"—I should think that would include high schools as well—"for 3 years of the Czech universities is 18,998.

"According to the press communications, dated the 21st of this month only 1,200 persons were arrested in connection with the events of the 15th of this month."

And then your office goes on to say by a process of subtraction that leaves 17,800. You were faced with their occupation.

My Lord, it is Page 104, Document 3858-PS. Exhibit GB-523.

VON NEURATH: I do not want to deny my official's statement. He must have known better than I. I am merely surprised that there should have been 18,000 students in two Czech universities, in a country with a population of 7 millions.

THE PRESIDENT: Hadn't you better check that by the original?

SIR DAVID MAXWELL-FYFE: My Lord, I shall. I am much obliged to Your Lordship. Well, My Lord, it is quite clear that both figures—they are in figures, and they are 18,998, and then there is the check below, and you have to take off 1,200; that leaves 17,800. My Lord, if it were only 1,800, the second figure could not arise.

DR. VON LÜDINGHAUSEN: Mr. President, somewhere there must be an error. That would have been more for two universities in Czechoslovakia than there were in Berlin at the best of times. There was a maximum of 8,000 to 9,000 in Berlin per year and in the case of a nation of only 7 millions there are supposed to be 18,000 students in two universities. This cannot be right.

SIR DAVID MAXWELL-FYFE: My Lord, it may be that there are three age groups. Your Lordship sees that it is "according to the data at my disposal, the number of students affected by the closure for 3 years of the Czech universities is 18,000." It may be that is the intake for 2 years, in addition to present students.

[Turning to the defendant.] Anyhow, this is the figure; and it is this problem which has been dealt with by your Ministry. It may be that it includes certain high schools, but at any rate, these are your Ministry's documents, and I want to know what happened. This was the minutes, as I understand it, from Dennler, Dr. Dennler, who was the head of Group X of your office, to Burgsdorff, who had a superior position; and, if I may summarize it, this letter of 21 November 1939 suggests that the students should be taken forcibly from Czechoslovakia to the old Reich and put to work in the old Reich; and then, the next—on 25 November, you will notice that in Paragraph 2 it says—the writer, who is Burgsdorff, is saying that he is dealing with X 119/39, which is Dennler's memorandum;

and Burgsdorff says that he does not want them to go into the Reich because at that time there was some unemployment in the Reich, and suggests that they should be dealt with by compulsory labor on the roads and canals in Czechoslovakia. Now, these were the two proposals from your office.

My Lord, the second one is Document 3857-PS, which will be Exhibit GB-524.

[Turning to the defendant.] What happened to the unfortunate students?

VON NEURATH: Nothing at all happened to them.

SIR DAVID MAXWELL-FYFE: Well now, did either of these proposals of Dr. Dennler for forced labor in the Reich and of Burgsdorff for forced labor in Czechoslovakia, did they come up to you?

VON NEURATH: No, none of them.

SIR DAVID MAXWELL-FYFE: Did they come to you for decision? Did they come to you for decision?

VON NEURATH: I think they were submitted to me, but I cannot tell you for certain.

SIR DAVID MAXWELL-FYFE: Well, will you agree with me, or perhaps you will be able to correct my knowledge, that this is the earliest suggestion—you said it was not put into effect—but the earliest suggestion of forced labor came from an officer of your department? Do you know of any other department of the Reich that had suggested forced labor as early as November 1939?

VON NEURATH: There is no connection, and, moreover, if you were to look through suggestions made by all your subordinates, then you, too, might find some proposal which you afterward rejected. Suggestions made by an adviser do not mean anything at all.

Apart from that, perhaps I can clear up this figure of 18,000. Here it says, "According to the data at my disposal, the number of students who will be affected by closing the Czech universities for 3 years will be 18,000." It is, therefore, three times 6,000, is it not? Which is approximately 18,000.

SIR DAVID MAXWELL-FYFE: I had already put forward that suggestion, Defendant, about 10 minutes ago, but I respectfully agree with you. That is one matter in which we are not in difference.

Well now, you understand what I am suggesting. It is that these proposals germinated in your office, because they were quite in keeping with the proposals in the memoranda which I have just read to the Tribunal, that you should not only get rid of Czech higher

education, but you should have forced labor. Do you remember that was in the State Secretary's memorandum? What I am suggesting is that it was in your department—the idea of forced labor—as early as 21 November 1939.

Now, Defendant, I have only one other matter, and I hope, as it is a question of fact, that perhaps you will be able to agree with me on reflection. You suggested this morning that the German university in Prague was closed down after the founding of Czechoslovakia in 1919. That is how it came to us. On reflection, do you not know that it continued and that many thousands of students graduated in the German university of Prague between 1919 and 1939?

VON NEURATH: As far as I know, it was a department of the Czech university, a German part of the Czech university, as far as I know.

SIR DAVID MAXWELL-FYFE: But it continued—it continued as a university?

VON NEURATH: Yes, it continued, but as a Czech university.

SIR DAVID MAXWELL-FYFE: Yes, but German students came there and could take their degrees in German? It was a permitted language? I suggest to you that there are thousands of people who went there from Austria and from the old Reich—went there as Germans and took their degrees in German.

VON NEURATH: Yes, only the old German university, the so-called Charles University, was closed by the Czechs. But a German department, or whatever one might call it, still remained. The Germans studied and took their examinations there.

SIR DAVID MAXWELL-FYFE: I think the point is clear. I am not going to argue about the actual thing, but that there was a German university, where German students could study, you will agree.

THE PRESIDENT: Do the Prosecution wish to cross-examine further?

STATE COUNSELLOR OF JUSTICE M. Y. RAGINSKY (Assistant Prosecutor for the U.S.S.R.): Defendant, tell us please, when you were Minister of Foreign Affairs did Ribbentrop try to intervene in the foreign affairs of Germany?

VON NEURATH: Is that a question?

MR. COUNSELLOR RAGINSKY: Yes, that is a question.

VON NEURATH: Yes.

MR. COUNSELLOR RAGINSKY: Would you please tell us in what form this intervention took place?

VON NEURATH: By communicating to the Führer his own ideas on foreign policy, without giving them to me for consideration.

MR. COUNSELLOR RAGINSKY: All right. Yesterday you stated here that in 1936 you had differences of opinion with Hitler and that on 27 of July 1936 you asked to be relieved of your duties as a Minister. This document was cited here yesterday, but did you not write to Hitler then?—and I will read the last sentence of your letter to him:

“Even if I am no longer Minister, I shall be constantly at your disposal, if you so desire, with my advice and my years of experience in the field of foreign policy.”

Did you write these words in your letter to the Führer?

VON NEURATH: Yes indeed; yes indeed.

MR. COUNSELLOR RAGINSKY: And did you fulfill the promises you made to Hitler? Whenever it was necessary to cover by diplomatic manipulations the aggressive actions of Hitler, as for instance at the time of the annexation of the Sudetenland, during the invasion of Czechoslovakia, and so on? Did you help Hitler with your experience? Is that right?

VON NEURATH: That is a great mistake. On the contrary, as I have stated here yesterday and today, I was called in by Hitler only once; and that was on the last phase of the Austrian Anschluss. With that my activities came to an end, but in 1938, to be sure, I went to see him of my own accord, to restrain him from starting the war. That was my activity.

MR. COUNSELLOR RAGINSKY: We have already heard this. I would like to ask you another question concerning the memorandum of Friderici without repeating what has already been said here concerning it. You remember this memorandum well, as it was just presented to the Court a short time ago. In the last part of the memorandum of Friderici—it is the last paragraph but one—it is stated:

“If the governing of the Protectorate were in reliable hands and guided exclusively by the order of the Führer of the 16th of March 1939, the territory of Bohemia and Moravia would become an integral part of Germany.”

It was for this purpose that Hitler chose you to be Protector; is that not so?

VON NEURATH: Not a bit; that was not the reason at all. The reason was—I have described it in detail yesterday.

MR. COUNSELLOR RAGINSKY: All right. We shall not repeat the reasons; we spoke about them yesterday.

Well, you deny that you were precisely the man who was supposed to carry through the invasion of Czechoslovakia?

VON NEURATH: To that I can only answer "no."

MR. COUNSELLOR RAGINSKY: All right. Do you admit that you were, in the Protectorate, the only representative of the Führer and of the Government of the Reich, and that you were directly subordinate to Hitler?

VON NEURATH: Yes, that is right; that is stated in Hitler's decree.

MR. COUNSELLOR RAGINSKY: Yes, it is stated there. I will not read this decree, which would only delay the interrogation. This decree has already been presented to the Court.

Do you acknowledge that all administrative organs and authorities of the Reich in the Protectorate with the exception of the Armed Forces, were subordinate to you?

VON NEURATH: No. I am sorry to have to say that that is a mistake. That is also stated in the same decree of 1 September 1939. Apart from that, there were numerous other organizations, that is, Reich authorities, which were not under my jurisdiction; quite apart from the Police.

MR. COUNSELLOR RAGINSKY: Well, as far as the Police are concerned, we will speak about that separately. So you think it is a mistake that the decree does not mention it, or do you interpret the decree otherwise?

I shall read the first paragraph of the decree of 1 September 1939. It is stated there:

"All the authorities, offices and organizations of the Reich in the Protectorate of Bohemia and Moravia, with the exception of the Armed Forces, are under the jurisdiction of the Reich Protector."

It is also stated in Paragraph 2:

"The Reich Protector supervises the entire autonomous administration of the Protectorate."

And Paragraph 3:

"The office of the Reich Protector is in charge of all administrative branches of the Reich administration with the exception of the Armed Forces."

As you see, it is stated very bluntly and definitely here that all the institutions of the Reich were subordinate to you, while you were subordinate to Hitler.

VON NEURATH: I have to tell you again that as to administrative agencies, yes; but there were a number of other

authorities, Reich authorities and offices which did not come under my jurisdiction, for instance, the Four Year Plan.

MR. COUNSELLOR RAGINSKY: Now let us pass to the question of the Police. Yesterday, in answer to a question of your counsel, you stated to the Tribunal that as to this decree of 1 September, signed by Göring, Frick, and Lammers, Paragraph 13 was not comprehensible to you. Let us examine other paragraphs of the same chapter concerning the Police.

Paragraph 11 says:

"The organs of the German Security Police in the Protectorate of Bohemia and Moravia have the task of investigating and combating all hostile attempts toward the government and population in the territory of the Protectorate, informing the Reich Protector as well as the subordinate organizations, keeping them currently informed on important events, and advising them as to what to do."

Paragraph 14 of the same decree states:

"The Reich Minister of the Interior (the Reichsführer SS, and the Chief of the German Police), with the agreement of the Reich Protector in Bohemia and Moravia releases the legal and administrative directives necessary for carrying out this order."

Thus, according to this decree, the Police and the SS were obliged to let you know about all their measures and, moreover, all their administrative and legal acts and measures had been carried out with your knowledge. Do you acknowledge that?

VON NEURATH: No; that is not right. First of all, there was at one time an order that they were to inform me. But that was not carried out and was forbidden by Himmler directly. And the other, the second regulation to the effect that the administrative measures—or whatever it is called—could or should be carried out with my approval, was never applied.

MR. COUNSELLOR RAGINSKY: So you deny it?

VON NEURATH: Yes.

MR. COUNSELLOR RAGINSKY: I now present to you the testimony of Karl Hermann Frank, of 7 March 1946, on this very question; that is, on the question of the Police and to whom they were subordinated.

Mr. President, I present this testimony as Exhibit Number USSR-494.

THE PRESIDENT: Is this in the English book as well, do you know?

MR. COUNSELLOR RAGINSKY: No, Mr. President. This document that I am presenting now is an original, signed by Frank.

[Turning to the defendant.] Karl Hermann Frank, during an interrogation, testified:

"According to the order on 'The Structure of the German Administration in the Protectorate and the German Security Police,' all German authorities and offices in the Protectorate and thereby the entire Police, too, excepting the Armed Forces are formally subordinated to the Reich Protector and are bound by his directions. Owing to this the Security Police was bound to carry out this basic political policy set forth by the Reich Protector. Orders as to carrying out State Police measures were mainly issued by the Chief of the Security Police with the Reich Security Main Office in Berlin.

"If the Reich Protector wanted to carry out some State Police measures, he had to have the permission of the Reich Security Main Office in Berlin; that is, in this case the State Police also submitted each order for reconfirmation to the Reich Security Main Office in Berlin. The same applied also to directives for the carrying out of State Police measures given by the Higher SS and Police Leader to the Chief of the Security Police."

I would like to draw your attention to this paragraph that I am reading now:

"This system of channels for issuing directives remained in force during the whole existence of the Protectorate and was used as such by Von Neurath in the Protectorate. In general the Reich Protector could, on his own initiative, issue directives to the State Police through the Chief of the Security Police. The carrying out of such directives was, however, subject to approval by the Reich Security Main Office if State Police measures were concerned.

"In regard to the SD (Security Service), which had no executive powers, the authority of the Reich Protector respecting the issuing of directives to the SD was greater and not subject to the approval of the Reich Security Main Office in every case."

Do you confirm this testimony of Frank?

VON NEURATH: No.

MR. COUNSELLOR RAGINSKY: All right.

VON NEURATH: I refer you to a statement by the same Frank, which I have learned about here, which was made last year, during which he said something quite different. He said that the entire Police were not under the Reich Protector, but came under the Chief

of the Police in Berlin, namely, Himmler. It ought to be here somewhere—this statement.

MR. COUNSELLOR RAGINSKY: Don't worry about it; I will come back to this testimony.

Tell me, please, who was the political adviser in your service?

VON NEURATH: Political adviser?

MR. COUNSELLOR RAGINSKY: Yes, political adviser.

VON NEURATH: In general I had various political advisers.

MR. COUNSELLOR RAGINSKY: In order not to waste time, I will show you a short document, and I ask you to read it.

On 21 July 1939 the Chief of the Security Police wrote a letter to your State Secretary and Higher SS and Police Leader, Karl Hermann Frank. The letter had the following contents:

"In an order of 5 May 1939 the Reich Protector of Bohemia and Moravia appointed the SD Leader and Chief of the Security Police as his political adviser. I have ascertained that this order has not yet been published or carried out. Please provide for carrying out this order.

"Signed, Dr. Best."

Do you remember your order now?

VON NEURATH: I cannot remember that decree at the moment, but I do remember that this was never carried out, because I did not have this SD leader as my political adviser.

THE PRESIDENT: This would be a convenient time to break off.

MR. COUNSELLOR RAGINSKY: Mr. President, just one more minute, please, to finish this question, and then we can break off.

[Turning to the defendant.] But did you issue such an order on 5 May?

VON NEURATH: I can no longer tell you about that at this date—but it is probably true. I do not want to deny it; I do not know any more.

MR. COUNSELLOR RAGINSKY: But you did issue this order?

All right. I thank you, Mr. President. It is possible to adjourn now. I shall require 30 minutes more.

[The Tribunal adjourned until 26 June 1946, at 1000 hours.]

ONE HUNDRED AND SIXTY-FOURTH DAY

Wednesday, 26 June 1946

Morning Session

THE PRESIDENT: The Tribunal will not sit on Thursday, tomorrow afternoon, in open session, but will sit in closed session. That is to say, we will sit tomorrow, Thursday, from 10 till 1 in open session, and we will sit in the afternoon in closed session.

On Saturday morning, the Tribunal will sit in open session from 10 till 1.

MR. COUNSELLOR RAGINSKY: Mr. President, I am aware that yesterday when I submitted the Document USSR-494, the necessary copies of this document were not submitted to the Tribunal. I am very sorry about this, and I would ask you to accept the necessary copies now which I am going to submit.

[The Defendant Von Neurath resumed the stand.]

Let us go back, Defendant, to your warning issued in August 1939. If I understood you correctly, you said here before the Tribunal that this warning was issued in connection with the military situation of the time; is that correct?

VON NEURATH: With reference to the military situation nothing had happened at that time; absolutely no political tension had become noticeable in the meantime; therefore, it was not directly in connection with the military situation. There was certainly nothing wrong yet at that time.

MR. COUNSELLOR RAGINSKY: That is regardless of the military situation, all right. Do you acknowledge that by this order of yours, or by this warning, you had introduced a system of hostages? Do you admit that?

VON NEURATH: I did not understand the question.

MR. COUNSELLOR RAGINSKY: I am going to repeat the question. I am asking you, do you acknowledge that by means of this warning of August 1939—I am submitting this document as evidence under Document Number USSR-490—that by this order you were setting up a system of hostages? Do you admit that?

VON NEURATH: I did not understand.

MR. COUNSELLOR RAGINSKY: Was it correctly translated to you just now?

VON NEURATH: Yes; the translation did not come through on the last question, or rather the last sentence. I did not understand the last sentence.

MR. COUNSELLOR RAGINSKY: Well, I will put it to you that you know the document well.

VON NEURATH: Yes; but I did not understand the last sentence of your question.

MR. COUNSELLOR RAGINSKY: I shall try to say it in such a way that you will understand it now. In this order of yours, in the penultimate paragraph, it is stated, "The responsibility for all acts of sabotage will be borne not only by the individual perpetrators, but by the entire Czechoslovak population." This means that not only guilty persons have to be punished, but there were punishments set up for innocent people too. With this order you inaugurated the mass terrorism against the Czech population.

VON NEURATH: Not at all. It only meant that the moral responsibility for any possible acts was to be laid to the account of the Czech people.

MR. COUNSELLOR RAGINSKY: Well, in Lidice, was this not applied in practice? Was it only a question of the moral responsibility there?

VON NEURATH: Yes, yes.

MR. COUNSELLOR RAGINSKY: In this order you state the following: "Those who do not take these necessities into account will be considered enemies of the Reich." To the enemies of the Reich you applied only the principles of moral responsibility and nothing else?

VON NEURATH: Yes, if someone did not obey orders, then naturally he was punished.

MR. COUNSELLOR RAGINSKY: That is exactly what I am trying to determine and that is why I put this question to you, that just by this order of August 1939 you started the general terrorism of a massacre and punishment of innocent people.

VON NEURATH: Well, I do not know how you can draw this conclusion from this warning.

MR. COUNSELLOR RAGINSKY: We are going now to the deductions which we can make out of this. In the report of the Czechoslovak Government, submitted as evidence, Document USSR-60, which is a report on the final result of the investigation of the crimes committed by you and your collaborators, all this has been stated.

And you just flatly deny all this documentary evidence. I am not going to argue with you regarding this document, but I am going to read into the record some of the testimony by the witnesses; and I would like you to reply whether you corroborate this evidence or whether you deny it. I am going to read into the record an excerpt from the testimony of the former Minister of Finance, Josef Kalfus, of 8 November 1945.

The Tribunal will find these excerpts on Page 12 of the English text, Document USSR-60.

Kalfus stated:

"The economic system introduced by Neurath and after him by the later German regime, was nothing else than systematic, organized robbery. As to the occupation of decisive positions in the Czech industry and finance, it should be pointed out that, together with Neurath, a vast economic machinery was installed, which immediately occupied the chief positions in industry. The Skoda Works, Brno Armament Works, steel works at Vitkovice, important banks—Bohemian Discount Bank, Länder Bank, and Bohemian Union Bank—were occupied as well."

Do you corroborate this evidence?

VON NEURATH: I talked about this matter in great detail yesterday, and I refer you to my statement I made yesterday. I have nothing to add.

MR. COUNSELLOR RAGINSKY: Thus, you do not corroborate this evidence?

VON NEURATH: Not in the least.

MR. COUNSELLOR RAGINSKY: The former, President of Bohemia, Richard Bienert, during the interrogation of 8 November 1945, stated—Mr. President, this excerpt is on Page 13 of the English text of the Document USSR-60:

"When we got to know him more closely, we noticed that he, Neurath, was ruthless toward the Czechs. As the Landespräsident of Bohemia I knew that it was Neurath who subjected the political administration in Bohemia and Moravia to German control, both the state administration and the local government as well. I remember also that Neurath caused the abolition of the local school counsellors, and the appointment of German school inspectors in their place. Neurath ordered the dissolution of the regional representative bodies; he caused Czech workers to be sent to the Reich from April 1939 onward in order to work for the war machine of the Reich. He ordered the closing down of the Czech universities and of many Czech secondary and elementary schools.

"He abolished the Czech sport clubs and associations, such as Sokol and Orel, and ordered the confiscation of all the property of these gymnastic organizations; he abolished... the Czech recreation homes and sanatoria for young workmen and students, and ordered the confiscation of their property. The Gestapo carried out the arrests, but on the order of the Reich Protector... I myself was arrested on 1 September 1939, as well."

Will you still deny this testimony?

VON NEURATH: No, no. About all the matters which are listed here, I spoke yesterday in great detail. I do not intend to repeat it all over again now. Moreover, it seems strange to me that Mr. Bienert of all people, who knew perfectly well what I had ordered and what my relations were to the Gestapo and so forth, that Mr. Bienert of all people should say things like that.

MR. COUNSELLOR RAGINSKY: Very well. Let us look at some other testimony. The former Prime Minister of the so-called Protectorate, Dr. Krejci, during the interrogations on 8 November 1945, stated...

Mr. President, this excerpt can be found on Page 17 of the English text of the Document USSR-60. Krejci testified:

"I know that the gymnastic associations were disbanded and their property confiscated at the order of the Reich Protector, and their funds and equipment handed over to be used by German associations such as SS, SA, Hitler Youth, and so on. On 1 September 1939, when Poland was attacked by the German Army, arrests took place on a large scale, especially arrests of army officers, intellectuals, and important political personalities. The arrests were made by the Gestapo, but it could not be done without the approval of the Reich Protector."

I am reading into the record one more excerpt from the next page of the testimony:

"As far as the Jewish problem was concerned, the Government of the Protectorate was forced by the Reich Protector into a campaign against the Jews, and when this pressure had not the desired result, the Germans—or the Reich Protector's office—started persecuting the Jews according to the German laws. The result was that tens of thousands of Jews were persecuted and lost their lives and property."

Are you going to deny this testimony, too?

VON NEURATH: With reference to the order which you mentioned at the beginning, concerning the sport clubs, I have to tell you that that was a police measure which I had not ordered; and

I go on to repeat, as I said yesterday, that the arrests at the beginning of the war were carried out by the Gestapo, by direct order from Berlin, without my even having heard about the matter. I did not learn about it until afterward. Finally, with reference to the Jewish problem which is mentioned in the end, the statement which is contained in the Indictment, I think, namely, that I had attempted to get the Government of Czechoslovakia to introduce anti-Jewish laws, is an incorrect statement. I, or rather my State Secretary, talked to Mr. Elias, as far as I know. I myself have never talked to him. I talked to Mr. Hacha only afterward on a later occasion, when there was an attempt to introduce racial laws with reference to the Czechs; Mr. Hacha objected to this and I told him he did not have to do this, as this was my responsibility.

The introduction of the anti-Jewish laws was carried out by a decree of mine, to be sure, because as early as the beginning of April 1939, I had received orders to introduce the anti-Jewish legislation in the Protectorate which was not incorporated in the Reich. I delayed this step until July by means of all sorts of inquiries in Berlin, so as to give time to the Jews to prepare themselves in some way or other. These are the actual facts.

MR. COUNSELLOR RAGINSKY: Tell me, do you know Dr. Havelka?

VON NEURATH: I know Herr Havelka, yes.

MR. COUNSELLOR RAGINSKY: He knew exactly about your conversation with Hacha?

VON NEURATH: Well, how much he knew about that, I do not know. Herr Havelka came to see me once or twice. He was Transport Minister, I think.

MR. COUNSELLOR RAGINSKY: Yes, that is quite correct. He was the Minister of Transport, but before that, he was the head of the chancellery of Hacha's office.

Havelka, during his interrogation on 9 November last year, gave the following testimony, which can be found on Pages 18 and 19 of the English text of Exhibit USSR-60—I am quoting an excerpt:

"He"—Neurath—"was not interested in the Czech nation and interventions of Cabinet members and Dr. Hacha pressing Czech demands were on the whole without any result.

"There were the following actions in particular:

"Arrests of Czechoslovak officers, intelligentsia, members of the Czechoslovak Legion of the first World War, and politicians. At the time of the attack on Poland by the German Army about six to eight thousand persons were arrested. They were hostages. The Germans themselves called them 'held in protective custody.' The majority of those hostages

were never interrogated, and all steps taken at the office of the Reich Protector in favor of these unfortunate men remained without any result.

"Neurath, as the only representative of the Reich Government in the territory of the Protectorate of Bohemia and Moravia, was responsible for the execution of nine students on 17 November 1939. The execution was carried out soon after..."

THE PRESIDENT: General Raginsky, would it not be better and perhaps fairer to the defendant to ask him one question at a time? You are reading long passages of these documents which contain many questions. Perhaps you could take these two paragraphs you read now about the arrest of officers and ask him whether he says those are true or untrue, and then go on to the other paragraphs you want. It is very difficult for him to answer a great number of questions at one time.

MR. COUNSELLOR RAGINSKY: Mr. President, he has these documents before him and he is acquainted with the testimonies in question, but I will take into consideration what you have just told me. I will speak about the shooting of the students separately.

[Turning to the defendant.] Do you corroborate this part of the evidence which I have just read into the record regarding the hostages?

VON NEURATH: About the arrest of the members of the so-called Vlayka, at the beginning of September 1939, I have spoken earlier, and I spoke in detail about that yesterday.

I said that these arrests—I am repeating it once more—were carried out by the Gestapo without my knowledge. Herr Havelka's statement, that no steps had been taken in the interest of these people, is untrue. He ought to know that I continuously fought for these people and that a large number of them were released through my efforts.

MR. COUNSELLOR RAGINSKY: Very well, let us go over to another question. Here, before this Tribunal, a certain document has already been introduced several times under Document Number USSR-223. This is the diary of Frank.

Mr. President, I am not referring to Karl Hermann Frank, who was sentenced to die for his crimes, but it is the Defendant Frank that I am speaking about. This excerpt has already been quoted here, but I should like to put a question to the defendant about it. I shall read it into the record. During an interview with a correspondent of the *Völkischer Beobachter* in 1942, the Defendant Frank stated as follows:

"In Prague, for instance, some red placards were put out saying that seven Czechs were being shot that day. Then I told

myself if I had to issue an order for such placards to be put up regarding every seven Poles who were shot, then there would not be enough timber in Poland to manufacture enough paper for such placards."

Please tell me if it is true that such red placards were put up in Prague?

VON NEURATH: I mentioned that yesterday. I have already said yesterday that this was the poster where my signature was misused, and that I had not seen it in advance. That is that red poster.

MR. COUNSELLOR RAGINSKY: Well, if you have not seen these posters, will you please look at them. We are going to show it to you right now.

VON NEURATH: Yes, I know it very well.

THE PRESIDENT: General Raginsky, he did not say he had not seen it. He said it was put up without his knowledge.

MR. COUNSELLOR RAGINSKY: Mr. President, I am going to come back to this, but I should like to establish that these were the red posters which were mentioned by Frank in his diary, and I should like to submit this poster under Document Number USSR-489.

I should like to read it into the record; it is very short and it will not take much time. The text is as follows:

"In spite of repeated serious warnings, a number of Czech intellectuals, in collaboration with *émigré* circles abroad, are trying to disturb peace and order in the Protectorate of Bohemia and Moravia by committing major or minor acts of resistance. In this connection it was possible to prove that the ringleaders of these resistance acts are especially to be found in the Czech universities. Since on 28 October and 15 November these elements gave way to acts of physical violence against individual Germans, the Czech universities have been closed for the duration of 3 years, nine of the perpetrators have been shot, and a considerable number of the participants have been arrested.

"Signed, The Reich Protector of Bohemia and Moravia, Freiherr von Neurath, Prague, 17 November 1939."

You state here that you never signed this warning? Have I understood you rightly?

VON NEURATH: Yes, indeed. I have already explained yesterday or the day before how this came about, namely, in my absence.

MR. COUNSELLOR RAGINSKY: Well, you should not repeat what you have already stated.

I am going to read into the record a certain statement by Karl Hermann Frank of 26 November 1945, connected with the subject. It can be found on Pages 46 and 47 of the Russian text. The English text will be submitted. Karl Hermann Frank, giving evidence regarding this poster, the text of which I have just read into the record, stated:

"This document was dated 17 November 1939 and was signed by Von Neurath who did not object either to the shooting of the nine students..."

DR. VON LÜDINGHAUSEN: Mr. President, may I draw your attention to something connected with this document. The document is neither dated nor is it signed, at least not the copy I have. It does not make it at all clear from whom the document originates, and I should like to take this opportunity to protest against the reading of this document.

THE PRESIDENT: Dr. Von Lüdinghausen, is there not a certificate about the document?

DR. VON LÜDINGHAUSEN: Not in my copy.

THE PRESIDENT: Well...

MR. COUNSELLOR RAGINSKY: Mr. President, will you permit me to explain this misunderstanding. Dr. Von Lüdinghausen has the full text of the Document USSR-60. The English text was also submitted to the Tribunal. This document was quoted yesterday by Dr. Lüdinghausen. There is a certificate regarding the authenticity of this document signed by the plenipotentiary of the Czechoslovak Government, and there is the date, too.

Now, just to facilitate the proceedings, we have submitted another copy of Frank's testimony to Dr. Lüdinghausen, and it would be very easy to determine that there is a certificate regarding the authenticity of this statement which is dated 17 November...

DR. VON LÜDINGHAUSEN: I should like to say the following about this point: When I received this long indictment from Colonel Ecer of the Czech Delegation, the document did not have any additions or appendices, except texts of laws. I therefore endeavored to obtain these additions because reference had been made to them. I then received only one annex to an appendix, or supplement "Number 2"; the others I received in the same condition as the one which I have here.

THE PRESIDENT: Dr. Von Lüdinghausen, will you wait a minute? Will you kindly tell us what document it is you are referring to?

DR. VON LÜDINGHAUSEN: It is USSR-60.

THE PRESIDENT: USSR-60—well, that is the Czech report, is it not?

DR. VON LÜDINGHAUSEN: That is the Czech report, which is about this thick [*indicating*] in German; that is the one in question. Annexes have also been issued to this, and these annexes, I repeat, were not made available to me; that is, I made a personal effort to get them, but I received only one which is not identical with this document and which I received much later and in the same condition as that which I hold in my hand now, that is to say, without a heading, without a signature, and without a date, and most certainly without any certificate as to when, where, and by whom this supposed statement of Frank's was taken down.

THE PRESIDENT: Let us hear what General Raginsky has got to say about it.

As I understand General Raginsky, he says there is a certificate identifying that document and what is being supplied to you is merely a copy, which may not have the date and may not have the certificate on it, but which is the same as the document which is certified.

Is that what you said, General Raginsky?

MR. COUNSELLOR RAGINSKY: Yes.

THE PRESIDENT: Could you now show Dr. Von Lüdinghausen the certificate and the document which is certified?

MR. COUNSELLOR RAGINSKY: This certificate can be found on Page 44 of the Russian text in the appendix to Document USSR-60 and it is signed for General Ecer by Colonel of the General Staff Corps, Novack. This certificate was submitted, in due course, by us to the Tribunal.

THE PRESIDENT: Is it necessary to take up the time of the Tribunal about this particular document? It seems to me we are wasting a lot of time.

DR. VON LÜDINGHAUSEN: After all, it is important. Otherwise I cannot find out whether it is genuine. That is certainly my right.

THE PRESIDENT: I was asking General Raginsky whether he wanted to persist in the use of the document. Is it worth while? I do not know what the document is or what it says.

MR. COUNSELLOR RAGINSKY: I consider that is not necessary, because this document has already been submitted to the Tribunal a few months ago and accepted by the Tribunal as evidence. I really do not understand the statements by Dr. Von Lüdinghausen.

THE PRESIDENT: Why do you not show Dr. Von Lüdinghausen that there is a certificate which applies to the document which you put in his hand?

MR. COUNSELLOR RAGINSKY: Yes, certainly, Mr. President. I am holding in my hand the Russian text of the certificate. I am quoting the Russian text and I can present it to Dr. Von Lüdinghausen so that he can be convinced. The original document has been submitted to the Tribunal and is in the possession of the Tribunal.

THE PRESIDENT: Well, is there not a German translation of the certificate and does not the certificate identify the document? Is there a German translation of the certificate?

MR. COUNSELLOR RAGINSKY: Just at the moment I do not have it, but during the intermission I shall be glad to produce the original German document.

THE PRESIDENT: Dr. Von Lüdinghausen, the Tribunal is told that this document was put in before and the certificate of General Ecer was put in at the same time, certifying that this document is a part of the Czech report. In those circumstances, the Tribunal will allow the document to be used.

DR. VON LÜDINGHAUSEN: Mr. President, then I have another objection to the use of this document.

As is known, if any interrogation transcripts or affidavits from witnesses are presented, the Defense have the right to summon these witnesses for an interrogation. The former State Secretary Frank, who has made this statement, is, however, as is known, no longer among the living. Therefore, I also object for this reason to the use of this document.

MR. COUNSELLOR RAGINSKY: Mr. President . . .

THE PRESIDENT: Dr. Von Lüdinghausen, this document was offered and accepted in evidence during the lifetime of this man, K. H. Frank. That is one reason for accepting it.

The document is admissible under Article 21 of the Charter and was submitted under that article and there is no such rule as you have stated, that the Defense are entitled to cross-examine every person who makes an affidavit. It is a matter entirely within the discretion of the Tribunal and therefore that objection is rejected.

MR. COUNSELLOR RAGINSKY: Mr. President, I do not want to hold you any longer on this matter but I wanted to show that this was an unnecessary delay as Dr. Von Lüdinghausen used the document himself to introduce some extracts from the testimony of Frank in his document book.

Now I shall read into the record some statements made by Frank. This document, I repeat, is in connection with the warning dated 17 November 1939 which we just exhibited to this Tribunal, and signed by Von Neurath, who did not raise his voice either against the shooting of the nine students nor as to the number of students who were to be sent to concentration camps, and he did not really request any changes in this legislation.

[Turning to the defendant.] Did you hear the testimony, Defendant?

VON NEURATH: Yes, I have read it.

MR. COUNSELLOR RAGINSKY: Do you deny this?

VON NEURATH: But most definitely. There was no possibility whatever of my doing so because I was not in Prague and consequently I could neither have had any knowledge of it, nor could I have signed it or passed it on.

MR. COUNSELLOR RAGINSKY: Very well. You still insist on stating that the Police never informed you regarding the arrests which were made and other police measures which were taken? Do you state that firmly?

VON NEURATH: I did not say that they never informed me, but that they always informed me afterward. My information always came from Czech sources.

MR. COUNSELLOR RAGINSKY: Was not the state of affairs such that the Police regularly reported to you regarding the important events which took place?

VON NEURATH: Not at all. In particular I never learned anything about what they were planning, at least not until afterward—or if I had learned it from Czech sources and then made inquiries with the Police.

MR. COUNSELLOR RAGINSKY: Very well. I am going to read an extract from the testimony of Karl Hermann Frank, dated 7 March 1946. This testimony was submitted by me to the Tribunal yesterday and it was partially read by me already. Will you give a copy of the testimony, USSR-494, to the defendant, please?

Frank states:

“The Reich Protector, Von Neurath, regularly received reports on the most important events in the Protectorate which had some bearing on the Security Police, from me, from the State Secretary, as well as from the Chief of the Security Police. For example, Von Neurath was informed in the special case concerning the student demonstrations in November 1939 both by me and by the Chief of the Security Police. This case dealt with Hitler’s direct orders demanding the shootings of all the

ringleaders. The number of ringleaders was to be fixed by the Prague Stapo and the Reich Protector was informed about this. In this case an estimate on the number of the ringleaders was left to the discretion of the State Police, or rather to the approval of the Reich Protector. Reich Protector Von Neurath signed the official dispatch announcing the execution of these students, thereby approving this action. It can therefore not be said that in this case the Reich Protector was merely responsible for the carrying out of the general Hitler order which deals with the execution of all ringleaders, but that he is also responsible for the fixing of the number of ringleaders, namely nine. I informed him in detail about the interrogation and he signed the poster.

"If this had not met with his approval and had he wished to revise it, as for instance, making it less severe, which he had the right to do, then I should have had to abide by his decision."

Now do you deny these statements?

VON NEURATH: Yes; I do not know how many times I have got to tell you that I was not in Prague at all.

And besides I do not know under what sort of pressure Frank might have made these statements. It does not give the date, but you just said that he made this statement on 7 April, and therefore a few days before his execution.

MR. COUNSELLOR RAGINSKY: I should like the Tribunal to note that the defendant is deliberately distorting the facts. I repeated several times that these statements were made by Frank on 7 March and not on 7 April, or 2 days before the execution, as you are telling me now.

The document is before you and you can look at it yourself and see the date.

VON NEURATH: All right, then 7 March instead of 7 April. I think I said 7 April because I did not see the date at the top. But as I have said—I think I have already told you three times—I could not have known anything at all about it because I was not there.

MR. COUNSELLOR RAGINSKY: Well. But you are making too many mistakes. Yesterday when giving testimony you were not very clear as to the number of students, either.

VON NEURATH: I cannot remember what I said yesterday, but I could hardly have made so many mistakes; I do not know if there were one or two less.

MR. COUNSELLOR RAGINSKY: I would like to remind you. Yesterday, in reply to a question by Sir David, who submitted to

you Document 3858-PS, from which it was evident that after the closing of the higher institutions of learning, 18,000 students found themselves out of school...

THE PRESIDENT: Is it necessary to go over Sir David's cross-examination again? Surely we have said that we do not want to go over the same subject twice.

MR. COUNSELLOR RAGINSKY: Mr. President, I do not want to go back to the very same thing, and I do not want to add anything to the questions put by Sir David who has carried out a very detailed interrogation. I wanted only to establish the truth. When the defendant stated yesterday that in the document which was submitted by Sir David there was a mistake—that in Prague there existed only two institutions of higher learning and that 12,000 students could not have been arrested, this was not correct. The question was not merely about the closing of two Prague universities, but, on the basis of the order of 17 November 1939, there were closed the Czech university in Prague, the Czech university in Brünn, the Czech Higher Technical School in Brünn, the Czech Higher Technical School in Prague...

THE PRESIDENT: We heard all this yesterday, and we do not want to hear it again. We heard all about the closing of the university in Prague.

MR. COUNSELLOR RAGINSKY: Very well, Mr. President. I just wanted to state that not 2 universities were closed, but 10 institutions of higher learning.

I have just a few questions left which I should like to put to the defendant.

[Turning to the defendant.] You received many awards from Hitler, as is evident from the documents, and as you yourself stated. For instance, on 22 September 1940 you received the Iron Cross for Military Service. For what kind of services did you receive this award from Hitler?

THE PRESIDENT: Surely we went into this yesterday, did we not, in Sir David's cross-examination, or in the examination-in-chief, I forget which? I think it was the examination-in-chief—all these decorations which were given the defendant.

MR. COUNSELLOR RAGINSKY: Mr. President, I do not want to revert to these orders, but I should like to ask the defendant, for what special services he received the Iron Cross from Hitler in 1942.

THE PRESIDENT: All right, ask him that.

VON NEURATH: Unfortunately, I cannot tell you. I cannot tell you what sort of merits I am supposed to have displayed. The award

of this order of merit was made generally to all higher officials who were in service at the time.

MR. COUNSELLOR RAGINSKY: Very well, I am not going to insist on your reply. I just wanted to state here that you received this award in 1940 after the mass terror was applied against the Czechoslovak population.

VON NEURATH: I do not know that I am supposed to have carried out a mass terror.

MR. COUNSELLOR RAGINSKY: Very well, if you do not understand, we are not going to argue about this question.

In February 1943, in connection with your jubilee, various articles about you were published in many newspapers. I am not going to submit all these papers to the Tribunal or quote these articles, but I should like to read just two excerpts from the newspaper *Fränkischer Kurier* of 2 February 1943. We shall submit to you one of the copies of this so that you can follow me as I read this document into the record.

This newspaper is being submitted to the Tribunal under Document Number USSR-495.

In connection with your anniversary, it was stated:

"The most outstanding events in the field of foreign policy after Hitler's coming to power, in which Freiherr von Neurath played a most important role as Reich Foreign Minister and with which his name will always be connected, are: Germany's leaving the Geneva Disarmament Conference . . . the reuniting of the Saar to Germany . . . and the denouncing of the Locarno Pact."

And further on:

"Reich Protector Freiherr von Neurath was repeatedly decorated by the Führer for outstanding services in the interest of the people and the Reich. He was decorated with the Golden Party Badge of Honor, received the rank of SS Gruppenführer, was a knight of the Order of the Eagle, and received the Gold Badge of Honor for Faithful Service for his 40 years of diplomatic service.

"In appreciation of his outstanding services in the field of military efforts in the post of Reich Protector for Bohemia and Moravia, the Führer decorated him with the Military Cross, First Class."

Are the facts correctly stated in this article?

VON NEURATH: If I had to investigate the correctness of every article written by some journalist or other, I would have had a lot

to do. These statements are the opinion of a journalist and nothing more.

THE PRESIDENT: That was not the question. The question was whether they were correctly stated, as a matter of fact. You can answer that.

VON NEURATH: Yes—no.

THE PRESIDENT: Which do you mean, "yes" or "no"?

VON NEURATH: The decorations are correctly stated. Apart from that it is not correct.

MR. COUNSELLOR RAGINSKY: I have no further questions to put.

THE PRESIDENT: Dr. Lüdinghausen, do you wish to re-examine?

DR. VON LÜDINGHAUSEN: Mr. President, yesterday afternoon I had the feeling and impression, probably not without reason, that Herr Von Neurath was visibly tired and strained after the previous examination and that he was no longer in a position to do complete justice to the questions which were put to him. This, after all, is not surprising, if one considers that Herr Von Neurath is in his seventy-fourth year and besides that he is also suffering from a fairly serious heart disease. I feel obliged, therefore, to refer back to various points of the cross-examination of yesterday and put a few questions to him.

[Turning to the defendant.] Herr Von Neurath, you stated yesterday that because of the excesses of the SA and other radical groups in 1933 and later, you frequently protested to Hitler. What was the reason why you remonstrated with Hitler directly and did not raise your objections at the Cabinet meetings which were still taking place at that time?

VON NEURATH: I had already learned from personal experience that Hitler could not stand contradiction of any kind and that he was not amenable to any kind of petition if it was made before a fairly large group, because then he would always develop the complex that he was facing some sort of opposition against which he had to defend himself. It was different when one confronted him alone. Then, at least during the earlier years, he was accessible, thoroughly amenable to reasonable arguments, and much could be achieved in the way of moderating or weakening radical measures.

Moreover, I should like to mention again that just after the excesses mentioned in Mr. Geist's affidavit there was a meeting of the Cabinet, during which strong protests were raised against the repetition of such occurrences by various ministers including non-Nazi ministers. At that time Hitler thoroughly agreed with these objections, and declared that such excesses would not be allowed to

recur. Shortly afterward he also made a speech in which he publicly expressed an assurance to this effect. From then until June 1934 no more excesses took place.

DR. VON LÜDINGHAUSEN: But in April 1933 there was the well-known anti-Jewish boycott, which lasted 24 hours, if I am not mistaken?

VON NEURATH: Yes, that was one of Herr Goebbels' provocations. But actually there were no excesses and acts of violence whatsoever on that occasion. It was confined merely to boycotting.

Moreover, the fact that no further disturbances arose in that case was the result of a joint intercession by Herr Von Papen and myself with Hitler and especially with Hindenburg. A perfectly correct description of this episode is to be found, as I recall, in an article of *Time* for April 1933, which is also contained in my document book.

DR. VON LÜDINGHAUSEN: Mr. President, it was submitted in my document book, Document Number Neurath-9.

[Turning to the defendant.] In connection with the events that occurred at that time, arrests, and so forth, Sir David yesterday referred particularly to the arrest of the well-known author Ossietzki. Do you recall that this Ossietzki had already been sentenced to a fairly long prison term by a German court even before the seizure of power?

VON NEURATH: Yes, I remembered that afterward. I remember that even before the seizure of power—I do not know under which government—Herr Ossietzki had been sentenced by a Reich court to a fairly long term in the penitentiary for high treason, but he had not yet served it, and consequently was arrested again.

DR. VON LÜDINGHAUSEN: Now I should like to ask you another question with reference to the report submitted by the Prosecution yesterday. It is the letter of Ministerial Director Köpke on 31 May 1934. That is Document D-868. In this report, from the information noted down by Herr Köpke, do you see any proof that the Foreign Office was drawn into the subversive activities of the Austrian Nazis?

VON NEURATH: No, not at all. This has to do with a report which Ministerial Director Köpke made to me about a visit by Herr Wächter, whom he described as an Austrian with a sense of responsibility. This Herr Wächter had tried to establish a connection with the Foreign Office and with Hitler in order to draw attention to the dangers arising from the growing radicalism of the Austrian Nazis. The head of the Political Department, Herr Köpke, identifies himself with Wächter regarding these apprehensions and agreed to make an oral report to that effect.

I do not think that anyone can doubt that my attitude was not quite the same as that of Herr Köpke and I passed this report on to Hitler in order to draw his attention to the matter.

DR. VON LÜDINGHAUSEN: The Prosecution—or rather, Sir David—referred yesterday to reports which deal with the treatment of the Czech problem by you and Frank. This is Document 3859-PS, a letter which you sent to the Chief of the Reich Chancellery, Lam-mers, on 31 August 1940, for the preparation of your oral report to Hitler. Were these reports, that is, the one drafted by Frank, identical with the memorandum mentioned in the Friderici document of 15 October?

VON NEURATH: Yes, apparently these are the same reports.

DR. VON LÜDINGHAUSEN: Now, during your examination you spoke about the Friderici document, which you said was based on plans of the SS, various Party circles, and the Gauleiter of the Lower Danube district, regarding a deportation of Czechs to the Eastern Territories. You went on to say that in order to stop these plans, which you yourself described as nonsensical, you had Frank prepare this memorandum in which a less radical solution was recommended, which later had also been approved to a certain extent by Hitler; and that in reality nothing happened, which was what you intended, and that the idea of incorporation had practically been buried. Is that right?

VON NEURATH: Yes, that is true. This entire affair and the origin of these memoranda are extremely difficult to explain. It can be understood only from the entire domestic political development. The efforts of the Gauleiter of the surrounding districts to divide up the Protectorate had proceeded rather far. They had all submitted memoranda and Herr Himmler backed them up. All these memoranda envisaged a radical solution of these problems; that meant there was reason to fear that Hitler would comply with the wishes of these Gauleiter. In order to stop this I had to make several proposals which I myself had said were impracticable, and I identified myself with them primarily so as to declare them absurd later on.

That is the only explanation of the origin of these memoranda. I did not draft the memoranda myself, but that was done in my office, in accordance, to be sure, with instructions given by me.

This was, however, and I should like to emphasize this expressly, a purely tactical maneuver to get at Hitler, because I was afraid that he would follow the radical suggestions made by Himmler and his associates. I did actually manage to get Hitler to issue a strict order, which is what I had requested, to the effect that all these plans were no longer to be discussed, but that only the so-called

assimilation plan was left, which could be carried out only over a period of years; and, as a matter of fact, nothing more happened, and that was exactly what I was aiming at.

DR. VON LÜDINGHAUSEN: A decree was submitted by the Prosecution yesterday, which was issued to the German authorities in the Protectorate, regarding the treatment to be given of the German-Czech problem publicly. That is Document 3862-PS, dated 27 June 1941. Is that in any way connected with these memoranda or the discussion you had with Hitler about it?

VON NEURATH: Yes, it is most closely interconnected, and I think I said so yesterday. In the following year the same agitation started all over again for this Germanization and partitioning of the Protectorate, and I opposed it, and, once the question was decided, I prohibited it from being reopened.

DR. VON LÜDINGHAUSEN: A document was submitted yesterday, USSR-487, the Chief of the Security Police, addressed to State Secretary Frank, dated 21 July 1943, that is to say, after you had resigned. From that document the Prosecution are attempting to draw the conclusion that, in accordance with a decree dated 5 May 1939, you appointed the leader of the SA and Security Police in Prague as your political expert.

In what way did the latter act in this capacity? Did he act at all?

VON NEURATH: No, he did not; that is just it. It is clearly apparent from this letter of reminder, dated 21 July 1943, that he never became at all active in this respect.

MR. COUNSELLOR RAGINSKY: Mr. President, I should like to state here that the question was incorrectly put. This document is not dated in the year 1943 or 1942, but it is dated 21 July 1939.

VON NEURATH: May I remark here that it makes no difference, as nothing had happened. I did not appoint any political expert.

DR. VON LÜDINGHAUSEN: What measures followed Documents 3851-PS and 3858-PS, which were introduced yesterday by the Prosecution, and which were proposals submitted by various departments and department heads of your administration regarding the utilization for labor of the students who became unemployed through the closing down of the Czech universities?

VON NEURATH: I have already told you yesterday that this apparently concerned a proposal from an adviser which never even reached me, but was rejected by my State Secretary before it got to me. Just how I could possibly be held responsible for the contents of a draft submitted by an adviser, I cannot understand.

DR. VON LÜDINGHAUSEN: Now I should like to put one more question to you regarding the German-Austrian agreement of July 1936. As mentioned in a report by Dr. Rainer to Bürckel which the Prosecution have already submitted—I refer to Document 812-PS—is it correct that Hitler, immediately after the signing of that agreement, had personally declared to Dr. Rainer and the Austrian Nazi Leader Globocznik that this agreement of 11 July 1936 was signed by him in all honesty and sincerity, and that the Austrian National Socialists, too, should under all circumstances adhere strictly to this agreement, and that they were to let themselves be guided by him in their conduct toward the Austrian Government?

VON NEURATH: Yes, that is correct. As I think I said to you yesterday, I believe I can also remember that Rainer actually confirmed it when he was here on the witness stand.

THE PRESIDENT: Dr. Von Lüdinghausen.

DR. VON LÜDINGHAUSEN: I would like to put a last question . . .

THE PRESIDENT: He answered these questions perfectly clearly, according to his view, yesterday.

DR. VON LÜDINGHAUSEN: Yes, I am all through now. I should like to ask him only one more question in conclusion of the entire examination of my client.

[Turning to the defendant.] The Prosecution and also Sir David brought the following charge against you yesterday: They charged that although by your own admission you were not in agreement with the Nazi regime and its methods, and although you considered many of the things that occurred reprehensible and immoral and abhorred them, you did not resign, but remained in the Government. Will you please explain that to us once more?

VON NEURATH: I have already mentioned in the beginning that I had given my promise to Hindenburg to enter the Government and to remain there as long as it was at all possible for me to follow a course unfavorable to any use of violence and to protect Germany from warlike entanglements. That was my task and nothing else. But it was not only this promise I had given to Hindenburg, but also my sense of duty, and my feeling of responsibility toward the German people, to protect them from warlike entanglements as long as it was at all possible, which bound me to this office. Beside these considerations all my personal wishes, which were quite different, had to take second place.

Unfortunately, my power and influence as Foreign Minister did not reach far enough to enable me to prevent pernicious and immoral actions in other spheres, as for instance, that of domestic

policy, although I did try in many cases, not least of all in the Jewish question itself.

However, I considered that my highest duty was to carry out the work assigned to me and not try to escape it, even if in another sphere where I had no influence, things occurred which hurt me and my opinions very deeply.

There may be many people who have different ideas and a different attitude than I. I experienced similar attacks when I placed myself at the disposal of a Social Democrat Cabinet in the year 1919 after the first revolution; at that time, too, the strongest attacks and the most serious accusations were made against me.

DR. VON LÜDINGHAUSEN: Yet you yourself have struggled hard with your conscience, you have often told me.

VON NEURATH: Yes, of course I have. It is not easy to belong to a government with whose tendencies you do not agree, and for which one is to be made responsible later on.

DR. VON LÜDINGHAUSEN: Mr. President, this completes my examination. I would suggest we adjourn now and then I might be permitted to begin the examination of my witnesses.

THE PRESIDENT: The Tribunal will now adjourn.

[A recess was taken.]

THE PRESIDENT: Dr. Horn, you have some questions to ask?

DR. MARTIN HORN (Counsel for Defendant Von Ribbentrop): Mr. President, I ask permission for my client to be absent from the session this afternoon and tomorrow, because I have important questions to discuss with him.

THE PRESIDENT: The Defendant Von Ribbentrop?

DR. HORN: Von Ribbentrop, yes.

THE PRESIDENT: Yes, certainly.

DR. HORN: Thank you.

DR. ALFRED THOMA (Counsel for Defendant Rosenberg): Mr. President, yesterday afternoon General Raginsky asked whether Rosenberg interfered in Neurath's foreign policy. The interpreter just told me that she translated it wrongly. She translated it "whether Ribbentrop interfered in Neurath's policy." This question, therefore, has not been answered yet; consequently, I ask permission to ask Baron von Neurath whether Rosenberg interfered in Neurath's foreign policy.

VON NEURATH: No, in no way. I never talked to Rosenberg about matters of foreign policy.

DR. THOMA: Then I ask that the transcript be corrected accordingly, so it should not read "whether Ribbentrop interfered in Neurath's policies," but "whether Rosenberg interfered in Neurath's policies."

THE PRESIDENT: The record will be corrected.

THE TRIBUNAL (Mr. Francis Biddle, Member for the United States): I want to ask you just a very few questions. You will remember that the Baroness von Ritter said that after the 5th of November 1937 you recognized—I want to read it exactly:

"When Herr Von Neurath had to recognize for the first time from Hitler's statement on 5 November 1937 that the latter wanted to achieve his political aims by using force toward neighboring states, this shook him so severely mentally that he suffered severe heart attacks."

That is a correct description, is it not, of what you then recognized?

[The defendant nodded assent.]

THE TRIBUNAL (Mr. Biddle): Now, you stated that you spoke immediately after that meeting to General Beck and General Von Fritsch. Do you remember?

VON NEURATH: Yes.

THE TRIBUNAL (Mr. Biddle): And I think you said to Sir David that you did not speak to the Defendant Göring. What I am asking you now is whether you spoke of what Hitler had said to anyone else during the next 2 or 3 months. Did you speak to anyone in the Foreign Office?

VON NEURATH: I spoke to my State Secretary.

THE TRIBUNAL (Mr. Biddle): And with whom else from the Foreign Office?

VON NEURATH: No one, for Hitler had laid down the condition that silence should be preserved about all these meetings; and for that reason I did not speak with my officials about them. They knew nothing. They had learned nothing from the military men, either.

THE TRIBUNAL (Mr. Biddle): Did you speak to the Defendant Von Papen when you saw him next?

VON NEURATH: No. I believe I did not see him at all at that time.

THE TRIBUNAL (Mr. Biddle): And did you discuss it with anybody else before your resignation?

VON NEURATH: No.

THE TRIBUNAL (Mr. Biddle): Now, I have only one other question. You recognized, did you not, that Himmler would use methods which you would not approve of; is that right?

VON NEURATH: Yes, but only gradually; that could not have been foreseen from the beginning.

THE TRIBUNAL (Mr. Biddle): That is just what I wanted to know. When did you first realize that? When did you first begin, just as well as you could tell? About when did you realize what sort of man Himmler was?

VON NEURATH: That was very difficult to recognize, because Himmler had two faces; he was a perfect Janus; one could not see immediately what his real thoughts were at all.

THE TRIBUNAL (Mr. Biddle): I am not asking you what he was like. If you would just try to remember, you certainly realized that at some time. Did you know it in 1937? You knew it in 1937 or 1938? Certainly in 1938, did you not?

VON NEURATH: Probably in 1938, but it is hard for me to give a date at the moment.

THE TRIBUNAL (Mr. Biddle): I do not want a specific date. My point is that you knew it before you went to the Protectorate; you knew what Himmler was before you went to the Protectorate, of course? There is no question about that, is there?

VON NEURATH: Yes, certainly.

THE TRIBUNAL (Mr. Biddle): That is all.

THE TRIBUNAL (Major General I. T. Nikitchenko, Member for the U.S.S.R.): Did you ever express yourself openly against the policy of the Hitlerite Government?

VON NEURATH: I am sorry, but the translation was not good.

THE TRIBUNAL (Gen. Nikitchenko): In your explanations made before the Tribunal you stated that you were not in agreement with the policy of Hitler's Government, either on individual questions or taken as a whole, as well. Is that true?

VON NEURATH: Yes.

THE TRIBUNAL (Gen. Nikitchenko): Did you ever express yourself openly with a statement of your disagreement with Hitler's policy?

VON NEURATH: I did so more than once.

THE TRIBUNAL (Gen. Nikitchenko): In what manner was it, then? I am asking you about your public statements, either in the press or while addressing any meeting?

VON NEURATH: No. It was no longer possible either to have a voice in the press, or to hold a meeting. It was quite out of the question. I could only speak to Hitler personally or, at the beginning, in the Cabinet in protest against this policy. There was no freedom of the press any longer, any more than in Russia. In the same way no meeting was possible. Consequently...

THE TRIBUNAL (Gen. Nikitchenko): I am not asking you about Russia; I am asking you about your expressing your views publicly. In other words, you never expressed them.

VON NEURATH: No.

THE TRIBUNAL (Gen. Nikitchenko): And in that way nobody in Germany could know, or did know, about the fact that you were not in agreement with the policy on the part of Hitler's Government?

VON NEURATH: I always expressed myself quite unmistakably about it, but not in articles, nor in meetings either; but otherwise I always expressed myself clearly about it.

THE TRIBUNAL (Gen. Nikitchenko): Yes, but only in your *tête-à-tête* with Hitler, only personally to Hitler. You said so, did you not?

VON NEURATH: No; I tell you I said that to everyone who would listen, but I could not do so in public meetings, in speeches, or in articles.

THE TRIBUNAL (Gen. Nikitchenko): And you remained a member of the Government in spite of the fact that you were not in agreement with the Government's policy; is that so?

VON NEURATH: Yes, for that very reason.

THE TRIBUNAL (Gen. Nikitchenko): In order to counteract his policy?

VON NEURATH: Yes.

THE TRIBUNAL (Gen. Nikitchenko): Do you know the results of such counteracting?

VON NEURATH: I did not understand that.

THE TRIBUNAL (Gen. Nikitchenko): What were the results of counteracting the policy of Hitler's Government?

VON NEURATH: Well, I am not in a position to give the details on that.

THE TRIBUNAL (Gen. Nikitchenko): In particular, as to the question of aggression, were you against the joining of Germany and Austria?

VON NEURATH: Yes.

THE TRIBUNAL (Gen. Nikitchenko): The German Government, in spite of this, joined Austria to Germany; is that so?

VON NEURATH: I believe it has been clearly expressed here that at the last moment Hitler did that.

THE TRIBUNAL (Gen. Nikitchenko): You were against the seizing of Czechoslovakia?

VON NEURATH: Yes.

THE TRIBUNAL (Gen. Nikitchenko): And the German Government, in spite of this, seized Czechoslovakia?

VON NEURATH: I was no longer a member of the Government at that time.

THE TRIBUNAL (Gen. Nikitchenko): But as a statesman whose opinion should have been considered, you, of course, expressed your opinion against it, did you not?

VON NEURATH: Always.

THE TRIBUNAL (Gen. Nikitchenko): You were against the attack on Poland?

VON NEURATH: Yes.

THE TRIBUNAL (Gen. Nikitchenko): And in spite of that Germany did attack Poland.

VON NEURATH: I repeat, I was no longer a member of the Government. I learned of it only at the last moment.

THE TRIBUNAL (Gen. Nikitchenko): You were against the attack on the U.S.S.R.?

VON NEURATH: Yes, more so indeed; I always wanted the exact opposite. I wanted co-operation with the Soviet Union, I said that as early as 19...

THE TRIBUNAL (Gen. Nikitchenko): And still Germany attacked the Soviet Union?

VON NEURATH: Yes.

THE TRIBUNAL (Gen. Nikitchenko): Judging from your explanations, Hitler must have known about your political opposition and your disagreement with his policy; is it correct?

VON NEURATH: He knew that very well, for I resigned in 1938 for that reason.

THE TRIBUNAL (Gen. Nikitchenko): Yes. And you know how Hitler made short work of his political opponents?

VON NEURATH: In the Reich, yes.

THE TRIBUNAL (Gen. Nikitchenko): And so far as you were concerned, in spite of the fact that you sided with the opposition, nothing happened; that is true, is it not?

VON NEURATH: I did not understand.

THE TRIBUNAL (Gen. Nikitchenko): So far as you were concerned, in spite of the fact that you declared yourself for the opposition, nothing of the kind happened?

VON NEURATH: No, but I always expected it.

THE TRIBUNAL (Gen. Nikitchenko): And could you not tell us whether Sir Nevile Henderson, in his book, the *Failure of a Mission*, expressed the facts concerning you personally correctly or not? Do you consider that Sir Nevile Henderson expressed the facts correctly concerning you personally? Does he express them correctly?

VON NEURATH: I must admit frankly that I read this book by Sir Nevile Henderson only once, 3 or 4 years ago. I cannot remember now what he said about me. I heard excerpts from it here once or twice but I cannot say what he writes about me.

THE TRIBUNAL (Gen. Nikitchenko): But I assume that you are familiar enough with the excerpts presented by your defense counsel in his document book?

VON NEURATH: Yes.

THE TRIBUNAL (Gen. Nikitchenko): Now, for instance, that which is expressed in his excerpts so far as you are concerned, is it correct or not?

VON NEURATH: I assume so, yes.

THE TRIBUNAL (Gen. Nikitchenko): That is to say, it is correct. And is it quite correct what he writes in reference to your membership in the Party? He writes that "Baron von Neurath himself remained in the regime of Hindenburg, and he was not a member of the Nazi Party."

VON NEURATH: Yes, I believe I have said so repeatedly here in the last few days.

THE TRIBUNAL (Gen. Nikitchenko): And further on he informs us that "he (Neurath) became a member of the Party later."

VON NEURATH: I have already explained how that happened. In 1937 I received a Golden Party Badge without my...

THE TRIBUNAL (Gen. Nikitchenko): Yes, we have heard that before, but is it true or not that you became a member of the Nazi Party later, as Sir Nevile Henderson states?

VON NEURATH: No, I...

THE TRIBUNAL (Gen. Nikitchenko): So this particular part is not correct, is it?

VON NEURATH: I received the Golden Party Badge with Hitler's statement that this involved no obligations towards the Party.

THE TRIBUNAL (Gen. Nikitchenko): We have heard this already. That means that in Sir Nevile Henderson's statements not everything is true as far as your person is concerned?

VON NEURATH: I do not know. With the best intentions I cannot remember what Sir Nevile Henderson wrote about me.

THE TRIBUNAL (Gen. Nikitchenko): And the last question I have, which is in regard to your memorandum: I did not quite understand the explanations which were given by you to Sir David and later to your defense counsel. Now, in forwarding Frank's memorandum, in the letter addressed to Lammers, you wrote that you considered this memorandum absolutely correct. Is that true?

VON NEURATH: Yes, that is true. I should also like to tell you the reasons. This memorandum...

THE TRIBUNAL (Gen. Nikitchenko): You already explained the reasons before. I just wanted to establish the fact that you really wrote this.

VON NEURATH: Up to now I have not told the reason why I wrote this to Lammers. The reason why I wrote to Lammers to this effect was that he was the one who submitted this memorandum to the Führer. So I had to write to the same effect.

THE PRESIDENT: There are two subjects I want to ask you about and the first relates to the letter that you wrote on the 31st of August 1940. That is the letter which General Nikitchenko has just referred to; you remember that?

VON NEURATH: Yes, indeed.

THE PRESIDENT: And you remember that you said in that letter that you fully agreed with the memorandum which your Secretary of State Frank had drawn up independently of you. He said that "Germanization provides for the changing of the nationality of racially suitable Czechs; and secondly, the expulsion of racially unassimilable Czechs and of the intelligentsia who are enemies of the Reich or special treatment for these and all destructive elements." My question is: What did you understand by "special treatment"?

VON NEURATH: Well, as far as I read this extract at all at the time, I had in no way ever thought of the term "special treatment" as it has become known here during the Trial. I was certainly not at all in agreement with this attitude of Frank as represented in the report, and I only had the intention of frustrating this whole affair in order to sidetrack it. The content of these reports was only intended to present this to Hitler in Hitler's language, or in the language of Himmler and others, in order to dissuade him from it later on.

THE PRESIDENT: Was it not misleading to write to Herr Lammers with the view that it should be put forward to Hitler, saying that you fully agreed with the memorandum with which you did not agree?

VON NEURATH: Mr. President, as things were, I could not write to Lammers. I did not intend to carry out anything which is written in there, but since Lammers was presenting this to Hitler, I first had to tell him I agreed with it. Afterward I reported to Hitler and gave him an explanation in a personal conference during the meeting with Frank and Gürtner which has been mentioned here.

THE PRESIDENT: Then your answer is that you do not know what was meant by "special treatment"?

VON NEURATH: No; in any case I did not know at the time.

THE PRESIDENT: Now, there is one other question that I should like to put to you. You remember when you were called on the 11th of March 1938, at the time of the Anschluss with Austria, and you wrote the letter of the 12th of March 1938, in answer to the memorandum which you received from the British Government through Sir Nevile Henderson. You knew Sir Nevile Henderson quite well, did you not?

VON NEURATH: Yes.

THE PRESIDENT: And in that letter you said this:

"It is untrue that the Reich used forceful pressure to bring about this development; especially the assertion, which was spread later by the former Chancellor, that the German Government had presented the Federal President with a conditional ultimatum, is pure invention. According to the ultimatum, he had to appoint a proposed candidate as Chancellor and form a Cabinet conforming to the proposals of the German Government, otherwise the invasion of Austria by German troops was held in prospect."

And then you go on to say what you allege was the truth of the matter. You know now, do you not, that your statements in that letter were entirely untrue?

VON NEURATH: That did not come through.

THE PRESIDENT: Have you heard any part of the question that I was putting to you?

VON NEURATH: Unfortunately not.

THE PRESIDENT: It is a pity that you did not say so earlier. Do you remember the 11th of March 1938 and being called in to represent the Foreign Office, and you have told me just now that you knew Sir Nevile Henderson quite well?

VON NEURATH: Yes.

THE PRESIDENT: And you remember the letter which you wrote on the 12th of March 1938?

VON NEURATH: Yes.

THE PRESIDENT: And you admitted to Sir David Maxwell-Fyfe that the statements in that letter were untrue?

VON NEURATH: Untrue, yes—not entirely. They are presented incorrectly.

THE PRESIDENT: What steps did you take to find out whether or not they were true?

VON NEURATH: I did not learn of the incorrectness of this presentation until much later.

THE PRESIDENT: That is not an answer to my question. I said, "What steps did you take to find out whether the statement was correct?"

VON NEURATH: The statement which Hitler gave me I first simply presumed to be true. I certainly could not check up on it in any way.

THE PRESIDENT: Why should you assume it to be true when it was in contradiction of what the British Government had stated?

VON NEURATH: I had no other knowledge of the events which had occurred and therefore could only say what I knew.

THE PRESIDENT: You had the letter, the protest from the British Government, had you not?

VON NEURATH: Yes.

THE PRESIDENT: You knew Sir Nevile Henderson perfectly well?

VON NEURATH: Yes.

THE PRESIDENT: And you then wrote this letter contradicting the statements which had been made on behalf of the British Government; that is right, is it not?

VON NEURATH: Yes.

THE PRESIDENT: And you took no steps to check the facts which had been stated to you by Hitler? Will you answer that, please?

VON NEURATH: Yes. Your Lordship, how was I to do that? There was no one else who knew about it. It was only what Hitler had commissioned me to tell the Foreign Office. The draft of this note was drawn up by the Foreign Office according to the information which I had received from Hitler. I had no other chance to clear this up.

THE PRESIDENT: There were all the other persons who were concerned with the matter whom you could have communicated with, but your statement is that you did nothing?

VON NEURATH: I can only repeat that I had no opportunity to procure any other information. No one knew about it except Hitler.

THE PRESIDENT: Are you telling the Tribunal that Göring did not know about it?

VON NEURATH: Perhaps Göring knew about it.

THE PRESIDENT: That is all. The defendant can return to the dock.

DR. VON LÜDINGHAUSEN: Mr. President, I ask permission to call the first witness, the former Ministerial Director, and head of the political section in the Foreign Ministry, Dr. Köpke.

[The witness Köpke took the stand.]

THE PRESIDENT: Will you state your full name, please?

GERHARD KÖPKE (Witness): Gerhard Köpke.

THE PRESIDENT: Will you repeat the oath after me: I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

DR. VON LÜDINGHAUSEN: Dr. Köpke, how long have you known Herr Von Neurath?

KÖPKE: I have known Herr Von Neurath for over 40 years. His career is well known. Therefore I can limit myself to stating that we worked together as vice consuls in London, as legation counselors in the Foreign Office and later, after Herr Von Neurath became Minister in 1932, until my resignation in 1935. In the meantime Von Neurath was in Copenhagen, Rome, London, and for some time at his home, and finally in Prague. We met only occasionally when I was in Berlin, and we kept up a comparatively lively correspondence with each other as old friends. I myself was employed in the Foreign Office during the entire period. From 1921 on I was director of the Legal Department, and from 1923 I was director of the political, so-called Western Department, which I directed until I left the service. I voluntarily tendered my resignation at the end of 1935.

DR. VON LÜDINGHAUSEN: What do you know about the attitude, the fundamental attitude of Herr Von Neurath on domestic and foreign policy, but only on broad lines?

KÖPKE: In domestic politics, Herr Von Neurath stood close to the conservative circles but he was never a member of the Conservative Party. From this basic conservative attitude and also because of his outstanding character traits of loyalty to duty and reliability, he had the confidence of Reich President Von Hindenburg, and retained it without interruption until the latter's death. Herr Von Hindenburg esteemed Von Neurath as a prudent, moderate, reliable diplomat. Men of other party inclinations also had confidence in Von Neurath. I shall mention only the deceased Reich President, Ebert, who recalled Neurath to office during his term.

DR. VON LÜDINGHAUSEN: What do you know about Von Neurath's appointment as Reich Foreign Minister in the summer of 1932?

KÖPKE: The appointment of Herr Von Neurath as Reich Foreign Minister was based on a personal wish of President Von Hindenburg. Neurath did not become Foreign Minister within the Von Papen Cabinet, but became Foreign Minister as the special confidant of President Von Hindenburg.

DR. VON LÜDINGHAUSEN: Then how did it happen that Von Neurath remained Foreign Minister in the new Hitler Government also?

KÖPKE: Von Neurath did not participate so far as I know in the negotiations with Hitler about the assumption of power. If I can rely only on my memory, he was sick abed with a heart disease during the decisive days, but he remained Foreign Minister, again at the special wish of Von Hindenburg.

DR. VON LÜDINGHAUSEN: Can you tell us anything about the attitude, the relationship of Neurath to Hitler?

KÖPKE: I should like to remark by way of introduction that I cannot testify on this subject from my own immediate observation. I was never present at conferences which Herr Von Neurath held with Hitler. I myself never had any official conversation with Hitler whatsoever. But, according to Neurath's own description, and according to the information which I received from other important personalities in the course of time, I had the impression that, especially in the first years, Hitler treated Herr Von Neurath carefully and politely. To what extent this was out of respect for the Reich President, whose regard for Von Neurath was, of course, known to Hitler, I cannot say. In any case, Neurath was never actually in the confidence of Hitler and was not in the small circle close to Hitler, the powerful men of the Party. After the death of President Von Hindenburg, Von Neurath remained because he had promised the Reich President to do so. During the following

period also, Neurath repeatedly attempted to exercise his moderating and calming influence on the Party. However, I know that as disappointments and differences of opinion multiplied, Herr Von Neurath tried many times to separate from Hitler. In this connection I can recall two occasions on which he offered his resignation, and one of these appeals he showed me. It was in writing and must have been dated from the beginning of the year 1936. For at that time I had already resigned and visited Herr Von Neurath as a friend in a purely private capacity.

DR. VON LÜDINGHAUSEN: Now can you also give us a brief picture of Neurath's attitude toward the National Socialist Party?

KÖPKE: At first Herr Von Neurath adopted an attitude of reserve toward the Party and in particular its leading men. To my knowledge he was personally acquainted with hardly any of these men, since, indeed, he had lived most of the time abroad. Neurath was convinced that by reason of his years of experience as an old diplomat and supported by his confidential position with the Reich President, and the latter's moderating influence, he would succeed in working in accordance with his policy, which was directed toward compromise and understanding.

Before me, and I believe also before his other colleagues, Neurath frequently referred to experiences of this sort which he had had with Fascism in Rome. He occasionally said that such revolutionary elements should just be allowed to develop and that these hotheads would come to their senses if they were given time and opportunity to gather experience themselves in responsible positions.

By the way, Neurath also shared the opinions of State Secretary Von Bülow in this respect. He retained this State Secretary of Reich Chancellor Brüning, and also protected him until his death against repeated attempts of the Party to get rid of him.

Moreover, I should like to mention a small detail which was very valuable to us in the office at the time. When State Secretary Von Bülow, who was generally popular, died suddenly, Neurath managed to get Hitler to attend the funeral at the Kaiser Wilhelm Memorial Church. The old officials of the Foreign Office saw in that a gratifying and reassuring sign for the strong position of our Minister in relation to the Party. This event, which in itself is perhaps unimportant, happened exactly 10 years ago today.

DR. VON LÜDINGHAUSEN: As head of the Political Department of the Foreign Office, you were one of Neurath's foremost co-workers, and can surely tell us what was the dominant tendency of Neurath's foreign policy.

KÖPKE: Neurath's political attitude on the whole was, in accordance with his whole character and his years of experience in politics,

inclined toward compromise, waiting, negotiation. Measures backed up by ultimatums and attempts at solution by violence did not suit Von Neurath's temperament. Neurath was neither a gambler nor a fighter by nature.

DR. VON LÜDINGHAUSEN: Now I come to individual important foreign political events which occurred during the period in which you worked under Herr Von Neurath and were head of the political section.

In October 1933 Germany left the Disarmament Conference and the League of Nations. Now, I should like to ask you whether this step of Germany's, leaving the Conference and the League of Nations, was based on any aggressive or belligerent tendencies for the moment or for the future?

KÖPKE: No. As far as the picture of the events mentioned by defendant's counsel was clear to us, the experts, it was as follows: No one of us in the Foreign Office thought of warlike plans or preparations for war. It was only done to proclaim as impressively as possible that Germany would no longer allow herself to be considered a nation without the same rights and obligations as other peoples.

In the same way the militarization of the Rhineland was not based on any aggressive intention, either for the moment or for the future.

DR. VON LÜDINGHAUSEN: In the next few years, in 1935, Germany's military sovereignty was reintroduced, and a year later, the demilitarized Rhineland zone was remilitarized. I should like to read you one sentence from the affidavit of the former minister and interpreter Paul Schmidt of the Foreign Office. He says the following with regard to the events in the spring of 1935:

"The conclusion of a pact of mutual assistance between France and Russia on 2 May 1935 followed the proclamation of the establishment of a German Air Force and the introduction of general compulsory military service in March 1935."

Will you please give us a brief review of the historical development of these matters which led to the reintroduction of military sovereignty in 1935 and to the remilitarization of the Rhineland in March 1936?

KÖPKE: I believe...

THE PRESIDENT: Dr. Von Lüdinghausen, we have had the historical development of these matters over and over again. Surely we do not want it from this witness.

DR. VON LÜDINGHAUSEN: Only very briefly, only the dates, in proper order, Mr. President; no explanations about it. I should

only like to emphasize strongly once more how the individual events are connected with each other.

THE PRESIDENT: The Tribunal have the dates in their minds. We really have had these dates in our minds for some months.

DR. VON LÜDINGHAUSEN: Very well. If the Court believes that it does not need to be informed about it, I must, of course, dispense with it. Then I come to a last...

THE PRESIDENT: Well, you can put any question you really want to put about it, but you said, "Will you give us the historical developments from the 2d of May 1935?" We have heard that over and over again.

DR. VON LÜDINGHAUSEN: Yes, Mr. President. I was interested only in the following: From this affidavit of Herr Schmidt which I have just quoted, one could directly follow...

THE PRESIDENT: Ask the question, whatever you want to ask about this affidavit.

DR. VON LÜDINGHAUSEN: Then I shall formulate the question as follows:

[Turning to the witness.] I have just read this sentence by Herr Schmidt, and I have also told you what can be read from it; namely, that the conclusion of the Franco-Russian Pact of 2 May 1935 was the result of the restoration of military sovereignty. Is that true or what was the case?

KÖPKE: That question is difficult to answer if one merely considers these two events in chronological order. The conclusion of the Franco-Russian Pact was on 2 May 1935; the restoration of military sovereignty was already in March 1935.

However, the negotiations for this treaty of assistance go back much farther, and I should like to recall the fact that the critical stage, into which these negotiations had entered before the restoration of military sovereignty, is shown very clearly in the report of the French Military Committee's reporter in which the latter speaks quite openly of a close entente between the two nations. That was on 23 November 1934.

DR. VON LÜDINGHAUSEN: Now I come to another question and should like to ask you whether you know the opinions and attitude of Von Neurath concerning the Austrian question, at least during your time?

KÖPKE: I have known Herr Von Neurath's attitude toward the Austrian question for a much longer time than the period when we worked together during his term as Minister, for as a southern German he was always particularly interested in the problem and

I recall many conversations which I had with him even when I was still a vice consul. His attitude and intentions had always been to make the relations between Germany and Austria closer in the economic sphere, chiefly in the interests of Austria, and politically to guarantee a similar policy by treaties, but otherwise not to encroach on Austria's independence; that is what we in the Foreign Office had already learned several years before he became Minister, from our experience with the customs union, which at that time was actually intended only in an economic sense. The fact that this attempt was quite generally considered as a political union gave pause for thought and should have warned everyone who had resolved to touch this hot iron again. Therefore, Neurath, during his period of office, whenever he discussed the problem with me and worked on it, thought along just these lines.

I should like to add here that the critical time on the Austrian question was probably after I left office. Moreover, even Hitler originally shared Neurath's moderate conception, as was shown in his conversation with Mussolini in Venice in the summer of 1934. Especially interesting, however, are the remarks which Hitler made on the Anschluss problem to Sir John Simon during the negotiations in Berlin in March 1935. At that time Hitler expressed himself to the English statesman about that as follows:

If the people in London knew Austria as well as he did, they would believe his assurance that he could not want to increase our economic troubles by adding another field of economic difficulties. Germany did not want to interfere in this country at all. He was perfectly aware that any interference in Austrian affairs, even if it meant carrying out the wish of the Austrian people themselves for an Anschluss, could not be legalized. That was Hitler's opinion at that time.

Neurath also rejected all interference in Austrian internal affairs and strongly condemned the attempts which could be noticed in Party circles to give direct support to the Austrian National Socialists. During my time Neurath did everything he could to keep the Foreign Office out of the internal political struggle in Austria.

DR. VON LÜDINGHAUSEN: Still one more question. Up to the time of your resignation at the beginning of 1936, was there ever any talk in the Foreign Office of attacking Czechoslovakia or not observing existent treaties with Czechoslovakia?

KÖPKE: Never, neither the one nor the other. Our economic and political relations with Czechoslovakia were, as long as I was in office, very good. We had no occasion whatsoever to change them, not even the slightest.

DR. VON LÜDINGHAUSEN: And now my last question. Can you tell us anything about Herr Von Neurath's attitude toward the race question?

KÖPKE: On this question Neurath was completely opposed to the Party attitude. In this connection I should like to recall an experience which Neurath told me personally.

When the Jewish legislation was about to be proclaimed the Reich Minister of Justice Gürtner came to him in great excitement and told Von Neurath that he, Gürtner, had warned Hitler in vain against proclaiming these quite impossible laws. He strongly urged Herr Von Neurath as Foreign Minister to point out the enormous dangers which this madness could set loose abroad. Neurath told me that he did this immediately, but that all his efforts had been in vain.

Neurath's personal attitude on the Jewish problem was thoroughly conciliatory and reasonable, in keeping with his generally kind personality and his religious attitude. Among many examples I should like to refer here to only one, which is the following:

During the time when we were in London together, the Jewish doctor at the Embassy was also one of the closest friends of the Neurath family. When he had to leave London during the World War and was homeless and without employment, Neurath immediately took active steps to help his old friend.

As Reich Foreign Minister also, Von Neurath always helped non-Aryan colleagues, although that brought him often under attack from the Party circles and was not always easy.

DR. VON LÜDINGHAUSEN: Mr. President, I have no further questions to put to the witness.

THE PRESIDENT: Does any other member of the defendants' counsel want to ask any question?

[There was no response.]

Do the Prosecution wish to ask any questions?

SIR DAVID MAXWELL-FYFE: My Lord, the Tribunal will, of course, not consider that the Prosecution are accepting every statement of the witness; but I do not think that it would be a useful appropriation of time to cross-examine him. Therefore, I shall ask no questions.

THE PRESIDENT: One moment, Sir David. Sir David, would it be convenient to you and to the members of the defendants' counsel to discuss the questions of supplementary applications for witnesses and documents at 2 o'clock?

SIR DAVID MAXWELL-FYFE: Certainly, My Lord, it would be very convenient to me. I do not think there are many serious matters about which there will be serious dispute.

THE PRESIDENT: No, I thought there were not. Very well, we will do that then.

The witness can retire.

Dr. Von Lüdinghausen, call your next witness and then we can have him sworn before the adjournment.

DR. VON LÜDINGHAUSEN: May I ask that Dr. Dieckhoff be allowed to follow Dr. Köpke?

[The witness Dieckhoff took the stand.]

THE PRESIDENT: Will you state your full name please?

HANS HEINRICH DIECKHOFF (Witness): Hans Heinrich Dieckhoff.

THE PRESIDENT: Will you repeat this oath after me: I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The witness repeated the oath.]

THE PRESIDENT: Now the Tribunal will adjourn.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

SIR DAVID MAXWELL-FYFE: If Your Lordship please, My Lord, the first application is on behalf of the Defendant Von Neurath with regard to M. François-Poncet. That has been dealt with; that is covered.

Then, My Lord, the next is an application from Dr. Marx on behalf of the Defendant Streicher to put in an affidavit by the publisher, Herr Gassner of *Der Stürmer*. My Lord, the publisher is intended to deal with the question of the rise and the circulation of *Der Stürmer* during the years 1933 to 1935. The Prosecution have already submitted to the Tribunal that they did not think that that was relevant when an application was made to call Herr Gassner as a witness. The Prosecution still take the same position. My Lord, it is for an affidavit, and we leave to the Tribunal as to whether they would like the affidavit, but the Prosecution fail to see the relevance of that evidence.

THE PRESIDENT: Would Dr. Marx like to say something about that now?

DR. HANNS MARX (Counsel for Defendant Streicher): Mr. President, I have just discussed this matter with Defendant Streicher; and he tells me that the witness, Herr Gassner, whom I have proposed to call and from whom an affidavit had been proposed, would only be in a position to speak about the publication figures of *Der Stürmer* from the year 1941 onwards. That, of course, is of no interest whatever to the defense. I shall, therefore, forego the affidavit and rely on what the witness Hiemer has said in that respect. Therefore, it will not be necessary at all to procure the affidavit.

SIR DAVID MAXWELL-FYFE: My Lord, the next application is by Dr. Kranzbühler on behalf of the Defendant Dönitz for further consideration and admission of the affidavit of the former fleet judge, Jäckel, by reason of the course of the cross-examination.

My Lord, I think the most convenient course would be if the Prosecution do not object to the application at this time but reserve the right, when Dr. Kranzbühler makes the use that he desires of the affidavit, to consider whether we shall then object.

THE PRESIDENT: This is really evidence in rebuttal, is it?

SIR DAVID MAXWELL-FYFE: Yes, in rebuttal of the points raised in the cross-examination. It is very difficult to decide whether one should make a final objection until one knows what use Dr. Kranzbühler is going to make of it. I suggest that we do not object at this stage.

THE PRESIDENT: Well, these applications and the Tribunal's orders granting the witnesses are always subject to that provision.

SIR DAVID MAXWELL-FYFE: If Your Lordship please, then the Prosecution makes no further objection.

My Lord, then there are two applications on behalf of the Defendant Von Neurath, a request for minutes from the interrogatory of the . . .

THE PRESIDENT: They have both been withdrawn, have they not?

SIR DAVID MAXWELL-FYFE: Oh, they have? I was not certain.

My Lord, then Dr. Thoma makes application on behalf of the Defendant Rosenberg for three matters: The exchange of letters between Dr. Ley and the defendant; the entry of Dr. Strauber 27 May 1944; and third, a note of the Ministerialrat, Dr. Beil.

My Lord, the Prosecution feel that these documents are cumulative, and they leave it to the Tribunal with that suggestion—that the case is already well covered. I do not know if Dr. Thoma wishes to say anything further.

DR. ALFRED THOMA (Counsel for Defendant Rosenberg): Gentlemen of the Tribunal, I should like to refer to it quite briefly, as apparently there is an error in the matter of Dr. Beil. It is a question here of the interrogatory. I have sent to Beil an interrogatory which has not yet been returned. Otherwise, there is nothing that I know about this matter; but I have made an application which has not been mentioned yet. I applied for some of Rosenberg's writings, *Tradition und Gegenwart*, new speeches and translations, to be included in the document book, for these deal with questions which were discussed on the occasion of Gau educational meetings and discussions and which also deal with such questions as the peaceful living together of the nations of Europe, religious tolerance, his advocacy of an ideal humanity, and similar writings. I request that these articles be admitted. Apart from that, I have no further applications to make; and for the rest I leave the decision, of course, to the Tribunal.

THE PRESIDENT: If I understand what you said aright, Dr. Thoma, you were not referring to any of the applications which are before us. The applications which are before us are an exchange of letters between Dr. Ley and the defendant in the autumn of 1944; another is an entry which Dr. Strauber made; and the third is a note of Dr. Beil; you have not referred to them, have you?

DR. THOMA: Yes, that is right. I have to confess that these applications are completely new to me. These applications must have been made by Rosenberg on his own initiative, because I

cannot find any trace of them. Or perhaps an error was made in the memorandum to the Tribunal. I do not know the applications.

THE PRESIDENT: Well, Dr. Thoma, the copies of the applications are before us, and they appear to be signed both by the Defendant Rosenberg and by yourself.

DR. THOMA: In that case, this must have happened months ago. I cannot remember; this is from 3 June.

THE PRESIDENT: At any rate, you do not want them?

DR. THOMA: Application Number 3 is settled.

I have re-read the applications just now, and I do remember them. I ask you to make a decision favorable to the defendant.

SIR DAVID MAXWELL-FYFE: My Lord, the next applications are for a number of documents on behalf of the Defendant Von Papen, and the Prosecution have no objection to this.

THE PRESIDENT: Sir David, a good many of them—certainly Numbers 3, 5, and 13—have either been admitted or rejected, I think.

SIR DAVID MAXWELL-FYFE: That is so, My Lord. I had a note opposite 13. I really think they have been dealt with, My Lord; they are in the books, and I do not think any further discussion is required.

THE PRESIDENT: Are they all in the book?

SIR DAVID MAXWELL-FYFE: I think so, My Lord. I do not know if—Dr. Kubuschok says he agrees with me.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: If Your Lordship please, the next is an application on behalf of the Defendant Bormann, a request for a decree of Hitler's and a decree issued by Bormann in 1944. My Lord, the Prosecution have no objection to these.

THE PRESIDENT: I do not quite understand the meaning of the last one. Can you tell me what it means?

SIR DAVID MAXWELL-FYFE: My Lord, I took it myself that it was "to" the SD, instead of "of" the SD—the appertaining of members of the head office of the National Socialist Party of the SD. I am afraid that that guess on my part does not meet with approval.

DR. FRIEDRICH BERGOLD (Counsel for Defendant Bormann): My Lord, this concerns a decree from Bormann in which he prohibits members of the Party Chancellery belonging to the SD. It is a decree of Bormann's applying to the Party Chancellery.

THE PRESIDENT: Thank you.

SIR DAVID MAXWELL-FYFE: My Lord, the remaining applications are on behalf of the Defendant Göring, the admission of an affidavit by Baron von Gersdorff, and a book by Joseph Chapski.

My Lord, my Soviet colleague has dealt with that by submission in writing, dated 20 June. I did not propose to say anything further about that, My Lord. Colonel Pokrovsky is here if Your Lordship would like to hear him further.

THE PRESIDENT: I thought we had already made an order with reference to this.

SIR DAVID MAXWELL-FYFE: Your Lordship has.

THE PRESIDENT: We made the order on 9 June, apparently, that for the Defendant Göring three witnesses could be produced either personally . . .

Perhaps we had better hear from Dr. Stahmer about this.

DR. OTTO STAHLER (Counsel for Defendant Göring): Mr. President, that is the way I understood the decision of the Tribunal. I had applied for five witnesses. The Tribunal ordered that I could produce only three out of the five witnesses.

THE PRESIDENT: That is right.

DR. STAHLER: Then with reference to the affidavit nothing was said, as far as I can remember, in that particular decision, so that I had assumed that I would be free to ask for admission of affidavits insofar as the Tribunal considers them necessary.

THE PRESIDENT: Dr. Stahmer, after the Tribunal had made that order about limiting the number of witnesses to three, did you not receive a communication, to which you have replied, I think, suggesting that possibly you might be able to dispense with actual oral witnesses and do that whole part of the case by affidavits?

DR. STAHLER: Yes, Mr. President, I received that communication; and I have already negotiated about the matter with the Russian Prosecution. We did not quite reach an agreement, however; and therefore I made a written application to the Tribunal a few days ago.

THE PRESIDENT: Yes, but was not the agreement which you were trying to arrive at an agreement that only three affidavits should be produced on either side? Or was it more than three?

DR. STAHLER: No. The question which remains and which we have not agreed upon is whether I will be given the opportunity to read a few of the affidavits here.

THE PRESIDENT: I see. Dr. Stahmer, I think the position is, then, that unless you are able to arrive at an agreement with the Soviet Prosecution, we shall have to abide by our previous order.

DR. STAHLER: Very well.

THE PRESIDENT: You will make further efforts to achieve an agreement with the Soviet Prosecution and let the Tribunal know.

DR. STAHLER: I will.

SIR DAVID MAXWELL-FYFE: I wonder if your Lordship will grant me the indulgence of mentioning three exhibits. They all refer to the diary of Admiral Assmann, My Lord, which was introduced during the cases of the Defendants Dönitz and Raeder. There are three exhibits concerned.

The first is Document D-879. We thought that would be more complete if a connecting page was put in to make the continuity of the exhibit. For that purpose, My Lord, the Prosecution asks that Exhibit GB-482 be withdrawn and that there be submitted the two pages which were originally in it with a connecting page. That is merely adding a connecting page, My Lord.

The second is Document D-881 . . .

THE PRESIDENT: Is there any objection to that on the part of the Defense?

SIR DAVID MAXWELL-FYFE: I do not think so, My Lord; I have not heard of any.

THE PRESIDENT: What do the documents relate to, did you say?

SIR DAVID MAXWELL-FYFE: The diary of Admiral Assmann, who was on the staff of the Defendant Raeder.

THE PRESIDENT: Oh, yes.

SIR DAVID MAXWELL-FYFE: My Lord, it is only a question of putting the exhibit in proper form.

The second document, My Lord, is D-881, which is another passage from the same diary, on 23 February 1940. I promised Your Lordship that I should put in an exhibit when I dealt with the diary in cross-examination; and, My Lord, the exhibit has been prepared, and I want to put it in under the Number GB-475. That is, Document D-881 will become Exhibit GB-475.

The third, which is in the same position as the second, is Document D-892. That exhibit has now been prepared and will become Exhibit GB-476. Copies are available for the defendants and will be given to them after the approval of the Court is given.

THE PRESIDENT: And copies, of course, will be supplied to the Court as well?

SIR DAVID MAXWELL-FYFE: Of course, My Lord. They are just awaiting the formal approval of the Court, and they will be submitted.

THE PRESIDENT: Yes, Sir David, that is all right.

Then, Sir David, we will consider the other matter.

SIR DAVID MAXWELL-FYFE: If Your Lordship please.

THE PRESIDENT: Very well.

Yes, Dr. Thoma.

DR. THOMA: Mr. President, I just wanted to use this opportunity to submit to the Tribunal the affidavit of Robert Scholz, the Chief of Special Staff Rosenberg. It has been translated into English and French, and I should now like to submit it under Exhibit Number 41 to the Tribunal. I have already shown it to Mr. Dodd, and he has not objected.

THE PRESIDENT: Very well.

PROFESSOR DR. HERBERT KRAUS (Counsel for Defendant Schacht): Mr. President, I wanted to ascertain whether and up to what date after this session we may submit affidavits and documents. The reason is that during recent days I have received two affidavits and a document, the relevance of which we have not yet definitely decided upon.

THE PRESIDENT: Sir David, the Tribunal would like to know when the Counsel for the Prosecution and Counsel for the Defense think would be the best time to deal with these matters which are outstanding and with any evidence which either the Defense or the Prosecution may wish to bring in rebuttal.

SIR DAVID MAXWELL-FYFE: Yes, My Lord, I have not had the chance of discussing it with any of the Counsel for the Defense; but I should have thought at the end of the evidence. One might reasonably hope that the evidence will finish this week. It might be possible to deal with it on Saturday morning or on Monday, and suit the Counsel for the Defense, and, of course, as the Tribunal decides.

THE PRESIDENT: Yes. The Tribunal, I think, will expect the Defense Counsel and the Prosecution to be ready, directly when the end of the evidence comes, to deal with all these additional questions which are outstanding and also with any applications that they may have with reference to rebuttal.

SIR DAVID MAXWELL-FYFE: If Your Lordship please, yes.

THE PRESIDENT: I wanted that to be clearly understood, that it will be expected that it is to be done immediately the evidence closes. That, I think, answers Dr. Kraus' point about the affidavits and documents. That would be the most appropriate time.

Sir David, have you got any ideas as to how long that would take?

SIR DAVID MAXWELL-FYFE: My Lord, I think a very short time. I should have thought that 2 days or thereabouts would see it through. I have discussed it with Mr. Dodd, and that was the view we took.

THE PRESIDENT: Yes. In about 2 days at the outside?

SIR DAVID MAXWELL-FYFE: At the outside, My Lord, yes.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: If Your Lordship please.

[The witness Dieckhoff resumed the stand.]

DR. VON LÜDINGHAUSEN: Witness, since what date do you know Herr Von Neurath?

DIECKHOFF: Since 1913; I met him when I joined the Foreign Office. He was legation counsellor in the Foreign Office at that time. I then met him again in Constantinople, and there I had contact with him. Then I did not meet him again until 1930.

DR. VON LÜDINGHAUSEN: In what capacity did you have dealings with Herr Von Neurath beginning with 1930?

DIECKHOFF: Herr Von Neurath was then, from 1930 till 1932, Ambassador to London; and I was head of the Department "England-America" in the Foreign Office.

DR. VON LÜDINGHAUSEN: How was the co-operation during that time between the Foreign Office—that is, yourself—and Herr Von Neurath, who was then Ambassador to London?

DIECKHOFF: The co-operation was excellent.

DR. VON LÜDINGHAUSEN: Do you know anything about Herr Von Neurath's appointment to the position of Reich Foreign Minister?

DIECKHOFF: I remember that most of the leading officials of the Foreign Office were greatly upset by the sudden departure of Brüning, whose steady and moderate policy we approved at the time. We submitted to the change in the person of the Foreign Minister only because Neurath replaced Brüning and we knew that Herr Von Neurath was a man of high standards and an experienced diplomat. Furthermore, we knew that he had represented Brüning's policy in London; and we expected that as Foreign Minister he would continue Brüning's policy.

I welcomed Herr Von Neurath, I think it was on 2 June, at the station in Berlin when he arrived in Germany. From conversations with him I gathered the impression that he very much disliked to leave London and to take over the Foreign Ministry. But he said to me, "I do not think I shall be able to refuse the wish of the old gentleman." That, of course, was Reich President Von Hindenburg.

DR. VON LÜDINGHAUSEN: What position did you hold yourself during the time when you worked under Herr Von Neurath in the Foreign Ministry?

DIECKHOFF: At first, I remained at the head of the England-America Department until 1936. Afterward, in April 1936, I took

over the re-established political department. In June State Secretary Von Bülow died, and in August 1936 I was appointed acting State Secretary in the Foreign Office. I remained in that provisional position until March 1937, and then I became Ambassador to Washington.

DR. VON LÜDINGHAUSEN: Did Herr Von Neurath, as Foreign Minister, retain the old officials of the Foreign Office?

DIECKHOFF: He retained the old officials in practically all the leading positions of both the domestic and the foreign service. The State Secretary Von Bülow for instance remained for 4 years, until his death, in the same position in the Foreign Office.

He sent Ambassador Von Hoesch to London as his successor, and he sent Ambassador Von Hassell to Rome, and Ambassador Köster to Paris—all of these were old diplomatic officials.

DR. VON LÜDINGHAUSEN: Can you tell us from your own experience during your activities what the aims of Neurath's foreign policy were?

DIECKHOFF: It was the aim of Herr Von Neurath to maintain good relations with all states and thereby to re-establish gradually Germany's status of equal rights which we had lost in 1919. This was the same policy that had been pursued by Stresemann and Brüning. Herr Von Neurath was aware of the difficulties of Germany's position. He talked to me about it repeatedly. He was under no misapprehension about it. He saw things realistically. His tendency was to exercise moderation.

DR. VON LÜDINGHAUSEN: What do you know about Herr Von Neurath's entry into Hitler's Government, which was formed on 30 January 1933?

DIECKHOFF: I know about this only what I was told by State Secretary Von Bülow when I returned to Berlin from leave at the beginning of February 1933. According to this, Herr Von Neurath had no part in the formation of the new Cabinet, that is, Hitler's Cabinet. Apart from that, he was sick during that time. He heard of the plan of making Hitler Reich Chancellor and of forming a new government. He wanted to discuss it with Reich President Von Hindenburg in order to obtain certain reservations for himself; but he came too late and could not obtain these reservations. In spite of this, he retained the Foreign Ministry in the new Cabinet because he did not want to refuse the wish of the Reich President.

DR. VON LÜDINGHAUSEN: Do you know anything about Herr Von Neurath's attitude toward the National Socialist domestic policy?

DIECKHOFF: I know that Herr Von Neurath, soon after 30 January 1933 viewed the domestic policy with some anxiety, chiefly

because he felt that it strongly affected our foreign policy. When, in June 1933, I visited him in London, where he attended a conference as head of the German delegation, he told me about his anxieties; but he thought that these things would die down and that developments would be similar to those in Fascist Italy, where things had been very wild in the beginning, but had settled down afterward. He was hoping that the same would happen in Germany.

DR. VON LÜDINGHAUSEN: I am coming now to the year 1936. One of the principal questions which dominated that year was the Austrian problem. Can you tell us what Herr Von Neurath's attitude was toward the repeated interferences of German circles in the internal affairs of Austria?

DIECKHOFF: Yes. Herr Von Neurath considered such German interference in the internal affairs of Austria not only inadmissible but damaging. He told me so repeatedly. He was striving for an improvement of the economic relations with Austria and thereby trying to improve gradually the political relations also. He wanted to leave the sovereignty of Austria untouched. This was also the aim of the agreement of 11 July 1936 between Germany and Austria, that is, the economic strengthening of Austria and thereby the re-establishment of good political relations between the two countries.

DR. VON LÜDINGHAUSEN: Did you hear anything before March of 1938 that Hitler had the intention to incorporate Austria into Germany, if necessary, with force?

DIECKHOFF: No.

DR. VON LÜDINGHAUSEN: Did you ever hear anything before 1938 that Hitler had intended to solve the Sudeten problem by force or even to attack Czechoslovakia?

DIECKHOFF: No.

DR. VON LÜDINGHAUSEN: Do you know whether Hitler was in full agreement until November 1937 with the peaceful policy which Herr Von Neurath pursued with regard to both Austria and Czechoslovakia and also with regard to the other European countries?

DIECKHOFF: Until Herr Von Neurath's resignation in February 1938, I always presumed that Hitler agreed with the peaceful policy pursued by Herr Von Neurath; and I never heard or learned anything to the contrary.

DR. VON LÜDINGHAUSEN: Do you know what the thoughts, the considerations of Herr Von Neurath in 1935 were regarding the question of rearmament, that is to say, the re-establishment of Germany's military sovereignty?

DIECKHOFF: I know that Herr Von Neurath held the view that Germany, by the declaration of the Western Powers on 11 December

1932, had been granted equality of rights; and he considered her to have the indisputable right to rearm after all disarmament efforts had failed.

DR. VON LÜDINGHAUSEN: I should like to put the same question to you, with regard to the considerations and attitude of Herr Von Neurath, with reference to the remilitarization of the demilitarized Rhineland.

DIECKHOFF: I know that Herr Von Neurath was aware of the seriousness of this problem, for he knew that the problem of the remilitarization of the Rhineland was interconnected with the Locarno Pact; but I know that he saw a breach of the Locarno Pact in the Franco-Russian Agreement of Mutual Assistance concluded in May 1935 and that as a result of the ratification of this pact, or its going into effect, he firmly believed that Germany had the right to re-establish military sovereignty in the Rhineland.

DR. VON LÜDINGHAUSEN: What was the general political situation in those days? Taking it into consideration, was it not justified to assume that sooner or later a peaceful solution of this Rhineland problem would be arrived at in any case?

DIECKHOFF: At any rate, the actual development after 7 March 1936 showed that the Western Powers, though they did not agree to the remilitarization of the Rhineland, nevertheless very quickly acquiesced in the *fait accompli*.

I was at that time, during the second half of March 1936, for 2 weeks in London on behalf of the Reich Government; and I had the opportunity to discuss this matter with many Englishmen; and the view I found in the widest circles was that as Germany had been granted equality of rights one could not deny her the right to remilitarize the Rhineland. In some circles I even found the view that it was a relief that the remilitarization of the Rhineland, which was due sooner or later in any case, was carried out so quickly and comparatively painlessly.

DR. VON LÜDINGHAUSEN: And now one last question. What do you know about Herr Von Neurath's resignation from the position of Reich Foreign Minister in February 1938?

DIECKHOFF: I was Ambassador to Washington at that time and I was completely surprised by Foreign Minister Von Neurath's sudden departure. I did know that there were many things he did not agree with and that he had asked several times to be allowed to resign. I also knew that he was ill; he suffered from a neurotic heart. I also knew that he had passed his sixty-fifth birthday, which gave him the right to retire. But I was surprised all the same, particularly as I did not know the details at that time. I regretted the resignation of the Foreign Minister, in whose peace policy I

had confidence, very much. I remember that the official circles in Washington also regretted the departure of Herr Von Neurath very much, for Under Secretary of State Sumner Welles approached me a few days after this event and told me that the American Government regretted the departure of this man who had pursued a moderate policy.

DR. VON LÜDINGHAUSEN: Mr. President, I have no further questions to this witness.

THE PRESIDENT: Do any other members of the defendants' counsel wish to ask him any questions?

DR. KUBUSCHOK: One single question, Witness. You said that if Von Neurath assumed the office of Foreign Minister, you had expected that he would continue Stresemann's and Brüning's policy. According to your knowledge did he actually continue this policy of Brüning's after he became Foreign Minister?

DIECKHOFF: Yes.

DR. KUBUSCHOK: Thank you.

SIR DAVID MAXWELL-FYFE: My Lord, on the same basis I intimated with regard to the last witness, the Prosecution do not desire to take up time by asking any questions.

THE PRESIDENT: Then the witness may retire.

DR. VON LÜDINGHAUSEN: Mr. President, may I then have your permission to call my third and last witness, Dr. Völkers, into the witness stand.

[The witness Völkers took the stand.]

THE PRESIDENT: Will you state your full name, please?

HANS HERMANN VÖLKERS (Witness): Hans Hermann Völkers.

THE PRESIDENT: Will you repeat this oath after me: I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

DR. VON LÜDINGHAUSEN: Witness, you were twice the personal adviser to Herr Von Neurath; first in his position as Foreign Minister and later in his position as Reich Protector of Bohemia and Moravia; is that correct?

VÖLKERS: Yes; since 1920 I was a member of the Foreign Office, and I spent all my time abroad. Under Stresemann I spent 4 years in Geneva as Consul General and as the permanent German representative to the League of Nations; and in 1932 I was called to the Foreign Office and became personal adviser to the newly,

appointed Foreign Minister, Herr Von Neurath. I remained in that position for a year; and then, upon my own request, I was sent to Madrid as Embassy Counsellor, and later I became Minister to Havana. In 1939 I was called back to the Foreign Office to act as personal adviser with the title of chief of the office of Herr Von Neurath, who in the meantime had been appointed Reich Protector in Prague.

DR. VON LÜDINGHAUSEN: Did this appointment as personal adviser to Herr Von Neurath in Prague take place on the basis of any personal relations or merely for professional reasons?

VÖLKERS: Only for professional reasons. Until I was his attaché in Berlin I did not know Herr Von Neurath.

DR. VON LÜDINGHAUSEN: What was the attitude of the officials of the Foreign Ministry toward Herr Von Neurath's appointment as Foreign Minister?

VÖLKERS: I had the impression that the officials of the Foreign Office were generally most satisfied that in view of the difficult internal political situation an old professional diplomat and expert minister took over the direction of the Foreign Ministry, because they saw in that a guarantee for a steady foreign political course; all the more so as it was known that Herr Von Neurath had the special confidence of Reich President Von Hindenburg and because he enjoyed, due to his entire personality and his equanimity, the special recognition and veneration of all the officials of the Foreign Office.

When Hitler came to power I had the impression that he was skeptical and reserved toward him. He did not belong to the circle of the closer associates of Hitler, and during the time I was with him he never attended these evening conferences which Hitler held in the Reich Chancellery in those days.

Gradually, however, the pressure on the Foreign Office increased more and more. The Auslands-Organisation was created and the office of Ribbentrop started a competitive enterprise into which were called all sorts of people who had been abroad. They made all sorts of reports which went directly to the Führer without being controlled by the Foreign Office. And then later on the head of the Auslands-Organisation was installed as commissioner in the Foreign Office while Prince Waldeck was transferred into the personnel department of the Foreign Office. At that stage the pressure became so strong that finally one could not fight against it any more.

But the fact that the Foreign Office had isolated itself for so long and that it was still evading the pressure of the Party, that, I think, is certainly the merit of the then Foreign Minister and his

State Secretary Von Bülow. When the Jewish laws were then introduced into the Foreign Office, too, I know that Herr Von Neurath protected, as far as that was possible, his officials. I was in Stockholm during the last 2 years of the war and met there two former colleagues of mine with whom I am close friends. One is Ministerial Director Richard Meier who used to be in charge of the Eastern department and who had to leave quite soon and who often told me in Stockholm how grateful he was to Herr Von Neurath for not only having enabled him to take with him his family and his furniture and everything when he went abroad but also that Herr Von Neurath, until the collapse, continued to pay him his monthly pensions in Swedish kroner.

DR. VON LÜDINGHAUSEN: What was your position and your activity in Prague in the Government of the Protectorate?

VÖLKERS: My position in Prague with the Government of the Protectorate was approximately the same as the one I had 7 years earlier when I had been personal adviser to the Foreign Minister in the Foreign Office in Berlin, with the exception that in the Foreign Office there is a special protocol department and a chief of protocol, whereas in Prague I was also in charge of all protocols and ceremonial affairs, and that was really my chief occupation. I was head of the so-called Office of the Reich Protector, not to be confused with the principal authority, with which I had nothing to do. When I came to Prague in the summer of 1939 the office already had been functioning for several months. My predecessor was one Legation Counsellor Von Kessel from the Foreign Office. Apart from myself two other officials from the Foreign Office, who were subordinated to me, belonged to the Office of the Reich Protector, also one Count Waldburg, whose mother was a Czech and who was engaged by the Reich Protector because he was hoping to establish, especially through him, good relations with the Czechs.

The office was responsible, apart from the general and usual routine matters, for dealing with the private correspondence and the handling of personal petitions. In the course of time we had to set up a special department, because later on, when the many arrests took place, we received so many petitions, most of which were addressed to the Reich Protector personally . . .

THE PRESIDENT: Dr. Von Lüdinghausen, surely this is very remote from anything we have got to consider, and all the previous evidence this witness has given has been cumulative evidence which has not been cross-examined upon before; and now what he is saying is all very remote to anything we have to consider.

DR. VON LÜDINGHAUSEN: In fact, I have already come to an end, Mr. President. I merely wanted to show that he is in a position to answer the following questions from his own knowledge.

[Turning to the witness.] What can you tell us from your own observations and experiences about the attitude of Herr Von Neurath toward the Czechs?

VÖLKERS: I can give you only general impressions. As I have already told you, I had nothing to do with the actual activities of the office but was attached to Herr Von Neurath personally only for his private affairs and all ceremonial matters. But I do know, and he told me, that when he took over his position as Reich Protector, he did so with the intention of treating the Czech population as justly and decently as possible in order to create, by smoothing out the differences, a healthy basis for a peaceful living, side by side, of the two nations. He told me frequently that he was appointed Reich Protector, that is, protector of the Czechs; and we knew that the last German Ambassador in Prague, Dr. Eisenlohr, had often reported that the last Czechoslovakian Government, for their part, had been prepared to effect an Anschluss with Germany. He was an opponent of using military measures, and Herr Von Neurath told me when I came to Prague—I think it was in September 1938—that he had expressed himself very strongly against their use and that he together with Göring had visited Hitler in Munich in order to dissuade him from that.

In my office I experienced again and again that Herr Von Neurath—shall I go on—was very open-handed toward the Czechs with regard to petitions. He had a lot of sympathy and understanding; he examined each individual case, and that was very well known among the Czechs. And as we in this office had the possibility of submitting each single request and petition of Czech individuals directly to the highest chief, the Czech petitioners very frequently and gladly used this channel because the prospects for a positive action on their private requests and petitions through the highest local chief promised to be much more favorable than if they were quickly processed by the authorities concerned in the Government. Particularly this practice brought us in conflict with the State Secretary...

THE PRESIDENT: Dr. Von Lüdinghausen, this witness is simply making speeches, you know. You are not asking him any questions at all. He is simply going on...

DR. VON LÜDINGHAUSEN: Witness, what do you know about the personal and official relationship between Von Neurath and the President of State Hacha?

VÖLKERS: According to my observations, the personal and official relationship between the Reich Protector and the President of State Hacha was excellent; and I believe that this was not merely a matter of form, but I had the impression that Herr Von Neurath

really and sincerely liked the President of State because he considered him a very decent and upright man who, under the existing circumstances . . .

THE PRESIDENT: Witness, when you see your counsel has heard enough of your answer, surely you can stop . . .

VÖLKERS: Very well.

DR. VON LÜDINGHAUSEN: What was the relationship between Herr Von Neurath and the State Secretary attached to him, Frank?

VÖLKERS: That was a very bad one. Herr Von Neurath told me already at the time when I assumed my office that he had had considerable difficulties with him because of his definite anti-Czech attitude, as a Sudeten German—an attitude which a Reich German could not easily understand. He had always hoped, however, that Frank, who was not a civil servant but an outsider, would gradually follow his policy and adapt himself to the civil service staff. But unfortunately this was not possible. I do not know when . . .

DR. VON LÜDINGHAUSEN: Witness, can you describe to us briefly what the actual official powers of Herr Von Neurath and Frank were in relation to each other?

VÖLKERS: Herr Von Neurath was the superior of the State Secretary. The State Secretary was in charge of the entire internal administration, which was a very large one. Under State Secretary Von Burgsdorff, who I think has been examined already before this High Tribunal, worked under him. Besides being State Secretary, Frank was also the Higher Police and SS Leader.

DR. VON LÜDINGHAUSEN: Now, did Herr Von Neurath have a certain influence on this part of Frank's activities, that is to say, in his capacity as Higher SS and Police Leader?

VÖLKERS: The way conditions were he had practically no influence. I do not know whether in the beginning the matter had already been legally settled. In practice, however, the Police and the State Secretary were completely independent from Herr Von Neurath regarding police measures. This had some connection with the situation in the Reich, where Himmler, too, led the entire Police and SS, having taken the police powers away from the Ministry of the Interior. As far as I can remember, the matter was legally settled in the autumn of 1939 to the effect that the Police was independent and that Herr Von Neurath was to be informed afterward of all measures taken.

DR. VON LÜDINGHAUSEN: You mean by that the decree regarding the organization of the administration and the German Security Police in the Protectorate, under date of 1 September 1939?

VÖLKERS: Yes, I think that is the one. The first part referred to the administration and the second part to the Police.

DR. VON LÜDINGHAUSEN: Mr. President, may I remind you that the wording of this decree is contained in my document book under Number Neurath-149.

THE PRESIDENT: It has been submitted as evidence?

DR. VON LÜDINGHAUSEN: Yes. I merely wanted to remind you that I have presented it.

[Turning to the witness.] Was Herr Von Neurath at least informed afterward, in accordance with the instructions, of the police actions which Frank carried out independently?

VÖLKERS: The Chief of the Police was an SS man by the name of Böhme. He used to report to the Reich Protector several times each week. I do not believe that he informed him in advance of intended police actions. We never heard anything like that. Whether he reported such actions afterward and in their entirety is something which I cannot say. The rule was that the Reich Protector sent to him, for comment, the various petitions from the next of kin of Czechs who had been arrested and that Böhme would bring them along when he came to report. That was generally the way the Reich Protector was afterward informed.

DR. VON LÜDINGHAUSEN: Well then, when Herr Von Neurath was later on informed of such police measures, no matter in which way, did he make attempts for the suspension of arrests or for any limitation and mitigation of such police measures?

VÖLKERS: As I have already told you, we had set up in the small office of the Reich Protector a special department for the purpose of receiving such applications. This department, which of course was directly under the jurisdiction of the Reich Protector, did everything possible in order to reassure the next of kin and to bring about the releases of the detained persons. The work was particularly difficult because these local departments, the local police chief and also State Secretary Frank, usually took a negative attitude. Again and again the Reich Protector would then appeal directly to Himmler and very often to the Führer himself. I know and remember that there was a very excited correspondence with Himmler and that Herr Von Neurath repeatedly complained to the Führer about this.

DR. VON LÜDINGHAUSEN: Witness, can you judge, or can you tell us how far Herr Von Neurath, as Reich Protector, apart from the Police and police measures, was free and independent in his political and economic measures and orders, or how far he was depending on Berlin when giving those?

VÖLKERS: When I came to Prague there were all sorts of other offices beside that of the Reich Protector. For instance, there was a Reich Commissioner for Economy who, as far as I can remember and as I heard at the time, had already begun to exercise his functions when the Office of the Reich Protector had not yet been established. Then there was a Plenipotentiary for the Four Year Plan and there was the Armed Forces Plenipotentiary who had a large staff. Even the Party agencies were not centrally organized. Prague and the north belonged to the Sudetengau under Gauleiter Henlein; the whole of Moravia belonged to the Niederdonau Gau, under Gauleiter Dr. Jury; and the west belonged to a third Gau. All these Gauleiter tried, in turn, on their part...

THE PRESIDENT: Counsel, this is all detail, is it not, and quite unnecessary detail?

DR. VON LÜDINGHAUSEN: Do you know anything about Von Neurath's attitude toward numerous plans of germanizing the Czechs?

VÖLKERS: No, I know nothing about that. I remember only that, right at the beginning of the war, Herr Von Neurath told me that the whole structure of the Protectorate was regarded by him as a temporary solution and that the peace would have to decide the ultimate fate of Czechoslovakia.

DR. VON LÜDINGHAUSEN: Well, then, as you probably remember, in the autumn of 1939 there were the first demonstrations in Prague on the occasion of the Independence Day of Czechoslovakia, on 28 October 1939.

VÖLKERS: Well, I cannot remember the details. There were demonstrations on a Czech national holiday in October. As far as I can remember, they took place on the Wenzel Platz, and the Národní-ulice. I, personally, did...

DR. VON LÜDINGHAUSEN: What do you know about the consequences of new demonstrations particularly on the part of the students at Prague when a wounded student died and was buried on 15 November? What do you know about these demonstrations and what happened immediately in the wake of these demonstrations?

VÖLKERS: Previous to the second demonstration, as far as I remember, the instruction was given to exercise restraint. The demonstrations were generally, as I was told later, not particularly alarming. In spite of this, Frank had reported to Berlin about it. At any rate, the Reich Protector and Frank and General Friderici were called to Berlin for a conference with Hitler in the Reich Chancellery. I accompanied the Reich Protector at the time. Chvalkovsky, the Czech Minister in Berlin, was also invited. I was present

when Hitler, in a very excited and rude manner, reproached the Minister because of the events, for which he was holding the Czech Government responsible. Whether the closing of universities was discussed on that occasion, I cannot remember, nor can I remember having heard him threaten the shooting or arrest of students. The manner in which Hitler treated the Minister was most embarrassing to us. The Minister then left the room without saying a single further word. As far as I can remember, the subject was then mentioned no further. We had lunch, and when saying goodby, Hitler said to Frank that he wanted to talk with him some more.

Herr Von Neurath was not asked to stay and I remember that while walking home with him he was very angry about it. On the following day, I traveled back with Herr Von Neurath while Frank had already left the same night for Prague. I remember that when I came into the office in Prague, I saw a red poster declaring that because of the demonstrations, the shooting of the leaders and the arrest of students and the closing of universities had been ordered; that poster carried Neurath's signature. As I did not know what had happened in Prague in the meantime, I was utterly surprised, because I had heard nothing about these measures in Berlin; and I suspected an intrigue on Frank's part and went to report the matter to Neurath. I had the impression that Herr Von Neurath was deeply upset and just as unpleasantly surprised as I was and that he had known nothing at all about this previously. Soon afterward Frank passed through my room going into Neurath's room, carrying that red poster under his arm. I do not know whether Von Neurath had sent for him or whether he came on his own initiative.

DR. VON LÜDINGHAUSEN: Did Herr Von Neurath afterwards, at least after this unfortunate matter had occurred, use his influence for the release of these students who had been arrested?

VÖLKERS: Yes. He immediately used his influence, but he did not even succeed in getting hold of the list of names of the arrested students. Only after urging the Czechs for a long time did we receive from the Czech Government an incomplete list of names. In spite of this, Herr Von Neurath immediately worked for their release; and he did, in fact, have excellent results in that connection as time went by.

DR. VON LÜDINGHAUSEN: Do you know anything about what was done to accommodate or employ those students who, on account of these demonstrations and the subsequent closing of the universities, had more or less become idle?

VÖLKERS: No, I know nothing about that, and I had nothing to do with that matter.

DR. VON LÜDINGHAUSEN: But do you know whether Herr Von Neurath repeatedly urged Hitler to reopen the universities?

VÖLKERS: Yes, I remember that the chancellor, named Rosny, of the Czech University, whom I knew well, had asked me once for that and I reported it to Herr Von Neurath and Herr Von Neurath again made efforts at the time; but as far as I know, as long as we were in Prague the universities were not reopened.

DR. VON LÜDINGHAUSEN: Do you remember a Czech Fascist organization, Vlayka? I do not know whether I pronounce the name correctly.

VÖLKERS: Yes, I do, but I know very little about it. I only know that we received in the office a number of pledges of loyalty sent to us by members of the movement, and I also know that we had been informed by Czech sources that these people were partly criminal and generally not worth much. Herr Von Neurath adopted quite generally the view that this was an internal affair of the Czechs and that, after all, these were people who wanted to work together with us. But he, on his part, refused any collaboration; and such letters and pledges were never answered, I believe, by our office. But I know . . .

DR. VON LÜDINGHAUSEN: Herr Von Neurath was also, besides being Reich Protector, president of the Secret Cabinet Council. Did you, since you partly handled his correspondence of a more personal nature, notice anything indicating that Herr Von Neurath became active in this capacity as president of the Secret Cabinet Council?

VÖLKERS: No. As long as I was in Prague, Herr Von Neurath was never active. On the contrary, on one occasion he told me that Hitler, when he appointed him, had told him that he should not think that he would ever call a meeting of the Cabinet Council.

DR. VON LÜDINGHAUSEN: Herr Von Neurath was also a member of the so-called Defense Council. Did he ever have anything to do in this capacity in Prague?

VÖLKERS: No, I did not know that he was a member of the Defense Council. The fundamental decrees from Berlin concerning the Protectorate were frequently signed by the Ministerial Council for the Defense of the Reich—I believe that was the name—but Neurath had never signed or countersigned them.

DR. VON LÜDINGHAUSEN: Herr Von Neurath was appointed, as is well known, an honorary Gruppenführer of the SS and later, honorary Obergruppenführer of the SS. Did Herr Von Neurath at that time, when he was in Prague, ever wear that uniform?

VÖLKERS: As a rule, he wore his Reich Minister uniform. A portrait was also once made of him in that uniform. He used to wear civilian clothes a great deal. It may be that he once wore the black uniform of the SS, on the occasion of a parade of the SS; but I do not know for certain now. Otherwise, he never wore it.

DR. VON LÜDINGHAUSEN: Do you know anything about the circumstances and reasons concerning Herr Von Neurath's departure from Prague in September 1941?

VÖLKERS: When Herr Von Neurath was ordered to come to headquarters that September, he was accompanied by his military adjutant. I met him at the airfield; and in the car he told me that Hitler had been furious because of the acts of sabotage in the Protectorate and wanted to send Heydrich to do some exemplary punishing. He, Neurath, had stated that he did not want to have anything to do with that and had asked for his release. Hitler then had ordered that he should first of all go on leave, and so he did. He departed on one of the following days.

DR. VON LÜDINGHAUSEN: Mr. President, I have no further questions.

Mr. President, may I make one request at the end of my case. I have not yet been able to submit all documents because I have not yet received all the translations. May I reserve myself the right to submit the few remaining documents, perhaps at the end of the case of my colleague, Dr. Fritz?

THE PRESIDENT: You need not wait for the translation. You can offer the documents in evidence now. Put in a list with the numbers.

DR. VON LÜDINGHAUSEN: Mr. President, I have not got them with me, I am afraid. Perhaps, if I may, I could do so tomorrow or the day after when Dr. Fritz is finished.

THE PRESIDENT: Yes, certainly.

Do any of the defendants' counsel want to ask any questions?

[There was no response.]

Does the Prosecution wish to cross-examine?

SIR DAVID MAXWELL-FYFE: My Lord, the Prosecution do not wish to cross-examine, on the same basis.

My Lord, may I refer to one collection of documents that are in our Document Book 12b, the collection of the anti-Jewish decrees in the Protectorate. They are all from the *Verordnungsblatt* for the Protectorate, and the Prosecution ask the Tribunal to take judicial notice of them as being an official publication. The collection is merely for convenience and access of the Tribunal.

THE PRESIDENT: Then the witness can retire.
Then that closes your case for the present, Dr. Lüdinghausen.
The Tribunal will now adjourn.

[A recess was taken.]

THE PRESIDENT: I call on counsel for the Defendant Fritzsche.

DR. HEINZ FRITZ (Counsel for Defendant Fritzsche): Mr. President, I intend to present the case of the Defendant Fritzsche as follows:

First, I should like to call the Defendant Fritzsche to the witness stand and then the witness Von Schirmeister. In the course of these two examinations I intend to present to the Tribunal a few affidavits and to refer to these and to the rest of the contents of my two document books.

In its decision of 8 March 1946 the Tribunal granted as witnesses for my case: First, Herr Von Schirmeister, second Dr. Krieg; and as documents: The text of all radio speeches of the Defendant Fritzsche from 1932 to 1945 and the archives of Deutscher Schnelldienst (fast official news service) of the Propaganda Ministry. Of all the evidence, in spite of the efforts of the General Secretary, unfortunately only the witness Von Schirmeister could be brought here. Therefore, I had to rearrange my case and ask for the indulgence of the Tribunal if I go into a somewhat greater detail than originally intended in examining the Defendant Fritzsche and the witness Von Schirmeister.

With the approval of the Tribunal I shall now call the Defendant Fritzsche to the witness stand.

[The Defendant Fritzsche took the stand.]

THE PRESIDENT: Will you state your full name, please?

HANS FRITZSCHE (Defendant): Hans Fritzsche.

THE PRESIDENT: Will you repeat this oath after me: I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The defendant repeated the oath.]

THE PRESIDENT: You may sit down.

DR. FRITZ: Herr Fritzsche, will you please describe briefly your career up to the year 1933?

FRITZSCHE: As to that, may I refer to my affidavit, Document 3469-PS, Points 1 and 3 to 8? In addition I can limit myself now to a broad outline.

DR. FRITZ: Mr. President, I should like to remark at the beginning of the examination that my document books, of which I

have two, have not yet been completely translated. This affidavit, which the defendant has just mentioned, is also contained in the document book for the Prosecution. I do not know whether the Tribunal now has this document book.

THE PRESIDENT: Well, you can go on.

FRITZSCHE: I was born on 21 April 1900. My father was a civil servant. I attended the gymnasium to study classics. Then I was a soldier in the first World War, returned to school, and afterward studied philosophy, history, and national economics at various universities.

After the first World War my life and my work were determined by the distress of my people. We called this distress "Versailles." Enough has been said here as to the Versailles Treaty. I need add nothing to what has already been said.

DR. FRITZ: You were striving then in your journalistic work before 1933 for a change of the Versailles Treaty?

FRITZSCHE: Yes, of course.

DR. FRITZ: Did you seek this change through war?

FRITZSCHE: No, I sought it through the means of law, of politics, and economic common sense, which were at that time all on the German side. Along with this, certain restoration of the power of the German Reich would have been desirable because I saw in the weakness of the Reich a potential danger of war. But to change the Treaty of Versailles by means of war did not seem to me to be possible, expedient, nor desirable. The same sentiment prevailed later under the Hitler Government.

Adolf Hitler gave two assurances on just this point which, for me and for millions of other Germans, were especially impressive. The first was the assurance: "I myself was a simple soldier and therefore know what war means." The second was the statement: "In all the bloody wars of the last thousand years not even the victors gained as much as they had sacrificed in the war." These two assurances sounded to German ears like holy and binding oaths. Whatever in Hitler's policy should have violated these two assurances was a betrayal of the German people.

DR. FRITZ: When, how, and why did you come to the NSDAP?

FRITZSCHE: After my entry into the Propaganda Ministry I joined the Party. I refer again to my affidavit, 3469-PS, to Points 9 to 13.

I did not join the NSDAP on account of the Party program, nor through Hitler's book *Mein Kampf*; nor did I join because of the personality of Hitler, whose suggestive power, which has frequently been mentioned here, escaped me entirely. I rejected the harsh

radicalism of the methods of the Party. This harsh radicalism was contrary to the habits of my whole life and my personal principles. Due to this coarse practice I even came into a conflict with the Party in 1932.

I joined the Party when it had, without doubt, won over the majority of the German people. This Party had overcome, at the time, the disunion of the German people and brought it unity after Brüning's great attempt at recovery on a democratic basis had failed on account of the foreign political opposition, not because of the resistance of the German people. After the cabinets also had failed to find a footing among the people, the appointment of Hitler, as Reich Chancellor, meant a return to democratic principles. Much has been said here about these matters. I ask for permission to cite one circumstance which, to my knowledge, has not yet been mentioned here and which does have a certain significance.

When I joined the NSDAP I did not believe I was really joining a party in the true sense of the word, for the NSDAP did not have a party theory similar to those of the Marxist parties which had a developed and mature theory; all theorists of the Party were disputed. The theoretical writings of Gottfried Feder had been prohibited. The theorist Rosenberg was disputed in the Party to the very end. The lack of a theory for the Party was so great that even the printing of the bare Party program was forbidden for the German papers. The German papers were even forbidden a few years after 1933 to quote arbitrarily any part of Hitler's *Mein Kampf*.

At that time, then, I did not believe that I was joining a narrowly defined party but I thought I was joining a movement, a movement which united in itself contrasts such as those between Ley and Funk, between Rosenberg and the Reich bishop; a movement which was variable in its choice of methods; which at one time prohibited the labor of women and at some other time solicited this same labor of women. I believed I was joining such a movement because one group within the NSDAP saw in the swastika flag nothing but a new combination, a new form for the colors black, white, and red, while another group saw in this banner the red flag with a swastika. It is a fact that there were whole groups of the former German Nationalist Party in the NSDAP or of former Communists in the NSDAP. Thus, I hoped to find in this wide-flung Movement a forum for intellectual discussions which would no longer be carried on with the murderous animosity which had previously ruled in Germany but which could be carried on with a certain discipline dominated by nationalist and socialist conceptions.

For this reason and by making constant compromises, I put aside my own wishes, my own misgivings, my own political beliefs. In many conversations I advised my friends to do the same when they

complained that they and their interests were not given proper consideration during the time of the Nazification. I came to the conviction that millions of Germans had joined the Party only for this reason and in this expectation. They thought they were serving a good cause. Out of pure idealism they were willing to sacrifice everything to this cause, everything except their honor. Meanwhile, I had to realize that the leader of this cause accepted the sacrifice of these idealists, that he squandered it, and that, besides, he stained their honor with a senseless and inhuman murder, unique in history—a murder which no war necessity could have justified, for which one could not even find any reason in any necessity of war.

DR. FRITZ: Now, the Prosecution accuses you of having—and I quote, "... sworn the customary oath of unconditional loyalty to Hitler" in 1933. For whatever reason you did this, the fact that you took this oath is true, is it not?

FRITZSCHE: Yes, I also swore, twice, an oath to the Weimar Constitution, in 1933 and 1938. Let me add something. It was always and it still is my conviction that no oath relieves a man of his general duties to humanity. No one is made an irresponsible tool by an oath. My oath would never have made me carry out an order if I had recognized it to be criminal. Never in my life did I obey anyone blindly. For that reason, I do not refer for any of my actions to my duty to obey.

DR. FRITZ: Did you keep the oath which you took?

FRITZSCHE: Yes. No actions were expected of me which I could have considered criminal or a violation of written or unwritten laws. Moreover, I kept the oath which I took, not to Hitler, but to the German people.

DR. FRITZ: How long did you keep the oath?

FRITZSCHE: I kept it to the end. Then, it is true, I remained in Berlin, in violation of the order which I was given. When Hitler and his entourage took the way of suicide or fled toward the West, I was, to my knowledge, the only higher official to remain in Berlin. At that time I gathered together the employees of the highest Reich authorities, who had been left to their fate, in the ruins of my office. Hitler had left behind an order to fight on. The commander of Berlin could not be found. Therefore, as a civilian, I felt obliged to offer to the Russian Marshal Zhukov the capitulation. As I was sending off the emissaries who were to go across the battleline, the last military adjutant of Hitler appeared—General Burgdorff—and was going to shoot me in compliance with Hitler's order. Nevertheless, we capitulated, even though it was signed by the commander, who had been found in the meantime. Thus, I believe I

kept my oath, the oath which I had taken to the German people in the person of Hitler.

DR. FRITZ: Did you hold an office in the Party?

FRITZSCHE: No.

DR. FRITZ: Were you a political leader?

FRITZSCHE: No.

DR. FRITZ: Were you in the SA or the SS or any one of the other organizations which are accused here?

FRITZSCHE: No.

DR. FRITZ: Did you ever take part in a Party rally?

FRITZSCHE: No.

DR. FRITZ: In one of the celebrations of 9 November in Munich?

FRITZSCHE: No.

DR. FRITZ: Then, please describe briefly your position and your work from 1933 to 1945.

FRITZSCHE: Here, again, I may refer to my affidavit, 3469-PS, that is, to the rest of the affidavit. Thus I may again limit myself to a very brief presentation to supplement what is said in the affidavit.

At the seizure of power by National Socialism, I remained what I had been previously, Chief Editor of Drahtloser Dienst. That was the name of the German radio news service. I held that position for 5 more years.

In May 1933 this wireless service, which had been a part of the Reich Radio Company, was incorporated into the press section of the Propaganda Ministry. As I was a specialist in journalistic news service, I soon was entrusted with the news agencies, first the smaller ones such as Transocean or Europapress or Eildienst. Later I was entrusted with the big Deutsches Nachrichtenbüro (German news service).

At that time, I had no power to issue orders to the agencies, for I was still an employee of the Ministry and not yet an official. I also had no right to determine the contents of the news. I had only the organizational supervision, but I believe that my advice was respected at the time. In those days I also gave other advice of a journalistic nature. Then in December 1938 I became head of the German Press Section. I became Ministerial Director. As an official I still felt like the journalist I had been for decades previously. I continued to direct the German Press Section until the spring of 1942.

At that time I did not agree, among other things, with the colored press reports of my superior, Reich Press Chief Dr. Dietrich. For that reason, I became a soldier and went to the Eastern Front.

In the fall of 1942 I was called back by Dr. Goebbels. Dr. Goebbels approved my previous criticism, of which he knew. He offered me the direction of the Radio Section of his Ministry. I answered that I could return to the Propaganda Ministry only if I had the certainty that a termination of the war by political means would be sought and that total military victory would not be striven after, which from the first day of the war I had considered impossible. I told Dr. Goebbels at that time literally, "I am not going to participate as a propagandist in a fight of self-destruction such as was fought by the Goths at Mount Vesuvius."

Dr. Goebbels answered that Hitler and he, also, were seeking a termination of the war by diplomatic means on the basis of reaching some sort of understanding. He promised me that he would inform me in time if he noticed that the Führer was changing these intentions. Dr. Goebbels repeated this promise at intervals of a few months, up to the end of the war; and each time that he repeated it, he always gave me substantiated indications about the political efforts in progress at the moment. Today I have the feeling that he broke his promise.

Well, at that time I took over the Radio Section of the Propaganda Ministry, and I became Ministerial Director.

DR. FRITZ: Those were your official positions. But they were less known to the public. Better known were your radio speeches. What about them?

FRITZSCHE: Since 1932 I spoke once a week, for 10 to 15 minutes, on some German stations and on the Deutschlandsender (radio station for foreign broadcasts). At the beginning of the war I spoke daily on all the stations, I believe for 3 or 4 months. Then I spoke three times a week, then twice a week, and finally once a week again. At first these radio speeches were just reviews of newspaper articles; that is, a collection of quotations from domestic and foreign newspapers. After the beginning of the war, however, these speeches, of course, became a polemic on the basis of quotations mostly from foreign papers and foreign radio stations.

DR. FRITZ: Did your speeches have an official character? The Prosecution says that they were, of course, under the control of the Propaganda Ministry.

FRITZSCHE: That is not correct in that form. The speeches were not official. At the beginning they were purely personal elaborations. Of course, I could not prevent, as time went on, the private speeches of a man holding a position in the Propaganda Ministry being no longer considered as personal, but semi-official.

DR. FRITZ: You just said "personal elaborations," which was later considered "semi-official." For clarification I ask, could one criticize these speeches, or was one arrested for so doing?

FRITZSCHE: Criticism was not only allowed, but actually it was done. I had an extensive correspondence with my critics, although only with those who signed their names. There were of course also anonymous critics, but I may add that the anonymous critics had only general complaints.

After the outbreak of the war a South German office of public prosecution and later the Ministry of Justice, offered me a certain protection for my publications, apparently on the assumption that they were official or semi-official. It was suggested to me to appear as co-plaintiff in possible libel actions. I categorically refused this, stating, as I have often done both privately and publicly, that people must be allowed to grumble about something. If they are forbidden to criticize the State and the Government, then they must be allowed at least to criticize the press, the radio, and me.

DR. FRITZ: How did you prepare these speeches? Were they put down in writing and censored beforehand?

FRITZSCHE: I always refused to let them be censored beforehand. The material was gathered very carefully. It was kept in the so-called "Archiv-Schnelldienst" which had been applied for and approved by the Tribunal to be brought here but which could not be found.

The material consisted of clippings from papers, reports of news agencies, and reports from foreign broadcasts. The investigation of doubtful matters was done by a special official. A rough draft of the speech was then dictated and then delivered freely. Therefore, this procedure was different to that of writing an article; not every sentence had to be polished, because in a written matter every word counts, whereas in a speech it is more the total impression which is decisive.

DR. FRITZ: Now, you worked in the Propaganda Ministry; Dr. Goebbels was the Minister. His name has been mentioned here frequently in connection with his various positions as Reich Minister for Propaganda, Reich Propaganda Director of the NSDAP, Delegate for Total War Effort, and Gauleiter of Berlin. In which of these capacities did you deal with Dr. Goebbels?

FRITZSCHE: Exclusively in his capacity as Propaganda Minister.

DR. FRITZ: Were you his representative there?

FRITZSCHE: No. In the last 2¹/₂ years I was his commissioner for radio broadcasting and, in addition, head of one of the 12 departments of his Ministry. Dr. Goebbels' representatives were his state

secretaries. The last one was Dr. Naumann who was his successor for one day.

DR. FRITZ: Was Dr. Goebbels your only and direct superior?

FRITZSCHE: No. There were many offices between him and me at first, and still a few later on. This is the first time, here in the dock, that I am without official superiors.

DR. FRITZ: By the way, whom of the defendants did you know or with whom did you have official or personal relations?

FRITZSCHE: I had two or three official conversations, shortly after 1933, with Funk, who was then State Secretary in the Propaganda Ministry, mainly dealing with economic and organizational matters. I discussed with him the financial plans for the reorganization of the news service.

Then, I once had a talk with Grossadmiral Dönitz on a technical matter. I called on Seyss-Inquart in The Hague, and on Papen in Istanbul. I knew all the others only by sight and first made their personal acquaintance during the Trial.

DR. FRITZ: How about Hitler?

FRITZSCHE: I never had a conversation with him. In the course of 12 years, however, I saw him, of course, several times at the Reichstag on big occasions or receptions. Once I was at his headquarters and was invited to dinner with a large number of other people. Otherwise, I received instructions from Hitler only through Dr. Dietrich or his representative or through Dr. Goebbels and his various representatives.

DR. FRITZ: What were your relations with Dr. Goebbels? Were you on friendly terms with him? Did you meet with him frequently?

FRITZSCHE: One can by no means say that we were friends. The relationship was on an official basis, reserved and to a certain extent formal. I was personally even less frequently with him than other assistants of Dr. Goebbels of my rank. But I believed I observed that he treated me with more respect than any other of his co-workers. To that extent, I occupied a certain special position. I valued Dr. Goebbels' intelligence and his ability, at least sometimes, to change his own opinion in favor of a better argument. I saw him about twice a year during the first 5 years. When I was head of a department I saw him perhaps once a month. After the outbreak of war I saw him daily in the course of a conference with 30 to 50 fellow employees; and in addition, about once a week I had a conference on special subjects with him.

DR. FRITZ: Now we come to the subject of propaganda. Can you sketch the propaganda system in the Third Reich?

FRITZSCHE: I shall try it. There were three types of propaganda. The first was the unorganized agitation of the radical fanatics in the Party. It was present in all fields, in the fields of religion, racial policy, art, general policy, and the conduct of the war. As time went by Martin Bormann became more and more the leader of this unorganized agitation.

The second type of propaganda was under the Reich Propaganda Directorate of the NSDAP. The head of this was Dr. Goebbels. It attempted to put the agitation of the radicals on a more presentable basis.

The third type was the state organization of the Reich Propaganda Ministry.

DR. FRITZ: The Prosecution contended at the beginning that you had been also head of the Radio Section of the Propaganda Directorate of the NSDAP. How about that?

FRITZSCHE: The Prosecution have withdrawn that assertion. They said that they had no proof. It would have been more correct to say that this statement has been proved to be false. I refer to my affidavit, 3469-PS, Point 37. There I state that I was not—in contrast to all of my predecessors, as far as I know—head of the Radio Section of the Ministry and at the same time head of the Radio Section of the Party. Today I supplement this statement by saying that I held no office whatever in the Party.

DR. FRITZ: You have been accused of having helped Dr. Goebbels plunge the world into the blood-bath of aggressive war. Is that true? Did Dr. Goebbels ever speak with you about aggressive plans?

FRITZSCHE: No; I never heard of any intention to wage aggressive war, either from Dr. Goebbels or from anyone else.

DR. FRITZ: In the course of this Trial some conferences have been mentioned here several times at which, it was said, various aggressive plans were discussed; for example, before the attack on Czechoslovakia, before the attack on Poland, and on Norway, and on Russia. Did you participate in these conferences? Did you hear of them?

FRITZSCHE: I did not participate in a single one of these conferences. I heard of them for the first time here in the courtroom.

DR. FRITZ: Now, in case no plans for an attack were discussed in these conferences, was there any talk at all about war or the possibility of war?

FRITZSCHE: No; but the danger of war was mentioned as early as 1933—the danger of war due to the one-sided disarmament of one state in the midst of other states which were highly armed. This disproportion between armament and nonarmament had to be considered as enticing an attack.

German propaganda after 1933 underlined this consideration and this contention as one of the main reasons, first, for the demand for disarmament of the other powers and afterwards for the German demand for equality of armament. That seemed completely logical to me. But never was the danger of war mentioned without, at the same time, making a reference to the German will for peace. That seemed to me honest.

In the summer of 1939, when the danger of war became more and more imminent, I saw Dr. Goebbels more often than ever before. I gave Dr. Goebbels a number of little memoranda as, so to speak, a contribution from my field of work, the news service. They were analyses of public opinion in western countries, and they repeatedly indicated that England was determined to go to war in case of a conflict with Poland. I recall that Dr. Goebbels was deeply impressed when I once again gave him one of these memoranda. He expressed his concern and decided immediately to fly to Hitler. He said to me, literally, "Believe me, we did not work successfully for 6 years in order to risk everything in a war now."

Furthermore, in the summer of 1939, I knew of some serious gaps in German armament which have already been mentioned in part here in the courtroom. Therefore I was convinced of the honesty of the peaceful intentions in Hitler's policy.

If documents have been submitted during this Trial which indicate that Hitler secretly thought differently or acted differently, then I am at a loss to form a judgment, since the documents of the opposite side have not yet been published. But if it should be, as the documents submitted here say, I must state that I was deceived about the aims of German policy.

DR. FRITZ: Mr. President, at the beginning of my case I had stated that we were unable to produce here the radio speeches of the Defendant Fritzsche. I tried to obtain them from German radio stations and succeeded in getting at least a small part from the years 1939 and 1940. I have selected a few of these speeches which I should like to submit to the Tribunal as Exhibit Number Fritzsche-1.

To support what the defendant has just said, I should like to quote only one sentence from the radio speech of Fritzsche of 15 November 1939:

"The sole reason for war, which a nation that as a whole never longs for war, may have at all—the sole reason for war which is also morally justifiable is the threat to the existence, to the life of that nation."

And this line emphasized by the Defendant Fritzsche at the beginning of the war, was adhered to by him during the war as

well. As proof of this, I should like to quote another passage from the same document, from a radio speech of Fritzsche of 23 July 1940:

"We Germans have experienced in the course of our history, and especially 30 years ago, enough blood and tears and death to face things honestly now. We knew what war meant, and therefore we did not want war. And because the Führer knows it so well and had experienced it himself, he offered on 6 October and 19 July to make peace."

DR. FRITZ: Did you in any way have anything to do with war preparations of an intellectual or organizational kind?

FRITZSCHE: Not directly, but perhaps indirectly. I demanded the disarmament of the others, and then equality of armament; and I advocated the arming (Wehrhaftmachung) of the German people. The expression "Wehrhaftmachung" is liable to be misunderstood, at any rate, to be easily misinterpreted. I should like to define it expressly as the ability to fight in self-defense. The German people were promised again and again, often by me, that the restoration of military sovereignty would be for defensive purposes only.

DR. FRITZ: How and where did you propagate this idea?

FRITZSCHE: In the modest sphere of my weekly radio speeches, while making casual remarks. I was a patriot; but I feel myself to be free from chauvinism, that is, exaggerated nationalism. To me, as a historian, it was at that time already clear that, especially in the narrow confines of Europe, the old nationalism was an anachronism and that it was incompatible with modern communications and weapons. At that time I believed I saw in Hitler's doctrine also certain elements for a new type of mutual understanding among peoples. It was particularly the constantly repeated thesis that only the nationalism of one people can understand the nationalism of another people.

Only today have I realized ideologically—but particularly, of course materially—through the further development of arms, that the time of nationalism is past, if mankind does not want to commit suicide, and that the period of internationalism has come, for good or evil.

At that time, however, nationalism was not considered a crime. Everyone advocated it. It can be seen that it is still advocated today, and I also advocated it.

DR. FRITZ: Now, the Prosecution points out that before every attack a press campaign was launched in Germany, the aim of which was to weaken the victim of a planned attack and to prepare the German people psychologically for the new drive. Although this is stated by the Prosecution without as yet actually referring to you personally and even though later no direct charge is made that you

organized these press campaigns, the Prosecution, nevertheless, stress very strongly your connection with this practice.

Now, what facts do you have to state about your role in these journalistic polemics?

FRITZSCHE: First, I can only point out that I described the propagandistic actions in detail in my affidavit, Document Number 3469-PS, Points 23 to 33, starting with the Rhineland occupation up to the attack on the Soviet Union. These descriptions also contain information about the type and extent of my participation in these actions. Beyond that, I may emphasize that any reference is missing in the description made in my affidavit as to the question of the right in each case. All attempts at political justification are lacking. I should like to emphasize explicitly that in each case, in each action, I believed I represented a good and just cause. It would be leading too far if I were to explain that here for each case, inasmuch as many of these cases have already been discussed here. I assume, or rather I hope, that the Prosecution will ask questions on this subject for I assert that, no matter what the facts may have been in the individual cases, at every moment from the Anschluss of Austria on to the attack on Russia, information given to me and through me to the German public left no doubt of the legality or the urgent necessity of the German action; and I, as the only surviving informer of the German public, consider it my duty to be available here for any investigation of the correctness of this statement of mine, which is of especial importance for the German public.

DR. FRITZ: Some newspaper headlines are mentioned in your affidavit which are considered typical for the various states of tension prior to the individual action. What have you to say to that?

FRITZSCHE: The headlines are taken without exception from the *Völkischer Beobachter*. These headlines were submitted to me and, of course, I had to confirm their truth; but I may emphasize that the *Völkischer Beobachter* was not typical for the result of my press policy. The *Völkischer Beobachter* generally had its own direct connections to headquarters and to Hitler. Typical products of my press policy were papers such as the *Deutsche Allgemeine Zeitung*, the *Münchener Neueste Nachrichten*, and the *Hamburger Fremdenblatt*, to name only a few.

DR. FRITZ: But the Prosecution is of the opinion that you also incited to war by your domestic propaganda insofar as you tried to arouse hostile feelings in the German people toward other peoples of Europe and the world. In Captain Sprecher's trial brief it is said, for instance, that terms like "antagonism against the peoples of the Soviet Union" and "an atmosphere of senselessness and hatred" were created by you or that you had incited the Germans to blind hatred. Did you do that?

FRITZSCHE: No, I did not do that. Never did I attempt to arouse hatred against the English, French, Americans, or Russians, *et cetera*. There is not a single word of this type in perhaps a thousand speeches which I made before the microphone. I did speak strongly against governments, members of governments, governmental systems; but I never preached hatred generally or attempted to awaken it indirectly as was the case—and I ask your pardon for my taking an example from the courtroom—at the moment when a film was presented here and the words were spoken, “Here you see Germans laughing over hanged Yugoslavs.” Never did I try to awaken hatred in this general form and I may point out that for years many anti-National Socialist statements from certain countries, which were still neutral at that time, remained unanswered.

DR. FRITZ: Did your superiors demand that you mark your propaganda with the stamp of antagonism or to stimulate hatred?

FRITZSCHE: Yes, that happened frequently, but it was not demanded that antagonism or hatred should be stirred up against peoples. That was expressly forbidden because we wanted to win these peoples over to our side, but again and again I was requested to arouse hatred against individuals and against systems.

DR. FRITZ: Who requested you to do this?

FRITZSCHE: Dr. Goebbels, Dr. Dietrich, and both of them frequently on the direct orders of Adolf Hitler. The reproach was repeatedly made that the German press and the German radio did not arouse hatred at all against Roosevelt, Churchill, or Stalin but that they made these three personalities popular as efficient men. For that reason, for years the German press was forbidden to mention these three names at all unless, in an individual case, permission was given with exact instructions.

DR. FRITZ: Do you mean to say that you refused the request to change your propaganda to incite antagonism and to arouse hatred and did not carry it out?

FRITZSCHE: I should like to outline exactly what I did. When the reproaches of Dr. Goebbels and Dr. Dietrich accumulated, I had all caricatures from the first and second World War collected—from England, the United States of America, France, and a few from Russia. In addition, I had all anti-German propaganda films which I could lay my hands on, collected. Then in five to six demonstrations of several hours each, I presented these caricatures and these films to German journalists and German radio speakers. I, myself, spoke only 2 or 3 minutes in introduction. It is quite possible that I created hatred through these showings, but I should like to leave the judgment of this means of producing hatred in the midst of

war to the Tribunal. In any case, Dr. Goebbels said later that he was dissatisfied and we were "bunglers."

I may add one statement. I would have had a means of carrying out my orders of arousing real hatred, that is, not one means but a whole group of methods; that would have been, to give only one example, a German edition of the last two volumes of the Tarzan series, an adventure series which was very popular in Germany at that time and of which the last two volumes were strongly anti-German. I need not describe them here. I never pointed out such early products of anti-German propaganda. I always deliberately ignored such methods.

DR. FRITZ: If you say that you dispensed with hatred and antagonism in your propaganda, what means did you use in your propaganda during the war?

FRITZSCHE: During the war I conducted the propaganda almost exclusively with the concept of the necessity and the obligation to fight. I repeatedly painted the results of defeat very dark and systematically I gave quotations from the press and the radio of the enemy countries. I quoted repeatedly the enemy demands for unconditional surrender. I used the expression of the "super-Versailles" frequently and did—I emphasize that—describe the consequences of a lost war very pessimistically. It does not behoove me today to make a comparison with reality.

DR. FRITZ: But could you not learn from the broadcasts of the enemy that the fight of the Allies was not directed against the German people but only against its leaders? Did you keep that from the German people?

FRITZSCHE: On the contrary, I did not keep it from them, but repeatedly quoted it. However, I called it "incredible." For example, I once used the trick of quoting the wording of a medieval declaration of war in which it had already been said that a war was declared only on the King of France but that one wanted to bring freedom to the French people.

THE PRESIDENT: Would that be a convenient time to break off?

[The Tribunal adjourned until 27 June 1946 at 1000 hours.]

ONE HUNDRED AND SIXTY-FIFTH DAY

Thursday, 27 June 1946

Morning Session

[The Defendant Fritzsche resumed the stand.]

MARSHAL (Lieutenant Colonel James R. Gifford): If it please the Tribunal, the report is made that Defendant Ribbentrop is absent.

DR. FRITZ: Mr. President, Gentlemen of the Tribunal, first a very brief explanation: Yesterday I repeatedly mentioned the Indictment and intend to do so in the course of the examination. Thereby I mean the presentation of Fritzsche's case by Captain Sprecher in the morning session of 23 January 1946.

Herr Fritzsche, yesterday you spoke of your radio speeches concerning the Allied propaganda—my last question: Did you attempt to split the front of the Allies by your propaganda?

FRITZSCHE: Of course I attempted to do that. I elaborated on all ideological and all practical political contrasts or differences between the individual Allied nations. I considered that a permissible method of waging war. At that time I wanted a split between the Allies just as much as today I wish their unity, since Germany would be the first victim of any conflict.

DR. FRITZ: Now, you are accused of assisting in establishing Nazi control throughout Germany. Did you agitate against democracy?

FRITZSCHE: I never agitated against democracy as such. I attacked the democracy of the 36 parties, the democracy which had prevailed in Germany previously, the democracy under which even strong groups such as the two Marxist parties, for example, were powerless. I criticized foreign democracy only on two points: First, the elements which limited the basic concept of democracy—I believe it is superfluous and perhaps it would be misunderstood to enumerate them today. Secondly, I criticized the demands of the foreign democracies to force their form of government on us. According to my knowledge and information at that time, it seemed unjustified to me.

DR. FRITZ: Well, did you consider dictatorship a better form of government?

FRITZSCHE: I should like to emphasize that at that time, under the existing conditions and only for a temporary emergency period, I did; today, of course, no. After the totalitarian form of government has brought about the catastrophe of the murder of 5 millions, I consider this form of government wrong even in times of emergency. I believe any kind of democratic control, even a restricted democratic control, would have made such a catastrophe impossible.

DR. FRITZ: You are accused, furthermore, of having spread the doctrine of the "master race." The Prosecution makes this charge indirectly against you. How about that?

FRITZSCHE: I never set up or voiced the theory of the "master race." I even avoided this term. I expressly prohibited this term being used by the German press and the German radio when I was in charge of one or the other. I believe that the term "master race" played a greater role in the anti-National Socialist propaganda than in Germany proper. I do not know who invented this term. To my knowledge it was publicly mentioned only by men like Dr. Ley, for example, men—and I must explain this frankly and expressly—who were not taken seriously by anyone in this connection. It is true, however, that this term played a great role, without being expressed openly, among the SS because of its racial exclusiveness; but people of intelligence, tact and insight, and with some knowledge of the world, very carefully avoided the use of this word.

DR. FRITZ: Mr. President, at this opportunity, I should like to offer an affidavit to the Tribunal by Dr. Scharping of 17 May 1946. Dr. Scharping was Government Counsellor in the Propaganda Ministry up to the end. From this affidavit I shall now quote only one sentence from Page 13. I quote:

"In this connection it can be explained that Fritzsche always opposed the term 'the master race.' He even expressly prohibited the use of this word on the radio."

[Turning to the defendant.] But the Prosecution has quoted a passage from one of your radio speeches to prove this assertion.

FRITZSCHE: The quotation is correct, but I ask you just to read it carefully. The term "master race" is rejected in this quotation for the Jewish and for the German people. The quotation cannot be misunderstood.

DR. FRITZ: Mr. President, that is in Captain Sprecher's speech for the Prosecution, English text, Pages 31 and 32.

[Turning to the defendant.] But you carried on propaganda not only in Germany, but also abroad. What was the difference?

FRITZSCHE: In my radio speeches there was no difference. Before the outbreak of war I made a slight difference in the speeches

for Germany and those for other countries simply because the audience was different, and because I had to presuppose a different level of knowledge. During the war my speeches on the Reich-German radio were simply transmitted over the short-wave stations. What was said for Germany or for other countries could be controlled by both sides. Moreover in the 12 years during which I spoke on the German radio, I never permitted my speeches to be translated, since that always involved a differentiation in emphasis. Written articles can be translated, perhaps official speeches also, but not rather light and half-improvised chats.

DR. FRITZ: Were your broadcasts abroad criticized internationally?

FRITZSCHE: Yes, very frequently. During the war there was often daily criticism from some country or other. I had these criticisms collected. I asked for them as documents, but my application was refused by the Court. As far as I know, I am not accused of inciting war in these criticisms.

DR. FRITZ: Now you not only acted as a mouthpiece for propaganda, but also as an organizer of it. You are accused of having helped to create an important instrument for the alleged conspiracy. The Prosecution says that for 13 years you aided in the creation of the propagand machine which the conspiracy was able to put to such good use. Did you create the press organization of the National Socialist State?

FRITZSCHE: No, I did not create this organization nor did I have any part in its creation. It was created by Dr. Goebbels, Dr. Dietrich, and Reichsleiter Amann. When, in the winter of 1938, I became head of the so-called German Press Section, I attempted to loosen the bonds which had been imposed on the German press. I attempted that in the material and personnel field. For example, I called back to their work with the press hundreds of editors of other parties who had been dismissed in 1933 and 1934. Today they will be angry with me. I had the best intentions at that time. In addition to the official press conferences which were very strictly controlled, also as far as their records were concerned, by my superiors, I also arranged the so-called supplementary conferences in which I met the representatives of the 50 or 60 most important papers and discussed more freely the possibilities of their work. I coined the slogan which was often used there: "You may write any criticism you like in the German papers provided such criticism is not shown in big headlines but is buried somewhere in the text in an elegant form." Very many German journalists made use of this possibility in the past 12 years. I should be glad if this work, which was hidden work, would be honored in some way today in

the interest of these people who, in part, returned to their profession as journalists only out of personal confidence in me. Of course, I must add that the possibility of criticizing was not unlimited.

DR. FRITZ: Mr. President, on this occasion, with the approval of the Prosecution, I offer the Tribunal a document as Document Number Fritzsche-4. It is an excerpt from a letter of the German Lieutenant General Dittmar, who frequently commented on the military situation on the German radio during the war and who is in British captivity. The well-known English radio commentator, Mr. Liddell-Hart, has sent an excerpt from the letter to the British Prosecution. I should like to quote briefly this memorandum which was sent to me. May I quote this passage?

THE PRESIDENT: Yes, you may.

DR. FRITZ: Dittmar writes that the possibility of retaining the critical attitude in his radio commentary is due primarily to the silent approval and the protection of Hans Fritzsche, the director of the political radio. He believes that Fritzsche was a secret opponent of the regime and that he was glad of the opportunity to have found a commentator who discreetly expressed ideas which resembled his own and which insidiously would tend to reduce confidence in the regime.

Following this quotation, there is another quotation from the affidavit of Dr. Scharping, which I have already submitted as Document Number Fritzsche-2. It is on Page 11 of this affidavit. I quote:

"The radio men and the journalists knew Fritzsche's tolerance quite well. It repeatedly happened that, for example, Fritzsche at his conference had a copy of the *Völkischer Beobachter* in his hand and commented ironically on an anti-Jewish article. I recall that once he expressed his criticism in about the following words:

" 'A Berlin paper'—then he held up the *Völkischer Beobachter* so that everyone could see it—'has once more, in an editorial, made more than two blunders. Perhaps the publisher may yet succeed in hitting the right tune.'

"With such ironical remarks, Fritzsche always had the approval of his listeners, but there was some danger for him, for Goebbels daily read the records of these press conferences."

Herr Fritzsche, following the statement of Lieutenant General Dittmar, one question: Did you feel yourself to be an enemy of the system, or how does General Dittmar come to this statement?

FRITZSCHE: I was not an enemy of the system. It would be ridiculous and unworthy to try to assert that today. But I was

definitely an opponent of all misuse of the system. The obvious one which I noticed the most, because it was in my field of work, was whitewashing of news during the war. The aim of all my news policy was realism, and apparently that is what General Dittmar means in the part of his statement which has been read here.

I met General Dittmar in December 1942 or January 1943 at the moment when the German 6th Army at Stalingrad was already surrounded, but when this fact was still being kept secret from the German people. Together with General Dittmar, in face of the prohibition, I publicly announced the fact that the 6th Army was surrounded at Stalingrad. This caused a great sensation at the time.

In the following months and years I always defended General Dittmar and his realistic presentation of the military situation against all attacks, especially against the attacks of the Party, but also against the attacks of the Foreign Office, which repeatedly pointed out that these sober presentations of Dittmar had a bad effect on Germany's allies.

In connection with this struggle for realistic news service, later—and I ask permission to mention this briefly—I waged a desperate battle against the irresponsible propaganda of miracle weapons. Only 1 year after Dr. Goebbels had mentioned the future miracle weapons did I mention a new type of weapon for the first time. Speer has mentioned SS Standartenführer Berg, who is said to have carried on secret propaganda for the miracle weapon in connection with the Propaganda Ministry. He wrote an article in *Das Reich* which attracted much attention, with the sensational and very promising heading, "We, the Bearers of Secrets." I had to fight against things like that.

Another especially striking example was this: Another member of the SS, Hernau, wrote, at the moment when the invasion had succeeded, an article in which he presented the situation as if the evacuation of France had been a very secret trick of the German Command, which offered the possibility for a particularly strong counterblow. I prohibited this article in my field, and I repeatedly had to oppose the irresponsible rumors which were spread in secret about mysterious weapons. I did so publicly, and I plainly stated my point of view on the radio against this propaganda.

On the other hand I may point out that at every moment of the war my superiors always made well-founded promises to me, first, of some military offensive which was just being prepared; for instance, a thrust from East Prussia toward the south, a thrust from Upper Silesia to the Vistula, a thrust from Alsace toward the north, and so forth. Hand in hand with these promises, which were thoroughly detailed, were the political promises which were

mentioned briefly yesterday, that is, the descriptions given by Dr. Goebbels that foreign political negotiations were in progress with the enemy on one or the other side.

DR. FRITZ: Another question: Who was in charge of press policy?

FRITZSCHE: Reich Press Chief Dr. Dietrich. He gave very specialized instructions, mostly in a precise wording, the so-called "slogan of the day of the Reich Press Chief."

Generally he even gave the wording of the commentaries which were to be added in the press conference.

For the most part, Dr. Dietrich was at the Führer's headquarters and received his instructions directly from Hitler. Dr. Dietrich's representatives were Sündermann and Lorenz. The second factor decisive for German press policy was Reichsleiter Amann who was at the head of the organization of publishers. The third factor was Dr. Goebbels as Reich Propaganda Minister. Dietrich and Amann were nominally subordinate to him; actually, both had the same authority as he had and I always had to adjust differences or coordinate among these three authorities.

DR. FRITZ: Did you create the organization of the journalistic news service?

FRITZSCHE: Yes, I did create this organization. In principle, it originated with me. I may refer to my affidavit, 3469-PS, Point 17. I was in charge of the journalistic news service from about 1934 to 1938. I was proud of the fact that at the beginning of the war even the enemy recognized the good functioning of this news machine. However, at that time I was no longer the head of the so-called news service department. As an expert I created this organization in peacetime without thinking of the possibility of using it during war. The conclusion of the Prosecution that I also determined the contents of the news service is not correct.

DR. FRITZ: The Prosecution has said that the Propaganda Ministry was the most fabulous lie factory of all times. What do you have to say about this?

FRITZSCHE: First, for myself personally, I should like to make the following quite clear. I state under oath: On really serious questions of policy and the conduct of war I did not commit a single falsification and did not consciously use a single lie.

How often I myself became the victim of a falsehood or a lie I cannot say after the revelations of this Trial. The same is true, as far as I know, of all my fellow workers, but I do not by any means want to deny that I and my fellow workers selected news

and quotations following a certain tendency. It is the curse of propaganda during war that one works only with black and white. Only a few great minds remain independent. I believe that this painting in black and white is a luxury which also cannot be afforded any longer.

As to the Propaganda Ministry itself, as such, I must say that I can only judge of the one-twelfth, that is the one section of which I was in charge at any time. But to my knowledge it is a mistake to believe that in the Propaganda Ministry thousands of little lies were hatched out. In details we worked quite cleanly and honestly, technically even perfectly. If we had lied on a thousand small things, the enemy would have been able to deal with us more easily than was the case. But decisive for such a news machine is not the detail but the final fundamental basis on which propaganda is built. Decisive is the belief in the incorruptibility of the leaders of the state, on which every journalist must rely and this basis is shaken by what has become known today of mass murders, of senseless atrocities, and it is shaken by the doubt in the honesty of Hitler's protestations for peace, the factual details of which I am not in a position to judge.

DR. FRITZ: In this Trial it has been pointed out that there are no regulations in international law on the methods of propaganda in war and peace.

FRITZSCHE: I know very well that international law places no restrictions on propaganda, especially propaganda during war. I also know very well that only in a very few individual treaties between states are there regulations about the use of propaganda; for example in the German-Polish treaty and in the German-Soviet Union treaty. But in all my life as a journalist I have emphasized that the lack of international regulations as to propaganda is no excuse for lies. I always emphasized the moral responsibility of the journalist and newsman. I did so long before the war in an international discussion with Radio Luxembourg but it would lead too far afield to go into that here.

If last May I did not seek death, one of the reasons for this was my wish—I wanted to render an account of where, in that system, there were the pure idealism and the heroic sacrifices of millions, and where there were lies and the brutality which did not shrink from committing crimes.

DR. FRITZ: Please give us examples of cases wherein you felt you were deceived.

FRITZSCHE: During this Trial the news was discussed which circulated at the beginning of the Polish war about the attack on the Gleiwitz radio station. At that time I firmly believed in the

truth of the official German news. I need say nothing about this case.

Then, in December of last year, here in the prison in Nuremberg, I realized from a talk with Grand Admiral Raeder that it was actually a German submarine which sank the *Athenia*. Up to that time I had firmly believed in the truth of the official German report that there had been no German submarine in the neighborhood. I have asked my lawyer to pick out the most caustic statements I made in my radio speeches about the *Athenia* case and include them in my document book. They are utterances which would really speak against me but which, on the other hand, show that I worked not alone on the basis of the official German news, but that I also collected the news which supported the official German version; for example, the fact which was not at first made public and therefore was suspicious, that the wreck of the *Athenia*, one day after the catastrophe, was sunk by being shelled by British destroyers, which is a matter of course in the interest of shipping but which at the time seemed to me to be an occasion for suspicion. I also used American news on the same subject. But the most impressive false news of which I was a victim was given out in the last few days of the war. I must describe it for the sake of clearing up matters.

In the days when Berlin was surrounded by the Russian Army the people of Berlin were told that a relief army, the army of General Wenk, was marching on Berlin; that there was no more fighting on the Western Front. The news was given out that Ribbentrop had gone to the Western Front and had concluded a treaty there, and handbills were printed in Berlin which contained approximately this text: "Soldiers of the Wenk army, we Berliners know that you are as far as Potsdam. Hurry, come quickly, help us." These handbills were printed at a time when the Wenk army no longer existed and had already been captured. These handbills were apparently dropped over Berlin inadvertently and were to give the inhabitants of Berlin new courage. That happened in the days when Hitler, according to Speer's testimony, had already told his entourage that there was no use trying to do anything for the rest of the German people.

DR. FRITZ: Mr. President, the two radio speeches which the Defendant Fritzsche has mentioned dealing with the *Athenia* case are in the Document Number Fritzsche-I, which I submitted yesterday. I refer only to the contents of these radio speeches.

[Turning to the defendant.] Please give examples of untruths which you knew and which you did not consider lies.

FRITZSCHE: One example is the so-called "V" drive. Colonel Britton, a British colonel, proclaimed this "V" drive, this "Victory" drive on the British radio. On the same evening I stood before a German microphone and said, apparently harmlessly, "We will have a 'V' drive; the 'V' stands for 'Victoria.'" "

Then Colonel Britton said that I had stolen the "V" from him. I said that was not the case, that I thought of it first.

DR. FRITZ: If you thought you were operating only with the truth, why your sharp language, why the prohibition against listening on the radio to foreign stations?

FRITZSCHE: I have already emphasized in my affidavit that in my opinion the sharpness of my language was always less than that of my opponents. The prohibition against listening to foreign radio stations was issued decidedly against my will. This prohibition was only a hindrance for me in my discussions with my foreign opponents in the various countries. Due to this prohibition my enemy was, so to speak, half in shadow; I could not speak to him officially, but, on the other hand, I knew that many of my listeners had heard him.

May I mention here that I always advocated a mild judgment on the violators of this prohibition against listening to foreign radio stations. Legal authorities often consulted me as an expert. I may emphasize that, particularly after Stalingrad, I established my own listening service for the Russian radio in order to learn the names of German soldiers captured at Stalingrad which were mentioned on the Russian radio and report them to the relatives, because it seemed cruel to me to deprive the relatives of such a source of information about the fate of their people.

Moreover, there was only one alternative with regard to the prohibition of listening to the radio. That was either to confiscate all radios and stop the whole German radio system—the Party often demanded this—or the prohibition against listening to foreign stations, which seemed to me the lesser of the two evils.

Finally, we were in a war, and the enemy was not too particular in his methods. I should like to give an example. That was the station Gustav Siegfried 2, which at the beginning of its work gained listeners in Germany with stories that I do not want to characterize more precisely but which caused me to prohibit my own listening station from receiving this broadcast.

DR. FRITZ: You have been charged with urging a policy of ruthless exploitation of the occupied territories. Do you acknowledge such a policy?

FRITZSCHE: No. The aim of all my propaganda work in Europe was, and had to be, to win over the peoples of Europe to the

German cause. Anything else would have been illogical. All the radio broadcasts in all European languages, which were made under my direction, had for years only one aim: That was to win the voluntary co-operation, especially of the occupied territories, for the fight of the Reich.

DR. FRITZ: Were you of the opinion that the German administration in the occupied territories recruited voluntary co-operation?

FRITZSCHE: At the beginning, certainly, with one single exception. That was Koch in the Ukraine. Otherwise, as far as I could see, all administrations of occupied territories sought this collaboration more or less skillfully. I saw the gigantic efforts which the Allies made to interfere with this German collaboration policy, which was very dangerous for them. I saw that in these efforts the Allies were at first using their means of propaganda. This alone, would not have worked. Then I saw that they used other means in these efforts, that is, outrages and sabotage. These latter efforts had great success. Outrages always called for reprisals and reprisals always called forth new outrages.

I hope I will not be misunderstood, and this is not meant cynically, if I say the following: I, as a propagandist, considered for example the murder of Heydrich a minor success. The destruction of Lidice, carried out by the Germans, however, was a tremendous success for the Allies. In other words, I always was and had to be an opponent of reprisals of all kinds.

DR. FRITZ: Did you know of the reprisals? How did you deal with them in your propaganda?

FRITZSCHE: I learned of Lidice, which I just mentioned, only after months, because at that time I was at the Eastern Front. I learned—and this is significant—only of the destruction of the houses of Lidice and the driving out of the inhabitants. I learned only here in the courtroom of the killing of a part of the inhabitants. I learned that hostages were taken, but not that they were killed. The killing of hostages was made public only in the occupied territories. If shootings occurred anywhere, I was told that they had been of persons condemned to death on account of outrages or conspiracy.

The Night and Fog Decree was also unknown to me. On the other hand, I frequently learned of fines which had been imposed on towns or districts. In our propaganda, we always referred to the causes of such reprisals.

DR. FRITZ: And how did you describe the work of the German administrations in your propaganda?

FRITZSCHE: I always referred to the constructive work which, in spite of all difficulties and all resistance, was being done in the various occupied territories, especially and far ahead, the work for the intensification of agriculture; then that to increase industrial production. I had references made to the supplying of the occupied territories with food, often, as I should like to emphasize, from scant German stocks. I had reports made of the creation of schools, and I received at times very impressive reports and had them worked on, for example, on the supplying of cities such as Paris, in spite of sabotage by the enemy against railroad lines or other supply channels. I had such reports collected in permanent files and had speeches and whole series of speeches made on them. There were many such reports. I must emphasize that, as far as I know, in not a single German-occupied territory was there an infant mortality of 80 percent, and in none were there fields lying fallow, and it is simply not true, as the Prosecution said here once, although in a moment of excitement, that Germany and the Germans were well fed and happy during the war while the occupied territories starved. That is not true.

DR. FRITZ: What did you know about bad conditions in the occupied territories?

FRITZSCHE: Above all, the failure to call on the population for their own administration and the lack of decisive political concessions to the countries which administered themselves. Immediately after the French campaign, I had repeatedly demanded the establishment of a Magna Charta for Europe, laying down the basic rights of the European peoples. I prepared many memoranda on this subject which were accepted by Dr. Goebbels and taken to Hitler; and when in the autumn of 1942 I decided to return to the Propaganda Ministry, one of the promises which Dr. Goebbels gave me was that now finally that Magna Charta for Europe would be proclaimed.

DR. FRITZ: Mr. President, on this occasion I should like to quote a passage from the Scharping affidavit, Document Number Fritzsche-2, Page 13 of the affidavit:

"After the occupation of various European countries, Fritzsche issued directives for news releases to the effect that the peoples of Europe were to form a league of states on the basis of equality with Germany. He told me to work out a series of speeches to this effect in which this point of view was to play the decisive role and which at the same time should give the authorities hints for a healthy reconstruction in the occupied territories."

[Turning to the defendant.] Did you know what has been said here by the Prosecution about the activity of the Police in the occupied territories?

FRITZSCHE: No.

DR. FRITZ: At this point I should like to interpolate a question: I have already asked the witness Paulus about your conduct after you learned of the Commissar Order. How about that?

FRITZSCHE: I learned of the order to shoot captured Soviet commissars at the beginning of May 1942 when I came to the 6th Army. I immediately opposed it. Whether it was carried out or not, I do not know. Field Marshal Paulus, no doubt, is correct when he said that he had already prevented in his army the execution of this order. At any rate, I made it my business to have the order as such rescinded, and I achieved this. The 6th Army, at my advice, gave certain information to the High Command of the Wehrmacht or to the Armed Forces Operations Staff. I am convinced, moreover, that many army leaders acted in the same way as the leader of the 6th Army and simply did not carry out the order. At any rate, it was expressly rescinded afterward.

DR. FRITZ: The Prosecution quotes two paragraphs from your radio speech of 5 July 1941.

Mr. President, that is in the English record of Captain Sprecher, Pages 32 and 33.

[Turning to the defendant.] The Prosecution concludes from this presentation that you had agitated for ruthless measures against the population of the Soviet Union. You are said to have vilified the people of the Soviet Union.

THE PRESIDENT: We cannot find it here. What is the PS number?

DR. FRITZ: It is in the transcript, Mr. President.

THE PRESIDENT: We have not got the transcript here. We have the document book. The document book does not contain 32 and 33 pages. It contains only 32 or 31 and a little bit...

DR. FRITZ: I can give the document number which is 3064-PS, Exhibit USA-723 and...

THE PRESIDENT: It is Page 14 in our book. Well, did you say 5 July?

DR. FRITZ: 5 July 1941.

THE PRESIDENT: Well, I have got the 7th and 10th of July but not the 5th. What page in the shorthand notes was it? You know it?

DR. FRITZ: On Page 32, Page 33 in the English transcript. I have the English transcript here.

THE PRESIDENT: Well, you had better read it then.

DR. FRITZ: This quotation from Captain Sprecher's speech for the Prosecution reads:

"Letters from the front, film reporters, propaganda companies attached to the German Army wherever it advanced, P. K. reporters, and soldiers on leave confirm: In this battle in the East it is not one ideology fighting against another, not one political system against another, but culture, civilization, and human dignity have revolted against devilish principles of an underworld."

FRITZSCHE: I should like to state the following: With this statement I was neither calling for ruthless measures against the population of the Soviet Union, nor did I want to vilify the people of the Soviet Union. I refer to the full text of the speech of 5 July. I do not wish to read this speech, but I should like permission to sum it up briefly.

DR. FRITZ: Mr. President, in my Document Book 1—I do not know whether the Tribunal already has it—I have all the radio speeches . . .

THE PRESIDENT: No, we haven't got it.

DR. FRITZ: I have all these radio speeches of the Defendant Fritzsche from which the Prosecution quoted passages against him in my document book in their full text.

THE PRESIDENT: It has just been handed up to me. What page is it?

DR. FRITZ: Pages 8 to 13, the radio speech of 5 July 1941.

[Turning to the defendant.] Will you continue?

FRITZSCHE: I ask for permission to sum up the contents very briefly.

I spoke of the reports which the German public received about what German soldiers had seen in their advance in the Soviet Union, especially in connection with prisoners in the prisons in various cities. I did not describe these things once more; I only recalled them from the reports which had been given out at the time. From them I drew the conclusion that now one saw how necessary the fight was against a system under which such atrocities were possible. For the peoples of the Soviet Union I expressly used words of compassion and sympathy.

DR. FRITZ: In the same connection, and with the same tendency, the Prosecution then quotes a sentence from a paragraph of your radio speech of 10 July 1941.

Mr. President, that is in Document Book 1—the speech of 10 July 1941—also in its full text, on Pages 14 to 19.

[Turning to the defendant.] What do you have to say to this charge?

FRITZSCHE: What I just said becomes even clearer in this quotation, and in this whole speech. I referred once more to the reports just mentioned. I also referred to the descriptions coming from foreign correspondents. I then quite frankly reported Moscow's attitude toward these events and I said, quite honestly, "Radio Moscow says that these atrocities are facts, but it maintains that these atrocities were not committed by Russians but by Germans."

In view of this attitude of Moscow, I, so to speak, took the public into my confidence. I called upon millions of German soldiers as witnesses; I called upon their mothers and fathers and wives as witnesses. I formally called as witnesses the inhabitants of the occupied territories in which Germans were in power at the time, and in which, as I said, they were subordinated only to the moral laws in their own breasts. Then I drew the conclusion: These German soldiers cannot have committed the atrocities which were described by Berlin and Moscow in the same way.

The Prosecution asserted that this attempt to ascribe German atrocities to the Russians was ridiculous. I do not consider it ridiculous; I consider it tragic. It shows clearly, as I understand it, the absolute cleanliness and honesty of the whole German conduct of the war. I still believe today that murder and violence and Sonderkommandos only clung like a foreign body, like a boil, to the morally sound body of the German people and their Armed Forces.

DR. FRITZ: Finally, the Prosecution quotes a passage from your speech of 9 October 1941, another quotation from which was brought out elsewhere.

Mr. President, this is in the Fritzsche Document Book Number 1; the speech in its full text is on Pages 20 to 25. The quotations of the Prosecution are summed up in a document in the Fritzsche document book of the Prosecution. I think the Tribunal can easily compare it.

[Turning to the defendant.] The Prosecution concludes from this quotation that you had approved of the policy of the Nazi conspirators in their ruthless exploitation of the occupied territories. What have you to say to that?

FRITZSCHE: There is no question of ruthlessness either in the quotation given by the Prosecution or in the rest of the text of the speech of 9 October 1941. I refer to my affidavit 3469-PS, Paragraph 39, a paragraph which the Prosecution very fairly quoted in this connection.

In addition, may I once more sum up, very briefly, the sense of this speech.

That was the time when German soldiers were stationed from the Black Sea to the Bay of Biscay. I spoke of the possibility of exploiting the resources of this enormous territory. I said, "The possibilities of this continent are so considerable that they can cover any need for war and for peace." I said, in this connection, that a starving-out by blockade, such as was attempted in 1914-18, was now out of the question. I spoke of the possibilities of the organization of Europe which could begin in the midst of the war...

DR. FRITZ: In the midst of war?

FRITZSCHE: ... in the midst of war, and I meant the organization of European nations with equal rights. It is beyond all doubt that at that time I was not thinking of ruthless exploitation of the occupied territories, but only of winning them over politically and economically after the storms of war had blown by.

DR. FRITZ: Mr. President, I now come to another subject, so perhaps this would be a good time to break off.

THE PRESIDENT: Yes.

DR. THOMA: I have a request, Mr. President. I would like to have my client excused for the rest of the day because I want to talk to him.

THE PRESIDENT: Yes, certainly.

[A recess was taken.]

DR. FRITZ: What did you know about the removal of Jews from occupied countries?

FRITZSCHE: I did not know anything of their removal, but I heard that certain individuals were being arrested, Jews and non-Jews.

DR. FRITZ: What did you know about the topic, which we discussed here, of slave labor?

FRITZSCHE: I knew that millions of foreign workers were working in the Reich. I did not consider them slaves, for I saw them daily walking about free on the streets of all the cities.

DR. FRITZ: What did you know about their treatment, about their living conditions, and their wages?

FRITZSCHE: Reports about these things were sent to me or to my co-workers from the office of Sauckel and the German Labor Front. From these reports, among other things, I remember the fact that the foreign workers were given the same treatment as

the German workers in every respect. I further recall having heard that the initial inferior treatment accorded to Eastern Workers had been done away with. I received many reports from listeners complaining about the fact that foreign workers were allegedly in better position than German workers; and in this connection, I remember a reference to the fact that the foreign workers were permitted to send home money in the form of foreign exchange.

I also talked with foreign workers many times. I did not hear any special complaints. On the other hand, in the Propaganda Ministry, through official channels, I heard a great deal about the care given to foreign workers even along cultural lines. Frequently I was approached by Sauckel or the German Labor Front—I do not remember which it was—with the request to have radio broadcasts sent to one or another group of foreign workers. I was approached also with the request for turning over receiving sets to camps of foreign workers, *et cetera*.

DR. FRITZ: Did you know that most of them did not come to Germany voluntarily?

FRITZSCHE: That was exactly what I did not know. Here in this proceeding it was mentioned that Sauckel in one meeting or another made a statement about the fact that only a small percentage had come voluntarily. That was unknown to me.

I did hear the following complaints: First of all, that extravagant promises were made at the time of recruitment of the foreign workers, which could not be kept afterward. In the interest of my propaganda I had objections raised against that through the propaganda department of my Ministry when I heard about it. Then, I remember having heard complaints from Poland dealing with the fact that employers were "pirating" Polish workers from one another.

DR. FRITZ: Sauckel testified that in this connection he cooperated with the Propaganda Ministry and that he had many discussions with the Propaganda Ministry. Did you participate in such discussions?

FRITZSCHE: No, I did not participate in these conferences. I thought that I met Sauckel here for the first time. He reminded me of our meeting in the spring of 1945 at the home of Dr. Goebbels when some evening gathering took place.

DR. FRITZ: Did you have anything to do with the propaganda used in the recruitment of foreign workers in occupied countries?

FRITZSCHE: No.

DR. FRITZ: What did you have to do with the propaganda which was disseminated in the occupied countries?

FRITZSCHE: This propaganda, as it applied to occupied countries, was not subordinate to me, not even in the branches of the press or radio. This propaganda was under the direction and supervision of the local Reich commissioner, military commander, or governor. However, I did exert influence on this propaganda in the occupied countries on two, three, or four occasions when this propaganda in the occupied countries was contrary to the directives which applied to the Reich. I usually gathered this from the echo abroad. I remember one special case which received general attention. A certain man by the name of Friedrich attacked the Pope over the German radio in Paris. I had this man Friedrich replaced. That was the extent of my influence.

Dr. Goebbels, however, exerted much more influence on the propaganda in the occupied countries, especially through his foreign section or his Foreign Press Department or through his liaison officer to the OKW.

DR. FRITZ: Did you not make any radio broadcasts in the occupied countries?

FRITZSCHE: Yes, broadcasts of two types. An example of the first type is as follows: At the time of the occupation, Radio Paris was under German influence. Despite that, I retained the old German broadcast in the French language via Radio Stuttgart. I wanted to have it understood quite specifically that the occupation was an abnormal and a temporary situation, and anything that was taking place during the period of occupation did not have anything to do with that part of, let us say, German-French conversations, which was being carried on by the two mother countries.

The second example is as follows: It concerns German broadcasts in the Spanish and Portuguese languages. I had them transmitted through three stations in southern France, for it was easier to receive these transmissions in the Pyrenees peninsula. The basis for my work in this connection was a contract which we had with these stations and the payment of regular charges. Negotiations for this contract were carried out through the Foreign Office.

DR. FRITZ: I shall now turn to a different topic. You are accused of making anti-Semitic statements. Were you anti-Semitic, and in what way did you participate in anti-Semitic propaganda?

FRITZSCHE: I was not anti-Semitic in the idea of a noisy anti-Semitism. The Prosecution has asserted that all defendants—that is, including myself—had shouted, "Germany awake and Judaism shall die." I will state under oath that I never raised this cry or one similar. I was not anti-Semitic in the sense of either the

radical theories or methods beginning with Theodor Fritsch to Julius Streicher.

The Prosecution has stated that even the Defendant Streicher, the main anti-Jewish agitator of all times, could hardly have excelled Fritzsche when it came to libels against the Jews. I protest against this statement. I do not believe that I deserve any such accusation. Never did I give out any propaganda dealing with ritual murders, cabala, and the so-called secrets of the Elders of Zion. At all times of my life I considered them machinations of a rather primitive agitation. For humanitarian reasons, I regret that I have to make a further statement, but I cannot refrain from making this statement in the interests of truth.

My co-workers and I, in the press and on the radio, without exception I would say, rejected *Der Stürmer* radically. I personally, during a period of 13 years of regular newspaper comments, never quoted this paper. *Der Stürmer* was not quoted in the German press either. The editors did not belong to the journalists' union and the publisher did not belong to the publishers' organization during my term of office. How things were later on, I do not know.

As I have already stated in my affidavit, I tried twice to ban *Der Stürmer*. However, I did not succeed. Then it was proposed that I censor *Der Stürmer*. However, I declined the offer. I wanted to prohibit the publishing of *Der Stürmer*, not just because the mere verbatim reproduction of a page of the newspaper *Der Stürmer* was the most effective anti-German propaganda which ever existed, but I wanted to ban *Der Stürmer* simply for reasons of good taste. I wanted to prohibit it as a source of radicalism against which I fought wherever I met it.

The great secret for the sudden increase in the circulation of *Der Stürmer* after 1933 to half a million, already referred to in this Court, lay in the same cause as the secret of the sudden increase of such organizations as the SA.

The Party in 1933 had blocked the influx of new members, and a great many people tried to get in somehow, if not directly with the Party, then with some organization connected with the Party, such as, perhaps, the SA. Or they tried to show sympathy with National Socialist ideas by subscribing to *Der Stürmer* and displaying it. Therefore, in that sense, I was not anti-Semitic.

But I was anti-Semitic in this sense: I wanted a restriction of the predominant influence of Jewry in German politics, economy, and culture, such as was manifested after the first World War. I wanted a restriction based on the ratio of Jews to Germans. I proclaimed publicly this view of mine on occasions, but I did not exploit these views in extensive systematic propaganda.

Those anti-Semitic statements with which I am charged by the Prosecution have a different connection. The facts are as follows: After the outbreak of the war I referred frequently to the fact that Jewish emigrants immediately after 1933, were the first ones to emphasize that a war against the National Socialist German State was necessary; for instance, Emil Ludwig or George Bernhard or the *Pariser Tagblatt*. As far as I recall, this was the only connection in which I made anti-Semitic statements of any kind. I cannot say this without asking to be permitted to emphasize one more point. Only in these proceedings here did I learn that in the autumn of 1939 there was more at stake than just one city and a road through the Corridor; that in truth and in fact, a new partition of Poland had already been prepared at least, and only here in these proceedings did I learn that Hitler had confirmed in a dreadful manner the warnings of the Jews against him by an order to murder them. If I had known both of these things at that time, then I would have pictured the role of Jewish propaganda before the outbreak of the war quite differently.

DR. FRITZ: Mr. President, in this connection I should like to refer to the document which has already been submitted, Document Number Fritzsche-2, the affidavit by Dr. Scharping, with reference to Pages 9 to 11. This document is found in my Document Book Number 2; however, I do not know whether this document book has been submitted to the High Tribunal.

THE PRESIDENT: Yes, it has.

DR. FRITZ: Pages 9 to 11. I refer to the contents of this document.

[Turning to the defendant.] The Prosecution has quoted a passage from the book by Müller, dealing with the Propaganda Ministry. According to this, among other things, it was the task of this Ministry to enlighten the population about the Jewish question. According to the picture drawn by the Prosecution, matters stood as though you were the one charged with the task of this enlightenment; is that correct?

FRITZSCHE: No. The "Jewry" department was a branch of the propaganda department which carried on this so-called active propaganda in opposition to the specialized or administrative departments. I never directed this department of propaganda.

DR. FRITZ: I should like to interpolate a question. The Defendant Streicher, on 29 April, stated that the Propaganda Ministry published a *National Socialist Correspondence* which was sent to *Der Stürmer* as well and which contained in each issue several anti-Semitic articles. Is that true?

FRITZSCHE: No. The *National Socialist Correspondence* was not published by the Propaganda Ministry, but by the Reichspressestelle (Reich Press Office) of the NSDAP; however, I did not have the impression that the particular policy followed by *Der Stürmer* took its character from these articles. On the other hand, *Der Stürmer* may have published one or the other article which was given out by the NSK.

DR. FRITZ: The Prosecution quoted a passage from a speech which you made over the radio on 18 December 1941. This speech will be found in full in my Document Book Number 1, Pages 26 to 32. In this instance, you said that the fate of Jewry in Europe had been rather unpleasant and that this fate in all probability would stretch over to the New World as well. The Prosecution holds the view that this was a proclamation of further actions in the persecution of Jews. What can you tell us about this?

FRITZSCHE: In this quotation, I discussed the unpleasant fate of Jewry in Europe. According to the things that we know today, this must appear as though I meant the murder of the Jews. But in this connection, I should like to state that at that time I did not know about these murders; therefore I could not have meant it. I did not even mean the evacuation of Jews, for even this was not carried out in Berlin at least until a year or two later.

What I meant was simply the elimination of Jews from politics and economic life. The expression "unpleasant" hints at this; otherwise the inoffensiveness of this term could not be explained. And now to the question of why I spoke about the Jews in America in this connection. The sentence quoted by the Prosecution is inextricably connected with a communication preceding it, stating that a Jewish National Council had submitted to President Roosevelt their wish to enter the war. Not even this association of ideas, which is perhaps understandable now, was used by me without good reason. The largest part of the speech in question, perhaps nine-tenths of it, in fact, deals with the investigation commission set up in the United States to investigate the causes of Pearl Harbor.

THE PRESIDENT: There are a lot of pages in this.

DR. FRITZ: The Document Book Number 1, Mr. President, Pages 26 to 32.

THE PRESIDENT: Yes; I wanted to know whether first of all we are on Page 31.

DR. FRITZ: He is referring in his statements which he is making now to the entire contents of the speech, Mr. President. The Prosecution had quoted only the very last paragraph of this speech.

[Turning to the defendant.] Please continue.

FRITZSCHE: In this polemic address I not only suggested investigating whether the guards of the U. S. Navy had been careless but I also advised checking into American politics, as to whether someone might not have been interested in the outbreak of the war. In this connection, I recalled that an investigating committee of the American Senate, 20 years after the first World War, had investigated the causes for 'entry of the United States in the war in 1917. I said verbatim, "This Senate committee proved that Wilson, when entering the war, knew that he was the victim of a few warmongers." I deplored . . .

THE PRESIDENT: The investigation committee of the Americans about the entry into the last war? Isn't he going rather far back?

DR. FRITZ: Mr. President, I believe that the defendant can stop at this point. He only wanted to show that the quotation of the last paragraph cited by the Prosecution in order to incriminate him was torn from its contents. That is the fact he wanted to show, Mr. President.

[Turning to the defendant.] The second quotation used by the Prosecution is an excerpt from your radio speech of 18 March 1941. The Prosecution was of the opinion that this was also an incitement for the persecution of Jews, and they said, further, that it was proof of your propaganda with the term "master race."

Mr. President, this speech of 18 March 1941 may be found in my Document Book Number 1, Pages 2 to 7.

[Turning to the defendant.] The Prosecution quoted only one paragraph from this speech. What can you tell us in this connection?

FRITZSCHE: I do not wish to read this quotation. I rather ask that you read it carefully yourself, and after you have read it you will see that I completely agreed with Mr. Roosevelt when he said that there was no master race. I endorsed the correctness of this sentence not only as it applied to the German people, but to Jewry as well. The Prosecution concluded from this sentence that it was a justification for acts committed in Jewish persecutions in the past and that it was a foreboding of more persecutions to come. I do not understand this conclusion; it has no basis whatsoever.

THE PRESIDENT: In our copy there is no date at the top of Page 2 of your Volume I—yes, I see it is in the index. Which page of it is the passage that the Prosecution quotes?

DR. FRITZ: On Page 5 under Point 5, Mr. President.

THE PRESIDENT: Yes. Very well.

DR. FRITZ: It begins with the words, "But the crown..." and so forth. That is the quotation used by the Prosecution.

[Turning to the defendant.] The third quotation used by the Prosecution is a passage from the speech which you made on 9 October 1941.

Mr. President, the whole speech is to be found in Document Book Number 1, Pages 20 to 25.

[Turning to the defendant.] The Prosecution quoted only one paragraph from this speech as well.

In this paragraph, you, Herr Fritzsche, are speaking about a new wave of international Jewish-democratic-bolshevistic agitation. What can you tell us about this?

FRITZSCHE: I have very little to say in this connection. This speech was made in those days of the autumn of 1941 when the Reich Press Chief had announced that German victory in the East had been decisive. I had warned the entire German press about taking this slogan without reservations. I did not believe in this decision which supposedly had already taken place. I suggested to all German newspapers that they speak about a prolonged duration of the war. In this speech of mine I wanted to weaken the impression of the official victory bulletin. Therefore, in this speech, and perhaps for the first time in Germany, I mentioned those three factors which, in fact, later on determined the war in the East against Germany: First of all, the partisans; secondly, the international help in the way of arms and munitions; and thirdly, propaganda. This last part alone was quoted by the Prosecution. As I have already said, this last part is quite in accord with the knowledge and opinion I held at that time.

DR. FRITZ: The next quotation used by the Prosecution is an extract from a speech which you made on 8 January 1944.

The complete speech, Mr. President, may be found in my Document Book Number 1. It is speech Number 7, to be found on Pages 40 to 45.

[Turning to the defendant.] In this speech you are stating that it was not a new form of government or a new form of socialism which had brought about the war, but rather the agitation of Jews and plutocrats was responsible for this. How did you come to make that statement?

FRITZSCHE: To justify it, I should like to refer here, too, to everything that I have already said, and beyond that, I should like to emphasize that this rather heated accusation was not made by me just out of the blue or just because I wanted to agitate. This is proven by the context.

If I may be permitted to do so, I should like to state briefly the connection in this case. The topic of this speech was the differences of opinion which existed at that time between the Polish Exile Government in Moscow—rather, in London—and the Soviet Government in Moscow. There was a matter of territorial demands which they disagreed on, and on this occasion I quoted the London *Times* word for word. The London *Times* said that “the relinquishing of Polish regions, as demanded by Russia, was only a small and modest price for the absolute and reliable guarantee to Poland of help through the Soviet Union.” This statement made by the London *Times* I used as a matter of course in a polemic statement in which I said, “Well, if the *Times* had written in such a strain in August of 1939, that it was only about a city or a road, then surely there would not have been any war,” and so forth.

On this occasion I should like to state that all of these quotations, almost without exception, show only the combination of the concept Jew, Plutocrat, Bolshevik. The question of race was not the primary one, but the thing that was primary was the ideological struggle as it seemed, to my mind, to be taking place.

DR. FRITZ: The next quotations used by the Prosecution are some excerpts from your speech of 13 January 1945.

Mr. President, this is speech Number 8, contained in full in Document Book Number 1, to be found on Pages 46 to 51. The Prosecution in this case is quoting only two paragraphs, one on Page 50 of my document book, Paragraph 2.

[Turning to the defendant.] In these passages you mention Jewish influence on British policies. How could you make those statements? What were your reasons?

FRITZSCHE: The Prosecution assumes from this quotation that it was the introduction to further persecution of the Jews and to their complete extermination. This conclusion, however, is justified neither in the words nor in the sense nor when seen in the light of the context...

I shall forego giving you in this case a picture of the connections, not even in a brief summary. It can be gathered when you read the speech in question.

However, I cannot see where an appeal for the extermination of the Jews is to be found.

DR. FRITZ: Forming a part of the general crimes against humanity you are accused of incitive libel against the Jews, the logical result of which is said to have been further persecutions.

Therefore, I want to ask you about the murder of Jews. Did you know of Hitler's decree, as testified by the witness Hoess, a decree according to which the Jews were to be murdered?

FRITZSCHE: I should like to state under my oath that I did not know of this order by Hitler. If I had known it, I would not have served that person who had given this order for another hour. I should like to state further that evidently this decree, as well as this entire action, was concealed with specific care from me and my co-workers, because once I almost discovered its existence.

DR. FRITZ: Did you receive at any time an indication about the killing of a large number of innocent people?

FRITZSCHE: Yes. In February or March 1942 I received a letter from a medium-ranking SS leader of the Ukraine. I do not recall this man's name. The contents of the letter were to the effect that the author was the commander of an SS unit, that he had received an order to kill the Jews and the Ukrainian intelligentsia of his area. Upon receipt of this order, he had suffered a nervous breakdown and he was now in a hospital. It seemed to him that a complaint along official channels was quite impossible for him. He said he did not know me but had confidence in me; perhaps I could help in some way. He asked me not to mention his name as he was bound to silence at the cost of his life.

Without much hesitation and immediately upon receipt of this letter I called Heydrich, the Obergruppenführer, then leader of the RSHA or the Gestapo. I hardly knew him personally, but he declared himself quite willing to receive me immediately. I visited him and asked him pointblank, "Is your SS there for the purpose of committing mass murders?"

Heydrich was quite indignant at this question, and said that larger or smaller SS units had been assigned by him for police purposes to various ministers, Reich commissioners, and so forth. These special details of SS men had been misused on various occasions, and he thought this might apply to the unit which had been placed at the disposal of Gauleiter Koch. He told me that he would have an investigation started immediately.

Next noon he called me, from headquarters as he said, and let me know that this action had actually been attempted on the order of Koch. Koch, for his part, had referred to the Führer. The Führer, however, had not answered as yet. Heydrich said I would receive further details.

Two days later Heydrich asked me to come and visit him and said Hitler had expressly declared that he had not given this order; Koch now said that there was a misunderstanding. I was further told that an investigation of Koch had been started. At any rate, Heydrich promised me that this action would not be carried through. I remember particularly well one sentence which was used in this discussion, words used by Heydrich: "Believe me, Herr Fritzsche,

anyone who has the reputation of being cruel does not have to be cruel; he can act humanely."

Shortly thereafter, I was made a soldier and asked to be sent to the 6th Army and was sent to the Ukraine.

DR. FRITZ: Did you . . .

THE PRESIDENT: Wait a minute. I did not understand that last sentence. Heydrich said, "Believe me, Herr Fritzsche . . ." and then . . .

FRITZSCHE: May I repeat: "... anyone who has the reputation of being cruel does not have to be cruel; he can act humanely."

THE PRESIDENT: Yes, but then you went on about going to the 6th Army?

FRITZSCHE: Yes, shortly thereafter I became a soldier . . .

DR. FRITZ: He added, Mr. President, that shortly after this meeting with Heydrich, he himself, that is the Defendant Fritzsche, became a soldier and he specifically asked to be detailed to the 6th Army which at that time was stationed in the Ukraine.

THE PRESIDENT: What was the date of this incident?

FRITZSCHE: February-March 1942.

DR. FRITZ: When you were a soldier in the Ukraine, did you try to check the statements of Heydrich as to their correctness?

FRITZSCHE: I had no official authority to do this, but as an old journalist I made investigations on my own, of course.

First of all, I investigated in Kiev, with the local German radio station. The answer was: Yes, several shootings actually did take place, specifically after the blowing up of certain blocks of houses in Kiev, on which occasion many German soldiers lost their lives. However, they were shootings according to sentences imposed by courts-martial.

Then, for 3 days I traveled in all directions between Kiev and Poltava. Mostly I traveled alone. I found the population in utmost peace; there were no signs of terror whatsoever, and by the way, I was received very well myself.

At Poltava I checked with officers and soldiers. On these occasions as well, I was told, "Yes, there were some court-martial sentences. The reason for these sentences was sabotage."

Then, in Kharkov itself, I visited the SS command stationed there, and I spoke with the Sturmführer Rexlach. He denied any shooting actions. He showed me the prison and there were perhaps 50 inmates, no more. I asked him about camps and he stated that there were none.

Then I visited a Ukrainian family; I questioned a German agricultural leader at Bielgorod, and I met with the same result in every case: no shooting actions took place.

I certainly assumed from that that it had been an attempted individual action which had not been carried through.

DR. FRITZ: Before this letter which the SS leader had sent you, did you not already have suspicions, perhaps from Allied radio broadcasts to which you had access?

FRITZSCHE: These radio broadcasts were accessible to me. I had reports on atrocities specially gathered at that time and selected from the great number of enemy broadcasts which we received every day, and then I had these reports investigated and checked.

DR. FRITZ: And who concerned himself with this checking?

FRITZSCHE: The competent specialist, Oberregierungsrat Körber, in charge of the Schnelldienst office of the Press Department, or one of his co-workers, or I myself.

DR. FRITZ: Where was this checked?

FRITZSCHE: We inquired of the RSHA, for in most of these reports of atrocities the SS or Gestapo were mentioned as the ones who had perpetrated the murders.

DR. FRITZ: At which of the many branches of this office did you inquire?

FRITZSCHE: We inquired at the various competent offices, and I do not doubt that we inquired of Eichmann, who has been mentioned in these proceedings here. Apart from that, we inquired of Sturmbannführer Spengler or his deputy Von Kielpinsky, both of them members of that office which, at that time or later, was taken over by Ohlendorf who has also appeared here as a witness. Frequently we inquired of the branch offices of the Reichssicherheitshauptamt, the so-called state police control offices as well, especially if there were reports from a special area.

DR. FRITZ: What were the answers you received?

FRITZSCHE: We always received the answer that the report in question was either completely wrong and was an invention, or that the report had this or that legal basis.

Frequently figures and details were reported which in effect were quite disarming.

DR. FRITZ: Are there any records of this?

FRITZSCHE: Yes. The more important questions and answers were noted and were even reproduced and sent to the various offices within and outside the Propaganda Ministry. All the material was

collected in the archives called "Schnelldienst," for which I applied here and which was granted to me but not found.

DR. FRITZ: And you just believed these answers?

FRITZSCHE: Yes, I did believe them, for after all this was information which was given to me by official sources and furthermore I had experienced on numerous occasions that the authenticity of such reports from these sources had been proved very drastically.

DR. FRITZ: What do you mean by that?

FRITZSCHE: Perhaps I might give you an example. The first propaganda action of the war was the report given out by Warsaw about the destruction of the picture of the "Black Madonna" of Czestochowa. This report was transmitted around the world. We took German and foreign journalists to Czestochowa, who could assure themselves that this report was not true.

But I must be quite honest here and say that I really wanted to cite another example in reply to this question put by my counsel, another report which really had its surprising after-effects for me in this courtroom some 2 or 3 days ago. The British newspaper *News Chronicle*, on 24 September 1939, printed the report that the German...

THE PRESIDENT: What is the evidential value of the *News Chronicle* in 1939?

DR. FRITZ: The defendant wants to prove to the High Tribunal that he found that many reports from abroad, dealing with German atrocities, actually were false, so that...

THE PRESIDENT: Well, we do not need details about that. No doubt there were frequent reports which were not accurate. We do not want you to go into details.

FRITZSCHE: I wanted to prove with just one news item how at that time something which the world believed could be denied and then, in the shadow of this denial, quite unnoticed by the German public, something did take place, such as a larger wave of arrests or a similar matter.

THE PRESIDENT: He can state the facts, but he need not go into detail about a particular issue of the newspaper.

DR. FRITZ: Was it only once, Herr Fritzsche, that you learned of the falsehood of such foreign broadcasts?

FRITZSCHE: No, that took place quite frequently.

DR. FRITZ: Please be very brief, Herr Fritzsche.

FRITZSCHE: One of my co-workers gathered the necessary material for an article entitled, "In 8 Weeks of War 107 Lies." I should like to say only one thing about this. The compilation of

such false reports given out by our enemy gave me a sense of moral superiority over that type of reporting, and this feeling was the basis of my later work, which could not be explained without this feeling.

DR. FRITZ: Did it not strike you that such false reports occurred only in the beginning of the war?

FRITZSCHE: No, that thought never occurred to me. The reports were so numerous in the beginning and I could also notice them in later years. Some affected me personally.

DR. FRITZ: How far did they affect you personally? Can you sketch it in a few brief words?

FRITZSCHE: Just one of many statements: An enemy front propaganda bulletin accused me of the fact that 600,000 Swedish kroner...

THE PRESIDENT: What is he going to now? What is the purpose of this?

DR. FRITZ: He wants to give an example of how a false statement applied to him personally. He wanted to state that briefly.

THE PRESIDENT: Well, as I said already, there were, no doubt, erroneous statements made in the foreign press and every press. We cannot investigate those sorts of matters.

DR. FRITZ: Then I shall pass on to another question.

[Turning to the defendant.] Did you not, as an experienced journalist in the news service, have the feeling that where there is smoke there is fire? Did you not believe that at least something must be true of the enemy reports about murders and so forth in the areas under German domination?

FRITZSCHE: Precisely because I was a professional newsman I did not have this feeling. Again and again I thought—and I repeatedly reminded the public—of one erroneous bit of reporting of the first World War. I beg the Tribunal to grant me permission to mention it quite briefly because it is also a part of the fundamentals of the propaganda which I carried on.

THE PRESIDENT: No, I have already pointed out that we assume that there are a variety of errors. We do not want to go into detail.

DR. FRITZ: Then I shall turn to another question.

[Turning to the defendant.] But surely you knew that the Jews had been evacuated from the Reich; you must have noticed that they disappeared from the streets?

FRITZSCHE: Yes, I did notice that even though this occurred very gradually. Beyond that I heard Dr. Goebbels say on the occasion of a ministerial conference that as Gauleiter in Berlin he had demanded the evacuation of Jews.

DR. FRITZ: Where were these Jews taken in your opinion and what were you told about these things?

FRITZSCHE: Dr. Goebbels told me that they were taken to reservations in Poland. The suspicion that they were taken to concentration camps, or that they were even being murdered, never arose.

DR. FRITZ: Did you inquire about these reservations into which the Jews were allegedly being taken?

FRITZSCHE: Of course I did that. For instance, I learned of various things from a former co-worker of mine who had been transferred into the administration of the Government General and who had an administrative position in the region Biala-Podlaska. He said that the area under his control had become a Jewish area, and he repeatedly pictured the arrival and the housing of these transportees. He also mentioned the difficulties and the employment of Jews as workers or on plantations. His entire description bore witness to his humane point of view. He told me that under him the Jews fared better than they had in the Reich.

DR. FRITZ: What was the name of this man?

FRITZSCHE: Oberregierungsrat Hubert Kühl.

DR. FRITZ: Did you hear unfavorable reports about these deported Jews?

FRITZSCHE: Yes. Sturmbannführer Radke of the staff of the Reichsführer SS reported, perhaps in the winter of 1942, that the mortality rate of the Jews in the eastern ghettos was abnormally high due to the changeover from mental work to manual labor. He mentioned there were even some isolated cases of typhus.

Apart from that, Dr. Tauber, who was head of the section dealing with Jewish questions in the propaganda department, told me in 1941, if I remember correctly, that there had been pogroms during the occupation of Lvov and Kovno, but they were carried out by the local population. He assured me at the same time that the German authorities had taken steps against these pogroms. Nevertheless the references to such things caused me to criticize matters severely, even though these things today look almost insignificant compared with what we know of today. My criticism was directed against my superiors, particularly Dr. Goebbels, and also against co-workers and members of the Gestapo and of the Party. I referred repeatedly to the legal, political, and moral necessity of protecting these Jews, who, after all, had been entrusted to our care.

DR. FRITZ: Did you learn anything else about the fate of these Jews?

FRITZSCHE: On several occasions Jews or relatives or friends of Jews appealed to me because of discrimination or arrests. A large number of non-Jews also did this as my name had become well-known to the public. Without exception, I made their pleas my own and I tried to help through various offices such as the RSHA, through the personnel section of my Ministry, through individual ministers and Gauleiter, *et cetera*.

DR. FRITZ: Why did you turn to so many different authorities and offices?

FRITZSCHE: Very many requests were involved, and if my name had appeared too often at the same office its effectiveness would have been exhausted very quickly.

DR. FRITZ: Did you on occasion turn down these requests?

FRITZSCHE: No, not in one single instance, and I should like to emphasize that particularly because a letter addressed to me in this prison here was not handed over to me but was published in the press. It was a letter in which a woman asserted that I had turned down a request for pardon. I remember this case specifically and I should like to emphasize briefly that in this case I had expressly called on the Reich Minister of Justice...

THE PRESIDENT: It is sufficient for him to say that he did not turn them down. We do not want one instance of somebody who wrote to him.

How long are you going to be, Dr. Fritz?

DR. FRITZ: I believe I shall be able to conclude the entire Fritzsche case tomorrow morning.

Mr. President, I have heard that there is no open session this afternoon...

THE PRESIDENT: Yes.

DR. FRITZ: ...otherwise I would have been able to conclude the entire Fritzsche case today. However, I hope to be able to conclude my examination of the defendant in his own case and that of the witness Von Schirmeister. I hope that tomorrow noon I shall be able to conclude.

THE PRESIDENT: The Tribunal hopes so too, because, as I have pointed out to you, we do not want you to go into such elaborate detail. You have been going, in the opinion of the Tribunal, far too much into detail, and we want the matter dealt with more generally.

[The Tribunal adjourned until 28 June 1946 at 1000 hours.]

ONE HUNDRED AND SIXTY-SIXTH DAY

Friday, 28 June 1946

Morning Session

[The Defendant Fritzsche resumed the stand.]

DR. FRITZ: Mr. President, Gentlemen of the Bench, the Defendant Fritzsche, toward the end of yesterday morning's session, testified as to how he tried to aid persecuted persons, within the scope of his limited opportunities. In order to conclude this subject, and with the approval of the Prosecution, I submit Document Number Fritzsche-6, an affidavit of Count Westarp, which is to be found in my Document Book Number 2 on Pages 23 to 25, dated 15 June 1946. I beg the Tribunal to take judicial notice of the contents of this document.

Furthermore, as another piece of evidence, I should like to offer another affidavit, made by a Frau Krüger, Berlin, which is to be Document Number Fritzsche-8. This affidavit has not yet been included in my document book. However, the original was made by Frau Krüger in German as well as in English and both copies have been affirmed and sworn to. I should like to refer to the contents of this affidavit, especially to the last two paragraphs. From the last paragraph but one we can see that apart from individual cases Frau Krüger has a general knowledge of the defendant's activities. And the last paragraph is quite interesting; it deals with the manner of life led by the Defendant Fritzsche.

Apart from that, I also refer here to the entire contents of this article and I ask the High Tribunal to take judicial notice of this document.

Finally, in this connection, I should like to refer to an affidavit made by Dr. Scharping which has been frequently quoted, Document Number Fritzsche-2, which is to be found in the Fritzsche Document Book Number 2, Pages 6 to 15. I refer particularly to Page 13 at the bottom of the page, and the top of Page 14.

Herr Fritzsche, I should like to put two more general questions to you on this topic. During the last period of the war, did you not try to find out something about the final fate of the Jews?

FRITZSCHE: Yes. I made the most of an opportunity to which I will refer briefly later on. I asked a colleague of Obergruppenführer Glücks, in Oranienburg-Sachsenhausen, about the Jews. Briefly summarized, his answer was as follows: The Jews were under the special protection of the Reichsführer-SS who wished to make a political deal with them. He looked upon them as a kind of hostages and he did not wish a single hair from their heads to be harmed.

DR. FRITZ: Some of the Prosecution's witnesses have asserted during this Trial that the German public knew about these murders. Now I just want to ask you, as a journalist who worked in the National Socialist State, what was, as far as you know, the attitude of the broad mass of the German people to the Jews? Did the people know about the murder of the Jews? Please be brief.

FRITZSCHE: Leaving out all those matters which have already been mentioned at this Trial, I should like to mention only a few observations which to me seem important. I shall omit the period shortly after the first World War, which has already been described, during which certain anti-Semitic feelings were popular in Germany. I should like to state only that in 1933 at the time of the Jewish boycott, which was organized by the NSDAP, the sympathies of the German people clearly turned again in favor of the Jews. For a number of years the Party tried hard to prevent the public from buying in Jewish stores. Finally they even had to resort to threats. A profound and decisive factor in this development was the promulgating of the Nuremberg Laws. As a result of these the fight against the Jews was taken for the first time out of the sphere of pure agitation, that is, the kind of agitation from which one could remain aloof, and shifted to the field of State Police.

At that time a deep feeling of fear ran through the German people, for now dissension spread even to individual families. At that time many human tragedies resulted, tragedies which were obvious to many, probably to everyone, and there was only one justification for these racial laws. There was only one excuse for them and one explanation; that was the assertion and the hope: Well, now that the separation of the two peoples is being carried out, although painfully, there will at last be an end to the wild and unbridled agitation; and due to this separation there will be peace where formerly only unrest reigned.

When the Jews were forced to wear the emblem of a star and when, for instance, in Berlin they were prohibited from occupying seats on streetcars, the German people openly took sides with the Jews and it happened again and again that Jews were ostentatiously offered seats. In this connection I heard several declarations by

Dr. Goebbels, who was extremely bitter about this undesired effect of the marking of the Jews.

I, as a journalist who worked during that period, am firmly convinced that the German people were unaware of the mass murders of the Jews and assertions to that effect were considered rumors; and reports which reached the German people from outside were officially denied again and again. As these documents are not in my possession, I cannot quote from memory individual cases of denial; but one case I do remember with particular clearness. That was the moment when the Russians, after they recaptured Kharkov, started legal proceedings during which killing by gas was mentioned for the first time.

I ran to Dr. Goebbels with these reports and asked him about the facts. He stated he would have the matter investigated and would discuss it with Himmler and with Hitler. The next day he sent me notice of denial. This denial was not made public; and the reason stated was that in German legal proceedings it is necessary to state in a much plainer manner matters that need clarification. However, Dr. Goebbels explicitly informed me that the gas vans mentioned in the Russian legal proceeding were pure invention and that there was no actual proof to support it.

It was not without reason that the people who operated these vans were put under the ban of strictest secrecy. If the German people had learned of these mass murders, they would certainly no longer have supported Hitler. They would probably have sacrificed 5 million for a victory, but never would the German people have wished to bring about victory by the murder of 5 million people.

I should like to state further that this murder decree of Hitler's seems to me the end of every race theory, every race philosophy, every kind of race propaganda, for after this catastrophe any further advocacy of race theory would be equivalent to approval in theory of further murder. An ideology in the name of which 5 million people were murdered is a theory which cannot continue to exist.

DR. FRITZ: Now I shall turn to a different topic. You are accused by the Prosecution of having incited atrocities, and that the results of your propaganda covered every phase of the conspiracy, including abnormal and inhuman treatment and behavior. In this connection I shall, therefore, have to ask you about the whole question of concentration camps.

Did you know that the concentration camps existed?

FRITZSCHE: Yes, the fact of their creation was announced publicly, I believe in 1933; and the concentration camps were mentioned later in official communiqués.

DR. FRITZ: What was the purpose of these camps in your opinion at that time?

FRITZSCHE: As far as I can recollect, the persons to be taken to these camps were those who could not be restrained from taking an active part against the new State. It was stated that the reason for the establishment of these camps was the abnormal internal political situation prevailing at that time: A weak center party and two strong extreme parties, one of which had now assumed power. Steps were taken to put matters on a proper legal basis. Only later was it mentioned that habitual criminals were also to be brought to the concentration camps to prevent them from reverting to crime.

DR. FRITZ: Did you know anything about the number of concentration camps which were established in the course of time?

FRITZSCHE: Before the war I had heard about three camps. During the war I suspected there were five to six; and the chart of a large number of camps which was exhibited here, was quite a surprise to me.

DR. FRITZ: Did you know anything about the number of prisoners in these camps?

FRITZSCHE: Nothing definite. At the beginning of the war, foreign reports mentioned millions of prisoners. At that time, together with a few journalists, I asked Obergruppenführer Heydrich to arrange an interview with members of the local and foreign press in order to discuss the matter. He did so. As far as I can recollect, he did not give any definite figures; but rather he compared them with the number of inmates at the prisons and penitentiaries in former days. This comparison did not seem to be disquieting. That was in the winter of 1940 or 1941.

DR. FRITZ: Did you not have any doubts as to the accuracy of those figures?

FRITZSCHE: Not at that time.

DR. FRITZ: Did you know anything about the conditions in the concentration camps? Did you speak to anyone who had ever been in a concentration camp?

FRITZSCHE: Yes. Even as early as 1933 or 1934 I spoke to a journalist who had been interned for a few weeks in the Oranienburg concentration camp, which was the old Oranienburg camp. He informed me that he himself had not been tortured but that he had seen and heard how others had been beaten and how their fingers had deliberately been squeezed in a door.

DR. FRITZ: Did you just accept these reports and do nothing about them?

FRITZSCHE: Quite the contrary! I made quite a row. This journalist—I believe his name was Stolzenberg, as far as I remember—did not wish to have his name mentioned. I wrote three letters, one

to Dr. Goebbels—and he informed me that he would look into the matter—another letter to Frick as Minister of the Interior, and one to Göring as Prussian Prime Minister.

Senior officials from both these offices rang me up and told me that an investigation was being carried out. A short time afterwards, I heard that this old camp Oranienburg had been dissolved and that the commander had been sentenced to death. This was a report given to me by a Herr Von Lützow, who was press reporter for Diels or Diehl, who at that time was chief of the State Police.

DR. FRITZ: After this first successful protest against ill-treatment, did you receive any further reports about atrocities in concentration camps?

FRITZSCHE: No. I received no further reports about ill-treatment. On the contrary, I frequently made individual inquiries of members of the Gestapo or of the press section of the Reichsführer SS. All of the individuals whom I asked declared the following: Beastliness in the concentration camps only occurred in 1933 or at the beginning of 1934 at the time when these camps were guarded by members of the SA, who had no profession—that is to say, by those members of the SA who had the whole day at their disposal, and some of them were far from being the best type of men. In this connection I was told further that the 30th of June signified that a purge had taken place. The 30th of June had removed those Gauleiter and those SA leaders who had abused their power. They declared finally that the concentration camps were now being guarded by the SS, who had engaged professional guards, professional administrators and officials expert in dealing with criminal matters, and prison control officials. I was told that this would be a guarantee against abuses.

DR. FRITZ: Did you inquire about certain individuals who were in concentration camps?

FRITZSCHE: Of course, I inquired about well-known personalities such as Parson Niemöller or Schuschnigg, also about Leipkins, Hess' private secretary who had been arrested; and in each case I received information which was reassuring.

DR. FRITZ: They, of course, may have been exceptions because they were well known and were prominent people. Did you not try to speak to other people who had been in concentration camps?

FRITZSCHE: Yes. In April of 1942 I met a former official of the Communist Party, whose name was Reintgen. We had been soldiers together for 6 months; and therefore he reported quite frankly to me, without keeping anything back. He said that he had been ill-treated in 1933, having had lashes on his back, but not afterwards. This information fully coincided with my observations.

DR. FRITZ: Did you yourself visit concentration camps?

FRITZSCHE: No, I have never been inside the compound of a concentration camp. However, during the winter of 1944-45 I was frequently in the administration building near the Oranienburg-Sachsenhausen camp. Apart from that, I spoke to prisoners as often as I was able to do so, if I happened to see them either on the march or at work.

DR. FRITZ: With whom did you speak at Oranienburg?

FRITZSCHE: With a colleague of Obergruppenführer Glücks and twice also with him personally. They told me that the foreign reports regarding cruel treatment were false. They said that the treatment was not only humane but decidedly good, as after all, the prisoners were valuable laborers. I spoke at some length about the working hours, for at that time a rather silly decree had been issued about a general extension of working hours. The attitude taken by Glücks was very reasonable, namely, that longer working hours would not necessarily result in greater output. Therefore the working hours of 8 to 10 hours a day remained as before.* He did not mention anything about extermination through overwork. That is something I heard about for the first time in Court.

DR. FRITZ: And how about your questions which you put to the prisoners direct?

FRITZSCHE: Well, first of all, there was always a guard present, and quite naturally the prisoners were suspicious; but eventually I always received positive replies to positive questions. Briefly, the gist of these replies was always the same, that they had been unjustly arrested. Their food was really better than in prison and I frequently heard this phrase: "Well, anyway we are not soldiers here." The weapons carried by the guards were only rifles or revolvers; I did not see any truncheons.

DR. FRITZ: Did you not become more and more suspicious about these concentration camps, after listening to foreign radio reports?

FRITZSCHE: Not for a long time, for the reasons which I gave yesterday. Reports from English members of Parliament regarding the Buchenwald case were first mentioned in April 1945. But this case is so very recent that for brevity's sake I do not need to describe particulars of the incidents that occurred in the Ministry of Propaganda.

DR. FRITZ: How can you explain the fact that crimes and ill-treatment of the worst kind undoubtedly took place in concentration camps?

FRITZSCHE: I am on the horns of a frightful dilemma, since I heard the first reliable reports about these things here in prison.

Only a part of these terrible conditions, which were found to exist, can be explained through the stoppage of traffic and communications at the end of the war. The rest is more than enough. Obviously, the decree for the secret murder of masses of people had brutalized to a terrible extent those people who were entrusted with the execution of this decree.

THE PRESIDENT: The Tribunal does not know whether this explanation is of any value to us as evidence. We have already heard all about this matter. He has given us his explanation as to why he says he did not know.

DR. FRITZ: Mr. President, I have but two more questions I should like to put to the defendant.

Herr Fritzsche, it has been said here in Court that conditions in concentration camps were generally known to the German people. As a journalist, will you give us your opinion and the reasons on which it is based?

THE PRESIDENT: Has he not given us that already?

DR. FRITZ: No, I beg your pardon, Mr. President. He gave his opinion when it was a question of the ill-treatment and extermination of Jews, but on the topic of the extermination of Jews, I asked him . . .

THE PRESIDENT: Well, you are asking him what his opinion as a journalist was. I do not see that that is of any importance to us.

DR. FRITZ: Mr. President, I should be grateful if you would allow me to put the question, as this is my last question but one. I expect an answer from the defendant, an answer which would assist the Tribunal in arriving at a judgment.

THE PRESIDENT: On what matter do you want his opinion as a journalist?

DR. FRITZ: The Defendant Fritzsche would like to repeat a few statements such as some made, for instance, by Dr. Goebbels.

THE PRESIDENT: All right, you may ask the question.

[Turning to the defendant.] Did you understand the question?

FRITZSCHE: I believe a confusion has arisen, inasmuch as I do not wish to quote Dr. Goebbels on this subject but rather in relation to our last series of questions which seem to me more important than the question you have just put to me now.

DR. FRITZ: In any event, I should like you to give me a brief answer to my question. Shall I repeat the question?

FRITZSCHE: Thank you, no. In this connection I should like to refer briefly to the statements which I already made about the murders; that there were many rumors but those rumors were

denied. Undoubtedly an iron ring of silence surrounded these terrible events and the only thing I observed in the course of my work, and which appears to me to be important, is that in the RSHA and some of its branches there must have existed groups who worked systematically with the view of concealing these atrocities by issuing reassuring statements and denials to the offices which represented the public.

DR. FRITZ: Now I should like to put a last comprehensive question. In the course of your examination by me, you made statements about Hitler and his policies which were entirely different from those you made long ago in your radio broadcasts, *et cetera*. Can you tell us briefly the date and the reason for your change of opinion?

FRITZSCHE: I would like to answer this question very precisely. The first milestone on the road to this realization was not due to the German defeat, for right or wrong is independent of victory or defeat. The fact was that Hitler tried to use this defeat for the extermination of the German people, as Speer has now horribly confirmed and as I was able to observe during the last phase of the conflict in Berlin when, through deceit by raising false hopes, boys of 15, 14, 13, and 12 years of age were equipped with small arms to fight against tanks and called into battle, boys who otherwise might have been the hope for future reconstruction. Hitler found escape in death, leaving behind him the order to keep on fighting. He also left behind him the official report that he had died in battle.

I learned that he had committed suicide; and thus my last public statement, on 2 May 1945, was to let everybody know of this suicide, for I wanted to kill a Hitler legend in the bud.

Then, while in prison, I heard from a fellow prisoner, a German major named Sforner, that he had been arrested by the Gestapo, that he had been tortured in order to make him confess, and that in his presence, his wife had been beaten. That was the second milestone.

The third stage concerned another coprisoner, the world-famous geographer, General Niedermeier, who proved to me that the reasons given by Hitler for the attack on Russia were false, at least on one important point. After he had talked with the interpreter, he could tell me that in the decisive discussion between Molotov and Ribbentrop in 1941, Molotov had not put forth any new demands but that, rather, he demanded that the assurances which had been given in 1939 should be effective. Therefore, a part of the reasons given—and I stress this point—that our attack on Russia was to anticipate a Russian attack, was no longer valid.

The fourth factor was the proof submitted in Court here of the murder of 5 million Jews. I have already spoken about this matter.

I consider it only my duty to testify to still another statement, a statement which Dr. Goebbels made in my presence on Saturday, 21 April 1945. Dr. Goebbels, who was in a great state of utmost excitement, speaking about the last decisive break-through of the Russians near Berlin, said,

“After all, the German people did not want it otherwise. The German people by a great majority decided through a plebiscite on the withdrawal from the League of Nations and against a policy of yielding and chose, instead, a policy of courage and honor; thereby”—concluded Dr. Goebbels—“the German people themselves chose the war which they have now lost.”

These were the last words which I heard from Dr. Goebbels and these words are untrue. I declare under oath: Dr. Goebbels had never previously given such significance to that plebiscite. Never had he given it that interpretation. The exact opposite was the case. At the time of this plebiscite, the German people were explicitly given once again a solemn assurance of the will for peace on the part of Hitler and his associates.

Therefore, I am convinced that Hitler and at least some of his colleagues had deliberately lied to the people on decisive points, right from the beginning of their political career; and, something that is not so important to history, I personally felt deceived on these points, too.

DR. FRITZ: Mr. President, I have no further questions to put to the Defendant Fritzsche.

THE PRESIDENT: Do any of the defendants' counsel wish to ask any questions?

DR. STAHLER: Witness, did you ever hear or ascertain, at the beginning when the concentration camps were being organized, that in addition to the regular camps other so-called “wildcat camps” existed which had been established by the SA leaders without the knowledge of the competent authorities?

FRITZSCHE: No. I heard nothing about it at that time. I heard about this distinction in the concentration camps for the first time here in Court.

DR. STAHLER: On the basis of your present-day knowledge, can you assert whether the abuses which you described occurred in these “wildcat” concentration camps?

FRITZSCHE: I can give you a very precise answer to that question. These abuses about which I learned occurred in the old camp Oranienburg, a camp situated in the Berliner Strasse. I do not know to which category that camp belonged. However, these abuses were

stopped; and I emphasized in my testimony that, almost immediately after I sent my letter to the Prussian Prime Minister, I was called in by a ministerial counsellor or Ministerialdirektor, and I was assured that an investigation would be made—a promise which was kept—but in any case I do not remember whether a final report was sent me from this office.

DR. STAHLER: I have no further questions.

DR. KUBUSCHOK: In June 1934 the publication of Von Papen's Marburg speech was forbidden. Is it correct to say that from that time onward, any statement on the part of the Defendant Von Papen could be published only with the previous approval of the Ministry of Propaganda?

FRITZSCHE: That is correct, and in even a closer sense. Confiscation of the Marburg speech, as I remember distinctly, was carried out at the instigation of Berndt, who later became Ministerialdirektor. This man drew Dr. Goebbels' attention to the speech. With regard to any other of Papen's announcements, the principle was that not even the Ministry of Propaganda had the right to release them for publication but, rather, that they had to be forwarded either to the Minister personally or to the Führer.

DR. KUBUSCHOK: In your testimony you mentioned that you had known the Defendant Von Papen for some time and that you got to know him when you visited Turkey. Just when did you visit Turkey?

FRITZSCHE: In January, I believe it was 1944.

DR. KUBUSCHOK: What was the purpose of your visit?

FRITZSCHE: I delivered a speech to the German colony in Istanbul and Ankara on the occasion of the 30th of January.

DR. KUBUSCHOK: Did Herr Von Papen have anything to do with this speech and with this festivity?

FRITZSCHE: No, less than nothing. I received an official request from Berlin to see to it that Herr Von Papen would not ostensibly depart before the celebration of the 30th of January, as he wanted to do. I did not attempt to persuade Herr Von Papen to stay and so he left his office in time to go skiing.

DR. KUBUSCHOK: That is all.

DR. THEODOR KLEFISCH (Counsel for SA): Witness, you just now said that it had been reported to you that at the end of the year 1933 and at the beginning of 1934 unemployed SA men were guarding certain concentration camps and that abuses were probably to be traced back to that fact. I have but one question: Who reported that to you? Who was the author of that report?

FRITZSCHE: The then press chief or press expert of Reichsführer SS Himmler, whose name was Gerhard Ratke.

DR. KLEFISCH: Thank you very much.

DR. FRITZ SAUTER (Counsel for Defendant Funk): Witness, the day before yesterday you stated that the Defendant Funk was not concerned with propaganda in the Propaganda Ministry but that in the main he was concerned with organizational and financial matters. Now I should like to ask you to answer several questions regarding the activities of the Defendant Funk in the Propaganda Ministry.

You know, Witness, that at the beginning there was a Press Department of the Reich Government and that it was a State institution. How long did this Press Department exist, and what became of it?

FRITZSCHE: It had existed for quite some time, at least up until March 1933, when it was a branch of the Foreign Office. From then on it became a branch of the Propaganda Ministry, and it had a dual mission to carry on: First of all to be the Press Department of this Ministry and secondly, to continue functioning as the Press Department for the Reich Government.

DR. SAUTER: Witness, can you tell me who, beginning with March of 1933—that is, from the incorporation of the Press Department into the Propaganda Ministry—was the chief of this Press Department and, for all practical purposes, was the chief of the press system? Was that Funk or was it someone else?

FRITZSCHE: No, that was Ministerial Counsellor Jahnke, successor to Ministerial Director Berndt. This Press Department was then divided into three sections: German press . . .

DR. SAUTER: I am not interested in that, Witness, I am interested only in knowing whether the chief of this department was the Defendant Funk or whether it is correct to say that he had nothing to do with these matters.

FRITZSCHE: Nominally, of course, he was the chief, but with the practical operation he had nothing to do. That was taken care of by Dr. Goebbels, Hahnke, and Jahnke.

DR. SAUTER: And later Berndt?

FRITZSCHE: Yes.

DR. SAUTER: Witness, I have another question. Who had the management of the press policy in the Propaganda Ministry? I am still referring to the State organ. Did the Defendant Funk have anything to do with it, or just who was it? Who directed the press policy?

FRITZSCHE: At that time Dr. Goebbels himself exercised that function. Later on it was the Reich Press Chief, Dr. Dietrich.

DR. SAUTER: The Defendant Funk was State Secretary in the Propaganda Ministry, or at least he had the title of State Secretary. Now, looking at this matter rather generally, I would be interested in knowing this: Did he, in fact, have the position of a State Secretary and exercise authority as such, or did another official exercise the function of State Secretary as the regular deputy of the Minister?

FRITZSCHE: As a matter of course, naturally, he had the position, the power, the prestige, and the salary of a State Secretary; but the practical work was distributed a little differently.

DR. SAUTER: Just how was it handled?

FRITZSCHE: I have already mentioned that. Practically, Funk concerned himself with organization and finance as they applied to the gigantic cultural concern which was being developed at that time; whereas the actual policy was set up by Dr. Goebbels with the chief of his ministerial office, Hahnke, who was the successor of Funk as State Secretary.

DR. SAUTER: I have one final question, Witness, which refers to another topic.

Do you know what Minister Dr. Goebbels, in November of 1938 or later, said about the Jewish pogroms of 9 November 1938, with regard to Defendant Funk?

FRITZSCHE: Much later Dr. Goebbels stated in my presence that sometimes radical measures would just simply have to be taken, for instance, when Funk had constantly declared that the Jews could not be eliminated from economic life; but he, Dr. Goebbels, had to prove to Funk that it could be done by organizing the riots of 8 November.

DR. SAUTER: In this connection did he say anything about the fact that this Jewish action, for which Dr. Goebbels was responsible, was also instigated with the purpose of discrediting Dr. Funk and confronting him with a *fait accompli*? Did he state anything like that?

FRITZSCHE: That was the sense of the answer that I just gave you.

DR. SAUTER: I have no further questions; Mr. President.

DR. WALTER SIEMERS (Counsel for Defendant Raeder): Herr Fritzsche, in this Court we have heard what grave accusations are made against the Defendant Raeder because of an article in the newspaper *Völkischer Beobachter*. The article I refer to is "Churchill Sinks the *Athenia*," which was published on 23 October 1939.

Mr. President, this is Document 3260-PS, or Exhibit GB-218.

I should like to put a few questions pertaining to the *Athenia* case. Herr Fritzsche, when did the Propaganda Ministry receive the report about the torpedoing of the *Athenia*, and through what channels?

FRITZSCHE: I cannot give you the date from memory, but I do know that we received this report by wireless; that is, we listened in to a foreign broadcast.

DR. SIEMERS: This wireless report came in shortly after the sinking of the *Athenia*, is that right?

FRITZSCHE: Without doubt.

DR. SIEMERS: Did the Propaganda Ministry get in touch with the High Command of the Navy in order to learn the details of this matter?

FRITZSCHE: Yes, I personally did that because I happened to have a liaison officer from the Navy High Command in my office for censorship advice.

DR. SIEMERS: Whom did you get in touch with in the High Command of the Navy, and what did you learn?

FRITZSCHE: First of all, I spoke to the officer who was with me, whom I have just mentioned, Kapitänleutnant Hahn. Then he telephoned, and in all probability I phoned, too, to the OKM (the High Command of the Navy). As far as I recall, I spoke to Korvettenkapitän Wolf.

DR. SIEMERS: And what did Korvettenkapitän Wolf tell you?

FRITZSCHE: He told me already at this early stage that no German U-boat was in the area in question.

DR. SIEMERS: I should like to remind you that the *Athenia* was sunk on 4 September 1939.

What did the Propaganda Ministry do after the High Command of the Navy had stated that it was not a German U-boat which had sunk the ship?

FRITZSCHE: Then this report was announced.

DR. SIEMERS: Herr Fritzsche, how did it happen that about 6 to 7 weeks later the article, "Churchill Sinks the *Athenia*," appeared, which was published on 23 October 1939? Shall I show you the article?

FRITZSCHE: Thank you, no. I remember this incident especially well, as I have checked my memory about it since this case was mentioned again for the first time here in the Court.

I know that Hitler himself ordered this article to be written, giving detailed instructions. The order to write the article came

through two different channels: First, through a telephone call by the Reich Press Chief, Dr. Dietrich; and secondly through a telephone call by Dr. Goebbels or one of his officials—I am not able to tell you which of the two. This order was to be transmitted to the *Völkischer Beobachter*.

Now we come to the circumstances on account of which I remember the details. When I told one of my co-workers to inform the *Völkischer Beobachter*, he came back to me with the report that it would not be necessary because the *Völkischer Beobachter* had already heard the necessary details directly from the Führer's headquarters.

DR. SIEMERS: When was this order given by Hitler, or rather, Goebbels?

FRITZSCHE: The day before it appeared, I assume.

DR. SIEMERS: Did any office in the High Command of the Navy have any connection with this article?

FRITZSCHE: According to my knowledge, no.

DR. SIEMERS: Before this article was published, did you speak with Grossadmiral Raeder about this article, or did you advise him of the order given by Hitler in this direction?

FRITZSCHE: No, I believe that the High Command of the Navy had no knowledge of the article at all. The article originated in the manner that I have just described to you.

DR. SIEMERS: Did you at any time speak with anyone in the High Command of the Navy, or with Grossadmiral Raeder about this case?

FRITZSCHE: Only here in the prison.

DR. SIEMERS: Herr Fritzsche, is it correct that in September of 1939 the *Times* claimed that in Czechoslovakia Germans had murdered 10,000 Czechs at Prague, including the Lord Mayor?

FRITZSCHE: I do not know whether that was published in the *Times*, but at any rate it was published in the *News Chronicle*.

DR. SIEMERS: What did the Propaganda Ministry undertake to do thereupon?

FRITZSCHE: German and foreign journalists were taken to Prague. If I am not mistaken, one of the foreign journalists who went along to Prague on that trip is present in this courtroom.

DR. SIEMERS: What did these foreign journalists find out?

FRITZSCHE: They had an interview with the Lord Mayor of Prague, who allegedly had been killed; they traveled about the country, and they reported accordingly.

DR. SIEMERS: According to that, the report was clearly untrue?

FRITZSCHE: At that time this report was shown to be quite false. However, I must add that since Monday of this week, since the testimony given by Herr Von Neurath, it has become quite clear to me that under cover of this great and effective denial an action of arrests was actually carried out in Czechoslovakia. I must add this; I have to clarify this. And if...

THE PRESIDENT: Dr. Siemers, how does this affect Raeder?

DR. SIEMERS: Mr. President, I believe that in a certain way it is a parallel case to the article in the *Völkischer Beobachter*, which the Prosecution is stressing for reasons not quite clear to me.

THE PRESIDENT: The Tribunal thinks the evidence is not competent.

DR. SIEMERS: Herr Fritzsche, do you know what Dr. Goebbels' attitude was to Grossadmiral Raeder?

FRITZSCHE: From the few statements which Goebbels made about Grossadmiral Raeder it could be seen that he had an adverse attitude toward him. His reason, frequently expressed, was Raeder's negative attitude toward the Party and the Party's wishes and his positive attitude on Church matters, including the protection which he accorded Navy clergymen who were subject to attacks on the part of the Party.

DR. SIEMERS: Mr. President, I have no further questions.

DR. HORN: Witness, you stated that a General Niedermeier was present at the conference which took place between Molotov and Ribbentrop. Just where did you get your information?

FRITZSCHE: There is a mistake contained in your question. I did not say that General Niedermeier participated in this conference. What I did say was—and I shall be a little more explicit—that during my imprisonment I ran into this General Niedermeier who, for weeks or months just before that time, had shared a cell with the interpreter who had the task of interpreting the discussion of Molotov and Ribbentrop.

DR. HORN: Did General Niedermeier give you the name of this interpreter?

FRITZSCHE: Without doubt, but I did not try to remember it.

DR. HORN: I have one more question. After the last discussion on 30 August 1939 between the British Ambassador Sir Nevile Henderson and the then Foreign Minister Von Ribbentrop, in which the conditions for negotiating with Poland were made public, these conditions were published the next day in the *Daily Telegraph*; and allegedly this issue of the paper was recalled. What do you know about this article?

FRITZSCHE: First of all, I should like to correct another error which has found its way into your question. On the following morning in question, the *Daily Telegraph* did not publish the conditions or the note, but only published a report that during the preceding night the British Government had been in consultation on the German demands to Poland, conditions which had been transmitted to them by their Ambassador in Berlin. Therefore it could be seen from this article—at any rate, it could not be interpreted in any other way—that these conditions were known in London.

DR. HORN: Thank you very much.

DR. THOMA: Herr Fritzsche, you stated yesterday that the *Völkischer Beobachter* was in direct contact with the Führer and with the Führer's headquarters throughout the war. What individual members on the staff of the *Völkischer Beobachter* were you referring to?

FRITZSCHE: I was not especially referring to people in the *Völkischer Beobachter*; I was thinking mainly of people at the Führer's headquarters. So, Dr. Dietrich and his delegates made it their business always to call the *Völkischer Beobachter* directly.

DR. THOMA: You know that Rosenberg was no longer the chief editor of the *Völkischer Beobachter* after 1937?

FRITZSCHE: I am of the conviction that even before that time he held that position in name only.

DR. THOMA: Witness, can you tell the Court, as far as the so-called actions of the Party were concerned—for instance the burning of the books, the boycott in April of 1933, the pogrom in November of 1938—who the driving force in all of these actions was?

FRITZSCHE: Today I am of the firm conviction that it was Dr. Goebbels.

DR. THOMA: Witness, do you know that Goebbels, whenever Hitler was in Berlin, always was Hitler's guest?

FRITZSCHE: That does not hold quite true. Years before the war Dr. Goebbels saw Hitler, without doubt, only rarely.

DR. THOMA: I have another question. Do you know that Goebbels had a direct telephone line to Hitler?

FRITZSCHE: That is news to me. This is the first time I heard of it.

THE PRESIDENT: Dr. Thoma, this has nothing to do with Rosenberg, has it, the fact that Goebbels had a direct line to Hitler?

DR. THOMA: Mr. President, I wanted only to ask Fritzsche by that whether Rosenberg had the same connection with Hitler as Goebbels.

FRITZSCHE: I do not know what telephone lines Rosenberg had, but I know and I have heard frequently that Rosenberg seldom visited Hitler.

DR. THOMA: Thank you very much.

THE PRESIDENT: Is there any other defendant's counsel who wants to ask questions?

[There was no response.]

THE PRESIDENT: Then we will recess.

[A recess was taken.]

THE PRESIDENT: Does the Prosecution wish to cross-examine?

GENERAL R. A. RUDENKO (Chief Prosecutor for the U.S.S.R.): I should like to begin the cross-examination in determining the role which German propaganda played in the criminal activity of the Hitler Government. Tell me, do you admit that German propaganda disseminated racial theories and introduced into the minds of the German people the ideas of the superiority of the German race—that means, the idea of the “master race”? Do you admit that?

FRITZSCHE: The question touches upon two problems. May I reply to both of them? I admit that German propaganda spread the racial theory, but I deny that German propaganda spread the theory of the “master race.”

GEN. RUDENKO: You do not admit it?

FRITZSCHE: No.

GEN. RUDENKO: Very well. You admit that the German propaganda incited in the German people racial hatred toward the Jews and propagated the necessity of their extermination?

FRITZSCHE: Once again two problems are contained in this question. May I answer to both?

GEN. RUDENKO: I beg your pardon, you do not have to emphasize this. Just answer the question; if there are two, answer two.

FRITZSCHE: I admit, as I have done in my answer to your first question, that German propaganda spread the racial theory but I deny most emphatically that German propaganda had made preparations for, or had called for, the mass murder of Jews.

GEN. RUDENKO: But you do not deny that German propaganda preached to the German people racial hatred toward Jews? You do not deny that?

FRITZSCHE: I cannot even affirm that without reserve. That is the reason why, in my answer to the second question, I made a

slight distinction. German propaganda, and under that I understand official German propaganda, did not even preach racial hatred. It only spoke about racial distinctions, and that is something quite different; but I will admit that there was a certain type of German propaganda which went beyond that and which did preach the clear-cut and primitive racial hatred.

GEN. RUDENKO: You will admit that the activity of German propaganda was also directed against the Church?

FRITZSCHE: No, even that I have to deny.

GEN. RUDENKO: Will you pretend that the German propaganda was not directed toward the persecution of the Church?

FRITZSCHE: That is exactly what I wanted to say. The official German propaganda did not persecute the churches. On the other hand, in order to clear up this point for you, here again there was an unofficial, illegal propaganda which preached against the Church. However, the State and its organizations, during the time of the struggle with the Church, made many utterances and declarations which might have created an impression as if they had participated in the struggle against the churches. By this I mean the trials against clergymen which were given sensational importance.

GEN. RUDENKO: Very well. You will admit that the propaganda conducted by the Hitlerite Government in connection with the so-called problem of the expansion of the Lebensraum of Germany, cultivated and developed in the German nation militaristic tendencies.

FRITZSCHE: I deny that, too, and most emphatically.

GEN. RUDENKO: Do you admit that German propaganda used provocative methods, lies, and slander in order to camouflage the aggressive plans of the Hitlerite Government?

FRITZSCHE: Mr. Prosecutor, it is most difficult for me to answer that question after all I have voluntarily testified to in this courtroom yesterday. If I am to make the attempt to summarize very briefly, then I shall have to say this: I maintain that the German propaganda gave the German nation in the case of every individual action which was carried out, from the occupation of the Rhineland to the attack against the Soviet Union, a picture of the events which, among the Germans, must have created the impression that we were in the right. On the other hand, however, I myself—and I explained already when this happened—had recognized that the structure of these arguments had a basis which was shaky in various respects.

GEN. RUDENKO: That is to say, on the basis of lies and slander?

FRITZSCHE: No. Please let me apologize, but your way of putting it does not appear to be quite factual enough.

GEN. RUDENKO: You will persist then in denying that German propaganda used methods of slander and lies; you do deny this?

FRITZSCHE: Yes, certainly, I deny it, based on my thorough knowledge of German propaganda; and I should like you to permit me to give you a very brief explanation in this connection.

GEN. RUDENKO: Please, will you give an explanation, but directly, to my question?

FRITZSCHE: But of course. Looking at it today, it was the misfortune of the German people that its propaganda, particularly with regard to those details which can be checked and controlled, was so clean that it was completely overlooked that in its three basic principles there were three fundamental mistakes. I cannot be more explicit.

GEN. RUDENKO: What kind of mistakes are you speaking about?

FRITZSCHE: The first, the trust in Adolf Hitler's humaneness, which was destroyed by the order to murder 5 million people; the second, the trust in the ethical purity of the system, which was destroyed by the orders to apply torture; and the third, the absolute trust in Adolf Hitler's peaceful intentions, shaken by what has been brought up in this courtroom.

GEN. RUDENKO: Well, we shall revert to these questions later when we speak about your personal participation in the conducting of the German propaganda. I should like to ask you now the following: Of course you were aware that in the OKW there was a special section for propaganda, which was subordinate directly to Defendant Jodl?

FRITZSCHE: That was known to me, but you are mistaken if you are under the impression that that department was under Defendant Jodl. It was under the jurisdiction of General Von Wedel and he was succeeded by Standartenführer Gunther d'Alquen.

GEN. RUDENKO: Very well. I do not wish to deal with this subject any longer, at the moment. I am interested in something else; what were the relations between the Ministry of Propaganda and the OKW?

FRITZSCHE: I cannot tell you what they were between the Ministry of Propaganda and the OKW in general, but I can give you detailed information about the relationship between the Ministry of Propaganda and the Propaganda Department of the OKW which you have just mentioned. A permanent representative from that department worked in the ministerial office of Dr. Goebbels. He

participated daily in the ministry conferences which I have already mentioned once, he who was really always to be found in close proximity to Dr. Goebbels.

GEN. RUDENKO: Who gave the propaganda tasks and the directives to the OKW?

FRITZSCHE: I can only imagine that the propaganda tasks of the OKW were drawn up according to Dr. Goebbels' wishes and to the instructions of the Chief of the OKW, which was Keitel or Jodl.

GEN. RUDENKO: How was the general German propaganda applied with regard to the propaganda tasks and measures taken by the OKW?

FRITZSCHE: I am afraid I do not quite understand the meaning of your question.

GEN. RUDENKO: How was the general German propaganda brought into line with the propaganda measures taken by the OKW?

FRITZSCHE: Very probably it was just fitted into the propaganda measures adopted by the OKW, because Dr. Goebbels was so strong a personality that he would not have tolerated any disregard of his propagandist principles.

GEN. RUDENKO: Very well. I would like to have your answer to the following question: What relations existed between the Ministry of Propaganda and the Ministry of Foreign Affairs?

FRITZSCHE: Sometimes relations were a bit tense, but during the later years of the war a representative from the Foreign Ministry participated always in the ministry conferences of the Propaganda Ministry.

GEN. RUDENKO: What part did the Ministry of Foreign Affairs play in the carrying out of propaganda measures especially in connection with the preparation and execution of aggressive wars?

FRITZSCHE: May I say the following to this: At the very beginning of an action of war, a representative from the Foreign Office used to appear with a completed document book, a *White Book*. I know nothing about the origin of these *White Books*. At any rate, they were not prepared in the Ministry of Propaganda. In a few cases I later received some knowledge of their compilation in the Foreign Office.

GEN. RUDENKO: Would it be correct to make the following deduction: The Ministry of Foreign Affairs participated directly and actively in the preparation of propaganda tasks and directives; is that correct?

FRITZSCHE: No doubt that is true because the Foreign Minister reserved for himself the decisive word with reference to propaganda

which was connected with foreign policy or any propaganda which went abroad.

GEN. RUDENKO: Did you have in mind Defendant Ribbentrop when you just replied and when you spoke about the role of the Foreign Minister?

FRITZSCHE: Of course.

GEN. RUDENKO: Very well. You acknowledge and maintain that Defendant Ribbentrop personally gave out the propaganda orders for explaining the attack on the Soviet Union as a preventive war?

FRITZSCHE: That question cannot be answered with "yes" or "no" but with a very brief description of the facts. The then Foreign Minister Von Ribbentrop received, in the early morning hours of the day when the Russian campaign started, the foreign press correspondents and the German press. He put a *White Book* before them and he went on to explain in a speech what the situation was and concluded with the following emphatic statement:

"For all these reasons Germany was forced to begin this attack against the Soviet Union in order to forestall a Soviet attack. I ask you, gentlemen of the press, to please present the facts in this manner."

GEN. RUDENKO: I should like to determine by this that the propaganda tasks were given by Defendant Ribbentrop himself. Do you admit it?

FRITZSCHE: I beg to apologize, but I have admitted exactly what I have said. Your last question is a conclusion based on what I have said, and to that I do not want to agree.

GEN. RUDENKO: However, replying to my previous question you spoke about the decisive role of Defendant Ribbentrop in questions concerning the carrying out of the foreign policy propaganda; is that correct?

FRITZSCHE: Perfectly correct.

GEN. RUDENKO: Well. It is enough; let us skip that question. Tell me now what were the relations between the Ministry of Propaganda and the so-called Ministry for the Occupied Eastern Territories? Please explain to me in this connection how these two Ministries collaborated and what the relations were between them?

FRITZSCHE: There was a permanent liaison officer who was a member both of the Eastern Ministry and the Ministry of Propaganda; and beyond that, there was an institution which had been founded by both Ministries jointly and which was jointly administered by them. It was the institution called "Vineta," which dealt with the entire propaganda in the East.

GEN. RUDENKO: Yes, I understand. By what order—or who prepared the propaganda slogans, as you called them in Germany, which were intended for the occupied territories? Who planned and prepared them?

FRITZSCHE: I cannot tell you under oath, because I am not sure about it, but it is my assumption that they were developed based on the existing principles of general propaganda by Dr. Tauber who was mentioned, and his associates, in this Vineta institute.

GEN. RUDENKO: Very well. But apparently you are aware of the fact and will confirm that the leading influence of the Ministry of Propaganda has been maintained in all these measures.

FRITZSCHE: Quite definitely. Indubitably the Ministry of Propaganda had the superior initiative here and the greater influence.

GEN. RUDENKO: That is clear. Now tell me, what kind of influence did the Defendant Bormann have on German propaganda? What role did he play in this respect?

FRITZSCHE: That role was unusually great. I know that it is somewhat frowned upon when statements are made here about a man who presumably is dead. In the interests of the historic truth, however, I shall nevertheless have to tell you the following . . .

GEN. RUDENKO: We do not know yet whether Bormann is dead. We know only that he is not present on the defendants' bench; but he is, however, one of the defendants. Go on, please.

FRITZSCHE: The influence of the Defendant Bormann was unusually strong not only in all the other fields but also in the propaganda sector. It became apparent in the following:

First, in the general type of Party agitation which I mentioned yesterday, that of the most radical trend. A teleprint message from Bormann to Dr. Goebbels with, shall we say, the following contents: I heard complaints from Party circles regarding this, that, or the other, would always be the cause of a rapid acceleration of Dr. Goebbels' entire machinery.

Second—and this is something which I cannot express under oath in other words—Dr. Goebbels was quite clearly afraid of Martin Bormann. And he always tried scrupulously to justify in Bormann's eyes any actions of his which might have been misinterpreted by radical elements in the Party.

GEN. RUDENKO: Perhaps you will tell us who else of the defendants who were not named here during my cross-examination actively participated in the propaganda activities, and in what way. Maybe you would rather not tell us anything about the defendants who are present here.

FRITZSCHE: I certainly would rather not, but I shall answer.

GEN. RUDENKO: Yes, please.

FRITZSCHE: By the way, a very favorable influence on propaganda was exercised by one of the offices of the Defendant Kaltenbrunner. Whether he was responsible for it in person I do not know, but here are the facts: During the struggle for realistic news service which I mentioned yesterday, I repeatedly met with resistance from the Party and the Foreign Office; but I found the support of a department of the RSHA, the name of which I have forgotten, most useful. This department used to issue reports about the general frame of mind or temper of the German people, and these reports were distributed to various supreme authorities in the Reich. In these reports showing the mood of the people there was frequent praise for realistic news, the very thing which had been combated by the other two parties which I have mentioned.

GEN. RUDENKO: You just mentioned the office of Defendant Kaltenbrunner. Who else of the defendants could you name?

FRITZSCHE: None of the others played a part in German propaganda.

GEN. RUDENKO: Defendant Hess is not present here, but did he have any influence or not?

FRITZSCHE: Most unfortunately not.

GEN. RUDENKO: Why do you say "unfortunately"?

FRITZSCHE: During the period when he was still in office, he fulfilled a very beneficial task. He was, shall we say, the "complaint department" for all shortcomings in the Party and the State. I wish he could have continued...

GEN. RUDENKO: Well, there is no use to speak about it in detail. Now, let us go into the explanation of your personal participation and your personal role in the field of German propaganda. I should like you to state exactly what relations you had with Dr. Goebbels. Yesterday you spoke about it in detail, but here I should like you to state it briefly.

FRITZSCHE: The briefest formula is this: Personally, little relationship; officially, in the course of time, more and more relationship.

GEN. RUDENKO: Yes. Do you know the name of General Field Marshal Ferdinand Schörner?

FRITZSCHE: Yes, I know the name.

GEN. RUDENKO: I should like to read into the record an extract from his testimony. Mr. President, I am submitting this document (USSR-472) as Exhibit USSR-472.

[Turning to the defendant.] We are going to hand you this document in a minute. In order to facilitate the reading of it, the paragraphs which I am going to read here are underlined in red pencil. I am going to read the first excerpt; will you please follow the text—I quote:

“Everybody, including myself, was aware that Fritzsche was not only a close associate of Goebbels, but was also a favorite of his. He gained Goebbels’ sympathy by frequently copying him in his political activities and quoting Goebbels in his speeches. Goebbels, in his printed and verbal speeches, referred to the conclusions and prognoses made by Fritzsche as having the force of official declarations.”

Please tell me, Defendant Fritzsche, is that in accordance with reality?

FRITZSCHE: May I ask you which quotation you have been reading, 1, 2, or 3?

GEN. RUDENKO: I have already told you, it is quotation Number 1.

FRITZSCHE: According to my text, the first one says:

“Everybody, including myself, was aware that Fritzsche was not only a close associate of Goebbels, but was also a favorite of his.”

GEN. RUDENKO: Yes, that is quite correct. That is exactly what I quoted. I am asking you, is that in accordance with reality?

FRITZSCHE: I should not have expressed it like that, and I think it is a question of taste. This statement...

GEN. RUDENKO: I understand.

FRITZSCHE: Just a moment. I have something to add.

The expression “close associate of Goebbels” is wrong, objectively seen, and “favorite”—well, I do not think so.

GEN. RUDENKO: Yes, very well. Let us go further.

You enjoyed the complete confidence of Goebbels and you carried out your duties in the Ministry of Propaganda entrusted with fullest powers. Do you admit that?

FRITZSCHE: Absolutely.

GEN. RUDENKO: Very well. Thus, enjoying the confidence and disposing of full powers, in your utterances you fully mirrored the demands of the Hitler Government which were made tasks of German propaganda; is that correct?

FRITZSCHE: Yes, to the exact extent which I described yesterday.

GEN. RUDENKO: Now, I should like to read into the record some extracts from your testimony of 12 September 1945. I am submitting this document (USSR-474) as Exhibit USSR-474. I am going to read into the record Excerpt Number 1.

FRITZSCHE: May I have the document?

GEN. RUDENKO: Certainly, it will be handed to you immediately. Will you please follow my quotation of Excerpt Number 1. It is underlined in red pencil. I am reading:

"During a long time I was one of the leaders of German propaganda."

I skip a few lines and further read:

"I must say that Goebbels valued me as a convinced National Socialist and a capable journalist so that I was considered his confidential aid in the German propaganda machine."

Is that correct?

FRITZSCHE: Mr. Prosecutor, that is not correct. I know that I have signed this report but at the very moment when I signed it in Moscow I stated:

"You can do what you like with that record. If you publish it, then nobody in Germany will believe it and no intelligent person in other countries either because this is not my language."

I state that not a single one of the questions contained in this report was put to me in that same form and I go on to declare that not a single one of the answers in that record was given by me in that form and I signed it for reasons which I will explain to you in detail if you want me to.

GEN. RUDENKO: You therefore do not confirm these statements?

FRITZSCHE: No, only the signature is true.

GEN. RUDENKO: All right, let us say only the signature is true.

Well, we want to bear in mind that in this quotation which I just read and which you deny, it is said that Goebbels valued you as a National Socialist and a capable journalist and that therefore you were a trustworthy person in the German propaganda machine. This is the essence of the quotation; is that right? Do you deny this? Just a minute please. I am going to remind you...

FRITZSCHE: Yes, General, I admit that, I admit these facts.

GEN. RUDENKO: Well, then the quotation was correct, was it not?

FRITZSCHE: Yes.

GEN. RUDENKO: Well then, what else are we speaking about? That means you do corroborate this statement?

FRITZSCHE: I am talking about the record which has been put before me in its entirety.

GEN. RUDENKO: At present I am questioning you with particular reference to this quotation which I just read into the record. You are not going to deny it? You admit it?

FRITZSCHE: I will not confirm the quotation but I will confirm once more the contents which you have just summarized again.

GEN. RUDENKO: Very well. The sense is not different from the actual quotation, but results from it. I should like to remind you of an excerpt...

THE PRESIDENT: One moment. What is it you are saying, Defendant? Are you saying that you did not sign this document or that you did?

FRITZSCHE: Mr. President, I signed the document, although its contents did not correspond with my own statements.

THE PRESIDENT: Why did you do that?

FRITZSCHE: I gave that signature after very severe solitary confinement which had lasted for several months; and I wrote that signature because one of my fellow prisoners, with whom I came into contact once, had told me that once every month a court was pronouncing sentences based merely on such records and without interrogation; and I hoped that in this manner I would at least achieve being sentenced and thus terminate my confinement.

So as not to be misunderstood I should like to emphasize that no force was used and that I was treated very humanely, even if my detention was very severe.

GEN. RUDENKO: Very well. Of course, you never thought, Defendant Fritzsche, that after all you had done you would be sent to a sanatorium? It is obvious that you had to land in a prison and a prison is always a prison. This was just an aside, however.

I should like to ask you about the following: You stated that in 1945 you signed this because of a very strict regime to which you were subjected; very well—when you arrived in Nuremberg you were interrogated on 3 November 1945 here in Nuremberg by General Alexandrov; is that correct?

FRITZSCHE: Yes.

GEN. RUDENKO: So that is correct? Very well. I should like to remind you of some of your answers. You were put the following question—on 12 November 1945 questions were put to you and you replied. Do you remember these statements?

You answered, "I have very often been interrogated and I do not know what statements and testimony are in question now."

Thereupon, General Alexandrov submitted to you your testimony of 12 September and you answered him, "I am fully aware of this document."

You were asked, "I should like you to peruse this document. Do you remember these statements?"

You said, "Of course, there is no doubt about it."

And further: "Do you corroborate this document, which you perused and which was signed by you?"

And you replied, "Of course."

Do you remember these statements which you made in Nuremberg?

FRITZSCHE: In the statement which you have quoted, all those passages are missing where I stated again and again that the record was put before me complete and finished for the purpose of obtaining my signature. I wished to make 20 or 30 alterations. Some of them were granted but passages were missing wherein I said in Nuremberg that some of the answers in that protocol contained a certain amount of truth but that none of them actually do represent my own answers.

GEN. RUDENKO: Very well. I should now like to remind you of an extract from your statement of 7 January 1946.

Your Honors, this is Document 3469-PS. It is not in my book of documents as it was submitted by the Counsel for the Defense. I am going to quote from that document; it is a very short passage.

[Turning to the defendant.] This is Paragraph 39 of your statement:

"Once Goebbels tried to coerce me into submitting my texts for perusal. I refused this request and explained that usually I dictated a short résumé of my speech immediately before my broadcast and consequently, so to say, improvised my speeches. He said it was all right but on condition that if he would wish it, I should at least speak on specific, given themes."

Is that right?

FRITZSCHE: Yes.

GEN. RUDENKO: Does that not indicate the confidence Goebbels had in you? Is that not right?

FRITZSCHE: No doubt he had a great deal of confidence in me, and I did not deny it.

GEN. RUDENKO: Very well. Let us proceed.

In this very same document, which I have just mentioned to you, that is to say, in your statement of 7 January 1946, in Paragraph 35 there is the following sentence—I think it was written by your own hand. It was in reply to some of the questions put by your counsel. You say, "More and more I became the only official authority in the Ministry in the field of radio communication."

Is that right?

FRITZSCHE: Unfortunately I did not hear the end of your question but you have quoted the passage correctly and I have written it.

GEN. RUDENKO: So, it does correspond to facts?

FRITZSCHE: Yes, absolutely.

GEN. RUDENKO: Well, you therefore will admit that in the German propaganda machinery you occupied the most prominent position after Goebbels?

FRITZSCHE: No, my previous answer does not contain such a statement.

GEN. RUDENKO: I am asking you that now.

FRITZSCHE: I will admit that I had a most influential position in German radio, of which I was the head.

If you now put a new question, asking who held the second position in the entire set-up of propaganda after Dr. Goebbels, I will reply: Dr. Dietrich, the State Secretary, or Dr. Naumann, the...

GEN. RUDENKO: Excuse me just a minute, please. I did not say the second position; I only said the most influential position. Are you going to deny this?

FRITZSCHE: I have no objection to your use of the word "influential," but it does not change my answer.

GEN. RUDENKO: Very well, "influential position," if you like. That is still stronger. Let us proceed, however.

In the same statement of 7 January you wrote—it is contained in Paragraph 15:

"During the entire period from 1933 to 1945 the task of the 'German Press Department' was the supervision of the local press and supplying it with directives... More than 2,300 German newspapers were thus supervised."

And then:

"In the execution of this task given to me by Dr. Goebbels, in accordance with instructions of the Ministry of Propaganda,

my activity encompassed the entire news and information system of the German press and radio."

Is that correct?

FRITZSCHE: I do not know whether you have quoted the last sentence correctly, but I have certainly fully recognized the first sentences. It is my affidavit Document 3469-PS. That corresponds word for word with the truth.

GEN. RUDENKO: Quite correct. Please tell me this: You organized in the German Press Department, the head of which you were, the Schnelldienst, the so-called speed service, which supplied the German press with provocative material. Do you admit that?

FRITZSCHE: If you will eliminate the word "provocative" and replace it with the word "propaganda" material, then I will admit it.

GEN. RUDENKO: All right. The Tribunal will consider this. We are not going to argue about it.

Now, the last question from this group of questions: Tell me, were your broadcasts on the radio, which were presented with "Hans Fritzsche Speaks," considered official Government broadcasts?

FRITZSCHE: I explained this subject to you yesterday. Actually, they were a private work of my own; but the private work, publicly audible, of a Ministerialdirektor of the Ministry of Propaganda and the head of the German radio system will, of course, be regarded as semi-official, though not fully official; and this fact I had to consider, and I did consider it.

GEN. RUDENKO: All right. Now, I should like again to revert to the testimony of Ferdinand Schörner, which I have already submitted to the Tribunal as Exhibit USSR-472. I should like to quote Paragraph Number 2. Do you find it, Defendant Fritzsche?

FRITZSCHE: Yes.

GEN. RUDENKO: I am going to read it into the record.

THE PRESIDENT: General Rudenko, the Tribunal would like to see the whole of this document, or at any rate would like to see the questions to which these are answers.

GEN. RUDENKO: Mr. President, this document has been submitted to you in full.

THE PRESIDENT: Oh, I see. You mean that what we have in English here are only the parts that have been translated into English?

GEN. RUDENKO: Yes, that is quite correct. I am going to read into the record Extract Number 2:

"I am fully aware that Fritzsche was a prominent collaborator of the Ministry of Propaganda and that he was extremely

popular in National Socialist circles and among the German people. He gained great popularity, especially by his weekly war political radio commentaries on the international situation. I often heard Fritzsche's broadcasts in peacetime as well as during the war; and I perceived his broadcasts, which were filled with fanatical devotion to the Führer, as directives from the Party and the Government."

Do you agree with this evaluation?

FRITZSCHE: I cannot raise any objection to this quotation, but beyond that...

THE PRESIDENT: General Rudenko, is the document sworn?

GEN. RUDENKO: This document was put into official form in accordance with the processes which are in use in the Soviet Union.

THE PRESIDENT: Where was it taken?

GEN. RUDENKO: In Moscow.

THE PRESIDENT: The man who made the statement—was he free or was he in prison?

GEN. RUDENKO: He was at the time a prisoner of war.

THE PRESIDENT: Did the man who is alleged to have made the statement sign it?

GEN. RUDENKO: Of course, it was signed by him.

THE PRESIDENT: Go on.

GEN. RUDENKO: Thank you. And so you...

FRITZSCHE: May I add that it is known to me that on distant battle fronts or, for example, with German colonies abroad, my radio speeches were considered, shall we say, as a political compass.

GEN. RUDENKO: Yes, I understand. I should like to put to you another document which I will ask you to peruse.

Your Honors, I am submitting as Exhibit USSR-471 the testimony of Hans Voss.

Defendant Fritzsche, do you know this name, Vice Admiral Hans Voss?

FRITZSCHE: I know the name, but not the man personally.

DR. FRITZ: I apologize, Mr. President. It may be that the statement of General Field Marshal Schörner does not deserve too much attention, but at any rate I am unable to ascertain from the document the place where it was taken.

THE PRESIDENT: General Rudenko says that it was taken at Moscow.

DR. FRITZ: But the record, the protocol itself, does not show that; and then I have noticed also that the photostatic copy which

I have here does not show the signature of the Field Marshal. It just says "signed." Later on in the right margin a handwritten signature has been affixed, but I do not know whether this document is admissible from a legal point of view.

THE PRESIDENT: You can see the original and compare it.

GEN. RUDENKO: I am speaking about the Document USSR-471, which is a written statement by Hans Voss. Please look at the Excerpt Number 1, which is underlined; I quote:

"Fully devoted to Hitler and the National Socialist Party, Fritzsche rendered priceless services in helping to spread National Socialism throughout Germany."

Is that in accordance with reality?

FRITZSCHE: Well, at least I will not object.

GEN. RUDENKO: In other words, you are in accord with it?

FRITZSCHE: As I told you, I do not object, but I do not want to say by that that I concur.

GEN. RUDENKO: On the other hand, you do not deny this?

FRITZSCHE: No, I say for the third time that I do not raise any objection.

GEN. RUDENKO: Very well. I should now like to question you regarding your attitude toward the racial theory. You gave yesterday a detailed explanation in this connection to your counsel, so that I am going to put to you only two or three questions, and I should like you to reply briefly.

Did you agree with this racial theory?

FRITZSCHE: Yes, and precisely to the extent which I described to you yesterday.

GEN. RUDENKO: All right. In a radio broadcast on 6 April 1940 you spoke about Poland.

Your Honors, this is Document USSR-496. I am not going to read this document as I do not want to propagate the views contained in it, but I should like the defendant to peruse this document.

Please will you look at Excerpt Number 1 of this document. It is underlined in red pencil. This refers to your evaluation of the Polish nation. I simply should like to ask you about this speech of yours.

FRITZSCHE: It is impossible for me to recognize a radio speech of mine when I see an extract of only 20 lines, considering that I have spoken about a thousand times, as I said yesterday. In that case, you will have to let me have the full speech so that I can recognize my line of thought at the time.

GEN. RUDENKO: Did you not examine the document? This is a full text of your utterance which took place on 6 February 1940 on radio station, Deutschland Sender.

FRITZSCHE: General, there are 20 lines here. They begin with the words, "Considerable effort was necessary to..."

GEN. RUDENKO: That is enough, all right. There is no need in further quoting. That is the document to which I am referring. I am asking you, is that your speech?

FRITZSCHE: It is quite possible, but if you give me only 20 lines of that speech, I can only confirm that: At the time when I had seen the official German documents dealing with the atrocities committed against Germans in Poland I talked about that with great disgust on the radio, talked about what I saw in those documents.

THE PRESIDENT: Shall we adjourn now?

GEN. RUDENKO: All right, Mr. President.

DR. THOMA: I ask you to grant leave for Defendant Rosenberg to be absent from the Court this afternoon because I have an important conference to hold with him.

THE PRESIDENT: Yes.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

GEN. RUDENKO: Defendant Fritzsche, extracts from your speech dated 5 July 1941 will be handed to you. They concern the opposition which the German Fascist troops encountered while entering Soviet territory. My Lord, this Document Number 3064-PS has already been submitted by the Defense.

Will you look at Paragraph 7, the last paragraph? I do not intend to read it.

FRITZSCHE: Yes, I have noted it.

GEN. RUDENKO: Very well. Do you admit having used those very expressions?

FRITZSCHE: Yes, I admit that and I should like to emphasize, without quoting it, in what connection this statement was made.

GEN. RUDENKO: Very well. I merely want to ask you the following: When, in your speeches you insult the Polish and Russian peoples by calling them "subhumans" do you not consider that these are expressions of misanthropic theories?

FRITZSCHE: Mr. Prosecutor, I should like to state that I never called the Russian people or the Polish people subhumans.

GEN. RUDENKO: Very well. I do not intend to argue with you; the documents speak for themselves.

I would like to turn again to the statement of Hans Voss. This is Document USSR-471. It has already been submitted. Will you pay attention to Excerpt Number 2? It is underlined. It is just a short excerpt, and I will read it:

"...and he"—Fritzsche—"understood how to influence the German mind when he tried to convince them that they, the Germans, were the superior race and therefore had to rule over other peoples as their slaves."

Does that agree with the facts?

FRITZSCHE: No, it does not agree with the facts; rather, it contradicts the facts in all points.

GEN. RUDENKO: Let us say it contradicts your assertions.

Very well, I will put another question to you. Do you know the name Lieutenant General Rainer Stahel, who was the former commander of the city of Warsaw?

FRITZSCHE: I am not familiar with that name.

GEN. RUDENKO: You are not familiar with that name? Very well. You will be handed a document.

Mr. President, this is Document USSR-473, and it is the testimony of Rainer Stahel, dated 15 September 1941. The passage is underlined in your copy.

I will read the first excerpt:

"Goebbels and Fritzsche took every measure in order to popularize the racial theory among the Germans and to convince them that the Germans were a master race and that other peoples, as inferior races, must be subordinated to the German 'master race.'

"In order to convince the Germans of this and to compel them to believe in this theory, the Ministry of Propaganda, run by Goebbels and Fritzsche, made a large number of films before the war and during the war and published books, pamphlets, periodicals, and other literature in which the authors attempted to prove the 'superiority' of the Germans over other nations.

"It can be said that as a result of the energetic activity of Goebbels and Fritzsche the racial theory gained a firm hold on the minds of large numbers of the German people. This contributed to the fact that during the war the German soldiers and officers, having assimilated the teaching of the leaders of German propaganda, committed bestial crimes against peaceful populations."

Tell me, did Rainer Stahel correctly describe the part played by you in the propagation of racial theory?

FRITZSCHE: No, I should like to add that the level of this statement is even lower than that of the other statements submitted to me. I should be happy if just one of those people whose testimony has been submitted to me in this form, could appear here in person in order to testify as to the documentary basis of his statement.

GEN. RUDENKO: I believe that during the 6 months that the Trial has lasted, you have heard enough testimony. Well, let us go on.

FRITZSCHE: No, I have to make this observation: I have not been confronted with any testimony of witnesses dealing with the subject matter discussed here.

GEN. RUDENKO: You remember, I hope, the testimony of the witness Hoess regarding the extermination of millions of persons.

[There was no response.]

GEN. RUDENKO: I say that you, I hope, remember the testimony of Hoess, the commander of the concentration camp in Auschwitz, concerning the extermination of millions of people.

FRITZSCHE: I did not forget this testimony, and not for a minute did it escape my memory.

GEN. RUDENKO: Very well. I merely wanted to remind you. I do not intend questioning you on this matter. I am passing on to questions connected with the propaganda regarding the preparation for aggressive war by Hitler Germany. In order to shorten the cross-examination, I shall quote a few of your own statements, dated 12 September 1945, which have already been submitted to the Tribunal as Exhibit USSR-474. Please look at the second excerpt. It is underlined.

FRITZSCHE: I object to the reading of this quotation in the same way as I objected to the submission of the entire minutes of the interrogation, and I refer you to what I testified a few hours ago as to the origin of this record.

GEN. RUDENKO: You already gave an explanation to the Tribunal, and the Tribunal will consider your explanation. This document is submitted, and I intend to cite this part of the testimony. Please follow me—Excerpt Number 2:

“In order to justify this aggressive action, Goebbels summoned me to him and gave me instructions to conduct a hostile campaign against Austria. Among other things he instructed me to dig out old documents in the archives which in any way incriminated the Austrian Government and to publish them in the press. Goebbels stressed that the documents to be published must first of all show that the Austrian people wished to unite themselves with the German nation and that the Austrians adhering to these ideas were being persecuted by the Austrian Government. Furthermore, Goebbels said that the German press had to show that the Germans living in Austria were being systematically persecuted by the Austrian Government which even went to the length of carrying out mass reprisals against them.”

And further on:

“When Germany occupied Czechoslovakia, Denmark, Poland, Belgium, Norway, and the Balkan countries, acting on the instructions of Goebbels, I organized a similar calumnious propaganda.”

THE PRESIDENT: General Rudenko, surely it would be better to ask him with reference to one of these paragraphs: Did he say that?—rather than to put to him the whole document at once.

GEN. RUDENKO: Mr. President, I have only one paragraph left, and I intended to read it and then to put the question to him.

THE PRESIDENT: I am not objecting to that. I am only suggesting that it would be better if you put to him each paragraph in turn, and not put three or four paragraphs all in one question.

GEN. RUDENKO: Very well, Mr. President; I will deal with it in this way.

I am asking you, Defendant Fritzsche, do you admit the paragraph read by me concerning the Anschluss?

FRITZSCHE: No; and I maintain that that is not what I testified. That extract contains rather the thoughts which the interrogating Russian officer entertained in respect to my testimony. After it had been drawn up, the record was submitted to me for my signature.

THE PRESIDENT: Wait a minute! What do you deny in it? Take the first paragraph.

FRITZSCHE: Mr. President, I am protesting against everything, particularly against the expressions applied here which I have never used. During my interrogations in Moscow I stated exactly the same things as I stated here in this Trial yesterday, the day before yesterday and today or as I have set down in my affidavit.

THE PRESIDENT: Take the first paragraph. The first paragraph has just been read to you: "In order to justify this aggressive action..." Were you asked any question about that, and did you make any answer?

FRITZSCHE: Yes, indeed. In many interrogations which were held late at night, I was asked such questions, and to the subjects condensed in this one question I answered as follows:

I do not recall the date, but when the Austrian action was about to take place I was summoned to Dr. Goebbels. Dr. Goebbels told me that the Austrian Government of Schuschnigg had plans of such and such a nature—they have been described in sufficient detail here—that a government crisis had developed, that Seyss-Inquart had taken over the Government, that a call for help had come from Austria, and that now the march into Austria would take place.

THE PRESIDENT: Are you now telling us what you told the Russian interrogator, or are you telling us what actually happened in Germany at the time of the Anschluss?

FRITZSCHE: I am telling what I told the interrogating Russian officer, and that is exactly what took place in the Propaganda Ministry on the day in question.

THE PRESIDENT: You are saying, then, that this first paragraph is entirely made up, are you?

FRITZSCHE: No; I should not like to use the expression "made up," but I should like to say—and I beg permission to do so—which

parts in this paragraph are correct. First of all, there is the point that there was a hostile campaign against the Schuschnigg Government; such a campaign actually was instigated in the German press; whether at the moment of his resignation or just before his resignation I do not remember now.

Furthermore, it is correct, as set down in this paragraph, that it was proposed to show, by quoting individual cases as far as possible, that under the Schuschnigg Government those who were sympathetic toward Germany were persecuted. These are the points that are correct.

GEN. RUDENKO: Strictly speaking, this means that you have now corroborated what I have just read.

FRITZSCHE: No, no, sir. There is an essential difference.

GEN. RUDENKO: From your point of view. But I believe that you will not deny the fact that you conducted propaganda directed against the Austrian Government. This is the main point of this question.

FRITZSCHE: I must deny that as well. This propaganda was not conducted by me, but by my predecessor, as chief of the German Press Department.

GEN. RUDENKO: Do I understand correctly that you deny having participated personally in this propaganda, but do not deny the fact that there was such propaganda?

FRITZSCHE: You understand me correctly if by the term "propaganda" in this case you mean the enumeration of those measures used by the Schuschnigg Government against German interests as a whole.

GEN. RUDENKO: Very well. I should like to read the following paragraph of the same testimony which says:

"When Germany occupied Czechoslovakia, Belgium, Denmark, Poland, Norway, and the Balkan countries, acting on the instructions of Goebbels, I organized a similar calumnious propaganda. In every such case I dug out every old document from the archives which incriminated the Governments of these countries as far as Germany was concerned, added my commentary to these documents and attempted in this way to justify this or that aggressive action on the part of Germany."

Do you also deny this?

FRITZSCHE: Yes, in that form I deny that as well.

GEN. RUDENKO: But you will not deny that propaganda for the purpose of aggression was conducted against all the countries enumerated in this testimony?

FRITZSCHE: I contest your last remark. I admit the fact of the propaganda, and I have described in detail the individual actions and my participation in them in my affidavit, Document 3469-PS.

GEN. RUDENKO: Very well; I do not intend questioning you further, as this has been quite adequately explained in your statements dated 7 January 1946, Document 3469-PS, and which, in fact, do not contradict what has been stated. Is that right?

FRITZSCHE: I see an essential difference. But this Document 3469-PS is absolutely correct.

GEN. RUDENKO: Very well, I should like as a supplement to this, to read the testimony of Ferdinand Schörner, which is Document USSR-472 and which has already been submitted to the Tribunal; I mean Extract Number 3. He says in his statement, I read:

"Fritzsche's political activity in his function as official radio commentator, in the same way as the activity of the war correspondent, General Dittmar, was subordinated to the main aim of National Socialism, the unleashing of the world war against democratic countries and the contributing by all possible means to the victory of German arms. Fritzsche's principal method, applied during the several years of his activity, consisted in, as I later realized, the deliberate deception of the German people. I mention that because during the last years we soldiers felt this deception especially keenly since in spite of Fritzsche's false lamentations we knew the actual conditions on the front and the actual situation. The main guilt of people such as Fritzsche is that they did know the actual state of things, but despite this, proceeding according to the criminal intentions of the Hitler Government, consciously fed the people with lies or, to use a German expression, 'threw sand in their eyes.'"

Tell me, Defendant Fritzsche, does this characterization of German propaganda correspond to the truth?

FRITZSCHE: That is utter nonsense and it happens that I can partly prove that. Herr Schörner says part of the activity of the war correspondent General Dittmar was the starting of aggressive wars. General Dittmar spoke over the radio for the first time in the winter of 1942-43. That is one point.

The second point is the following: I have never seen Herr Schörner. I do not know him and I have never spoken to him. I should be very surprised if he were in a position to judge whether I deliberately or unconsciously at any time ever said anything that was not true. However—and this is something I must add—during the last few days in Berlin I received indirectly, through State Secretary Dr. Naumann, a report from General Field Marshal

Schörner with the instruction that it was left to my discretion to make use of it. It reported that he was in Bohemia with an army which was intact and that he could, if he wanted to, hold this territory for an unlimited period. We in Berlin should not lose courage; he could even come to our aid. I do not know whether Schörner actually made this statement but I think it would be worth while to call General Field Marshal Schörner here as a witness, in order to ask him on what he based his judgment.

GEN. RUDENKO: The fact that you do not know Ferdinand Schörner does not disprove this testimony, for you have yourself stated before this Tribunal that although very many people knew you as an official representative of the Government, you could, of course, not know everybody; is that right?

FRITZSCHE: If you will permit me, sir, I should like to call your attention to something illogical. Even without knowing me, it is very easy for anyone to give an opinion about the things I said, but it is impossible for anyone to judge whether I made those statements in good faith or in bad faith. I am sure that you yourself realize this distinction.

GEN. RUDENKO: You are speaking again of your personal participation, but you do not deny the lying character of the German propaganda?

FRITZSCHE: Again I cannot answer "yes" to the question in the way that you put it. This morning I gave you a basis for questions which can be put to me. I contributed my share to a historical clarification by trying to show what was pure idealism and what were false assumptions; these things are now being confused.

GEN. RUDENKO: I am not putting questions on the basis which you pretend you gave me, but upon the basis of documents which are at the disposal of the Prosecution.

Let us go on. I should like to ask you: Did you know the documents about the "Case Green" against Czechoslovakia, about the documents concerning the aggression against Poland, the aggression against Yugoslavia—and about the propaganda which had to be conducted in this respect?

FRITZSCHE: I heard for the first time here the documentary data for Case Green. But as you are now again trying to tie this up with propaganda measures, it is very hard for me to keep both of these matters separate. Perhaps it will serve your purpose if I answer that neither in the case of Czechoslovakia nor in the case of Poland nor in any other case did I know about the German attacks until an hour or an hour and a half before they were announced to the German public.

GEN. RUDENKO: Did you say an hour or an hour and a half?

FRITZSCHE: I do not wish to commit myself to an hour or an hour and a half. I do recall that in the case of Russia I had advance knowledge through Dr. Goebbels perhaps 5 or 6 hours beforehand.

GEN. RUDENKO: Very well. You will now be handed Document USSR-493. It is your radio speech in connection with the aggression against Poland. This speech was made on 29 August. Its purpose was to explain beforehand the reasons for the German attack on Poland and it was made on 29 August. I do not intend reading it, but the gist of this speech is that on 29 August you spoke of a series of unexpected events which were imminent. Have you acquainted yourself with this document?

FRITZSCHE: Yes, indeed.

GEN. RUDENKO: You do not deny that on 29 August 1939 you made this speech?

FRITZSCHE: No, I do not deny that. I should just like to refer to the fact...

GEN. RUDENKO: Excuse me. Please answer my question first and give your explanations later. This was on 29 August? You do not deny it. I am asking you, did you yourself believe in these explanations of unavoidable war with Poland? Did you yourself believe this at that moment?

FRITZSCHE: Whether at that moment I considered a war unavoidable, that I am not in a position to tell you. But I am able to tell you one thing: I did not believe that Germany was to blame. That if this tension should lead to a war...

GEN. RUDENKO: That is enough.

FRITZSCHE: I ask to be allowed to add...

GEN. RUDENKO: But please be brief.

THE PRESIDENT: General Rudenko, let the man answer.

GEN. RUDENKO: If you please.

FRITZSCHE: At that time it was a matter of great satisfaction to me that in the weeks that followed I could see from the Soviet press that Soviet Russia and its Government shared the German opinion of the question of war guilt in this case.

GEN. RUDENKO: I believe it is not the time to discuss this now nor did I ask you for explanations on this subject. You did not answer my question, but let us pass on to another question. On 9 April 1940 you made a speech concerning the reasons for a possible occupation of Norway. You will now be handed an extract from this speech.

Mr. President, this is Document Number USSR-496.

You have that document, Defendant Fritzsche. It is Excerpt Number 4.

FRITZSCHE: No, I do not have it. Yes, I have found it. It is Page 4.

GEN. RUDENKO: Very well. Yes, it is Excerpt Number 4. I will read a short passage:

"The fact that German soldiers had to carry out their duty because the English violated Norwegian neutrality did not end in a warlike but in a peaceful action. No one was injured, not a single house was destroyed; life took its daily course."

This was a lie. Do you admit it or will you deny it?

FRITZSCHE: No, that was not a lie, for I had just been in Norway myself and I had seen these things. And everything will be quite clear if you will permit me to read the next sentence, which says—the next sentence reads as follows...

GEN. RUDENKO: Defendant Fritzsche, wait a minute. You will read it later.

THE PRESIDENT: But, General Rudenko, you must let the man explain. He wants to read the next sentence in order to explain this sentence.

FRITZSCHE: The next sentence reads:

"Even there, where Norwegian troops, instigated by the misguided former Norwegian Government, put up resistance, the civilian population was hardly affected by this, for the Norwegians fought outside the cities and villages..."

GEN. RUDENKO: Well. Now I will show you a document, "An Official Report of the Norwegian Government," which has already been submitted to the Tribunal by the French Prosecution as Exhibit RF-72.

Mr. President, in my document book this document is wrongly numbered Exhibit USSR-78. It is Document 1800-PS and it has been submitted by the French Prosecution as Exhibit RF-72.

[Turning to the defendant.] Listen, Defendant Fritzsche, how correctly you described the situation in Norway; listen what the "Official Report of the Norwegian Government" says about it. I quote:

"The German attack on Norway on the 9th of April 1940 brought war to Norway for the first time in 126 years. For 2 months war raged throughout the country, causing destruction to the amount of 250 million kroner. More than 40,000 houses were damaged or destroyed and about 1,000 civilians were killed."

And that describes the situation as it really was. Do you admit that your speech on 2 May 1940 was full of the usual lies?

FRITZSCHE: No, I do not admit that, but I assert that you, sir, in submitting this extract, are not taking into consideration the fact that I, in my introduction, reported that I wanted to describe what I had seen myself, when I made a journey into the Gulbran valley and which I remember took me nearly as far as Atta. It does not in any way prove my description to be incorrect, if, according to the facts ascertained by the Norwegian Government, such loss and damage actually did occur in connection with this undertaking.

GEN. RUDENKO: I believe that the Norwegian people and the Norwegian Government had sufficient experience of the weight of the German occupation, and the government report states actual facts and not the sort of facts which you stated in your propaganda. This document has been submitted in accordance with Article 21 as indisputable evidence, and I do not intend to argue with you. The Tribunal will take note of it. I have a few more questions to put to you in connection with a matter which has already been dealt with in detail here. It is the *Athenia* case. I will not question you in detail on this matter, as it has already been ascertained with sufficient accuracy. I am simply asking you: Do you admit now that Fascist propaganda gave out to the public slanderous and false information about the *Athenia* case?

FRITZSCHE: Whether this was done by Fascist propaganda in Italy, that I do not know. National Socialist propaganda did it in good faith, as I have clearly described.

GEN. RUDENKO: I have already been speaking for nearly an hour about what occurred here and what has been ascertained. Do you agree that this speech was a slanderous one or do you still deny it?

FRITZSCHE: No, I have already admitted that and I also showed clearly how these statements came about.

GEN. RUDENKO: Very well. I am interested only in the personal part you played in this matter. Why did you take such an active part in this matter, and why were you the first man to spread this slander?

FRITZSCHE: I do not believe that I was the first one to bring this matter before the public. However, it is a fact that I spoke very frequently about the case of the *Athenia*, on the basis of official reports which I believed. I spoke about this case because I happened to be the very man who, at the beginning of the war, spoke on the radio in the evenings.

GEN. RUDENKO: Are you trying to assert that the first report on the *Athenia* appeared in the *Völkischer Beobachter* in October, 1939?

FRITZSCHE: I never claimed that.

GEN. RUDENKO: Well. Then I will remind you that you dealt with the *Athenia* as early as September 1939; is that right?

FRITZSCHE: Yes, of course, the question of the *Athenia*...

GEN. RUDENKO: And you spoke about it before the report was published in the *Völkischer Beobachter*?

FRITZSCHE: Many weeks before that, yes.

GEN. RUDENKO: Therefore, you were the first to spread those slanderous assertions?

FRITZSCHE: No, I cannot confirm that, but rather...

GEN. RUDENKO: Very well. In this connection I will put only one other question to you. You will not deny that in 1940 you still spread this version? I will repeat the question. I am asking you, you will not deny that even in 1940 you continued to propagate this slander?

FRITZSCHE: It is the essence of every form of propaganda that it repeats good and effective things as frequently and for as long a time as possible. I have explained already that in December of 1945, here in the prison only, I heard from Grossadmiral Raeder for the first time that it was really a German U-boat that had sunk the *Athenia*.

GEN. RUDENKO: Very well. I will pass on to a group of questions regarding your participation in the carrying out of propaganda connected with the preparation of aggression against the Soviet Union. You assert that you had no knowledge of the preparation of aggression against the Soviet Union until 5 o'clock on the morning of 22 June 1941—that is to say, when the German troops had already entered Soviet territory—and when you were called by Ribbentrop to the Foreign Office, where a press conference was being held. Did I correctly understand your testimony?

FRITZSCHE: No. Several hours before that, on the evening of the day preceding the entry, Dr. Goebbels had called some of the departmental chiefs of the Ministry to his house at Wannsee and told them these facts and forbade them to leave or to telephone. That was the first real knowledge that I had of this fact.

GEN. RUDENKO: Very well. You also claim that you got to know of Germany's aggressive aims with regard to the Soviet Union only in 1942, and this according to your own observations, is that right?

FRITZSCHE: I do not know what you mean by that. I tried this morning to make it clear that I began to have doubts as to the truth of the official German reasons given for this attack only when I was in prison. I explained that this morning. A second point, which I emphasized earlier in Moscow when I was interrogated, was that I observed in 1942—it may have been in 1941—after the war with the Soviet Union had broken out, that preparations of all kinds must have been going on for quite some time before 22 June.

GEN. RUDENKO: I will recall to your memory an excerpt from your statement, a document which you confirm in full. It is Number 3469-PS. In Paragraph 42 we read:

“At the beginning of 1942 I was a soldier in the eastern theater of war. I saw the extensive preparations which had been made for the occupation and administration of territories extending as far as the Crimea. On the basis of my personal observations, I came to the conclusion that the war against the Soviet Union had been planned a long time before it broke out.”

Is that statement right?

FRITZSCHE: Yes, certainly.

GEN. RUDENKO: Well, then, I have no further questions to put to you regarding this matter.

I would like to recall to your memory two further documents connected with the carrying out of propaganda, in view of the preparation of war and the actual attack against the Soviet Union. I am referring to the minutes of a conference held by Hitler dated 16 July 1941.

This document, Mr. President, is Number L-221 and has already been submitted.

[Turning to the defendant.] This document will be handed to you and I will quote one or two paragraphs on the first page. I quote:

“Now it is essential that we do not disclose our aims to the whole world. There is also no need for that; the main thing is that we ourselves know what we want. But on no account should we render our task more difficult by making superfluous declarations. Such declarations are superfluous for within the reach of our power we can do everything, and what is beyond our power we will not be able to do anyway.”

And further:

“What we tell the world about our motives for our actions must be governed by tactical considerations. We must act here in exactly the same way as we did in the case of Norway, Denmark, Holland, and Belgium. In those cases, too, we

did not say anything about our aims, and we shall have the prudence to adhere to this method in the future.”

Did you have any knowledge of such directives of Hitler?

FRITZSCHE: No, I did not know of any such directive, but the fact that such statements and directives have been submitted in this courtroom has made me realize, I have said, that some of the premises of our propaganda have no foundation.

GEN. RUDENKO: Very well. You also had no knowledge either of the instructions issued by the OKW and signed by the Defendant Jodl regarding the carrying out of propaganda in the “Case Barbarossa”?

FRITZSCHE: I cannot say that without seeing these documents; the Case Barbarossa as such meant nothing to me until this Trial.

GEN. RUDENKO: Mr. President, this is Document Number C-26 and has already been submitted to the Tribunal. I will deal with it only in connection with the matter of propaganda. It is Exhibit USSR-477 in your document book, Mr. President, Document C-26.

[Turning to the defendant.] I will quote one excerpt, Defendant. These instructions say:

“Propaganda directed toward the dismemberment of the Soviet Union into single states is not to be used for the time being. In the various parts of the Soviet Union German propaganda must use that language which is most spoken. But this should not be done in such a way that the various propaganda texts might give the impression that it is intended to dismember the Soviet Union at an early date.”

Were you acquainted with these directives?

FRITZSCHE: I knew neither the document nor the contents of the directive which you have just read.

GEN. RUDENKO: Yes, but I hope you will not deny that this was the spirit in which the propaganda was carried on.

FRITZSCHE: No. As far as I could observe, the propaganda which was carried on in the Soviet Union had just the reverse tendency. It tried to educate the various nationalities, such as the Ukraine, White Russia, Baltic States, and so forth, for independence.

GEN. RUDENKO: Very well. I would like to ask you now: When did you meet the Defendant Rosenberg for the first time, and when did you get his information concerning the tasks of German propaganda in the East?

FRITZSCHE: I doubt whether before this Trial I ever spoke with Herr Rosenberg, but I do believe I met him socially. However, never in my life have I had an official conversation with him.

GEN. RUDENKO: Very well. You will be handed Document Number 1039-PS. This is Rosenberg's report on the preparatory work concerning matters connected with the eastern countries. This document has already been submitted to the Defendant Rosenberg and he did not deny it, but confirmed it.

I would like you to turn to the second quotation which is marked. In order to shorten this cross-examination, I will not read the whole quotation. This report states:

"Apart from these negotiations"—about which we spoke before—"I received the responsible representatives of the entire propaganda organization, namely Ministerial Director Fritzsche, Minister Schmidt, Reich Superintendent of Broadcasting Glasmeier, Dr. Grothe for the OKW, and others. Without going into details as to political objectives, I instructed the above-mentioned persons in confidence about the necessary attitude, with the request to tone down the whole terminology of the press on uniform lines, without issuing any statements.

"The schemes for dealing substantially with questions concerning the eastern countries, which were prepared a long time ago, have now been issued by my office and I have passed them on to the propaganda representatives."

Did Defendant Rosenberg correctly describe these events which occurred in 1941, before the attack against the Soviet Union?

FRITZSCHE: No. I do not recall ever having been received by Rosenberg. In any case I never received before 22 June, from Rosenberg or from any of his colleagues, any report about the planned attack on the Soviet Union.

On the other hand, and this perhaps may clarify matters, I do recall that a colleague of Rosenberg's frequently came to see me or my colleagues. I even recall his name; he was chief of a press group, Major Kranz, formerly an editor of the *Völkischer Beobachter*. This man frequently came to see me and my colleagues and transmitted certain wishes of Rosenberg's pertaining to press propaganda. But in any case this was not before 22 June.

GEN. RUDENKO: This means that as far as you are concerned what Rosenberg writes in his report is not true?

FRITZSCHE: Untrue would be saying too much. It may be that this information of which he talks refers to a later period of time. I cannot judge that, as I have not read the entire document. It may also be that Rosenberg, in this report, was not quite accurate when he mentions the reception of the responsible representatives of the entire propaganda organization.

GEN. RUDENKO: Very well. In this connection I would like to put two questions to you. First of all, I would like to refer to the

written testimony of Hans Voss, which is Document USSR-471, and which you already have. It is Excerpt Number 3 of Document USSR-471. Have you found it?

FRITZSCHE: Yes, I have found it.

GEN. RUDENKO: I quote:

"After the defeat of the German troops at Stalingrad and after the start of the general Soviet offensive on the whole Eastern Front, Goebbels and Fritzsche took great pains to shape German propaganda in such a way as to help Hitler very effectively in mastering the situation at the front. This propaganda was based on the hope that the Germans would succeed in holding out for a long time. There was an attempt to frighten the German population by disseminating calumnious reports of the brutal acts of the Russian soldiers and the intention of the Soviet Union to annihilate the German nation.

"In the last stage of the war the propaganda conducted by Goebbels and Fritzsche made one last attempt to serve Hitler and to organize resistance to Soviet troops."

Is that correct?

FRITZSCHE: It is not only incorrect, it is nonsense.

GEN. RUDENKO: You frequently used such terminology. Obviously it is a sign of a professional practice. All right, I do not intend to enter into polemics with you.

I would like you to take a look at your testimony of 12 September 1945. It is the third excerpt of the Document USSR-474. Have you found that passage? I will quote your explanations concerning this question.

FRITZSCHE: All of them are not my statements. What passage are you referring to, sir?

GEN. RUDENKO: I mean marked Excerpt Number 3, which begins with the words, "The military aggression against the Soviet Union."

FRITZSCHE: Yes.

GEN. RUDENKO: Please pay attention:

"Since we had a treaty with the Soviet Union the military attack on the Soviet Union was prepared by Germany in secret. Therefore, during the period of preparation for war against the Soviet Union, no propaganda was carried on. Accordingly, the German propaganda authorities did not begin active anti-Soviet propaganda until after the war started on the Eastern Front.

"It must be added that the main task to which Goebbels set the whole propaganda machinery was to justify Germany's expansionist policy toward the Soviet Union.

"From this point of view, as chief of the German press and radio, I organized a vast campaign of anti-Soviet propaganda, attempting to convince the public at large that the Soviet Union and not Germany was the guilty party in this war. I must, however, state that we had no documentary basis for accusing the Soviet Union of preparing an armed attack on Germany.

"In my radio talks I tried especially to instill fear of the horrors of Bolshevism in the hearts of the peoples of Europe and the German population. Thus I asserted that only Fascist Germany was the protective barrier for the European countries against Anglo-American 'plutocracy' and 'Red imperialism.'"

Do you admit this?

FRITZSCHE: Here again actual statements made by me have been distorted. If I may, I want to give you the factual basis briefly for the various points.

It is correct to say that I stated in Moscow that the war against the Soviet Union had not been prepared for by propaganda, because this war came very suddenly and as a surprise. Furthermore, it is correct to say that after the attack on the Soviet Union it was the main task of German propaganda to justify the necessity of this attack; therefore we had to emphasize again and again that we had merely forestalled a Soviet attack. Further, it is correct that I said that the next task for propaganda was to show that not Germany but Russia was guilty of this war, which amounts to practically the same thing. Unfortunately the most important argument which I quoted is omitted from this record, namely, that I and with me millions of Germans believed the official communiqués given out by the German Government because it would have seemed to us nonsensical and crazy if in the middle of a war which had not yet been decided in the West, we wantonly and willfully risked another war in the East.

I continue. It is also correct that the evidence given in the *White Book* published by the Foreign Office at the time was rather meager and it is furthermore correct to say that German propaganda wanted to make Europe afraid of Bolshevism. It is finally correct that German propaganda again and again emphasized the fact that Germany was the only bulwark against the Soviet world revolution.

GEN. RUDENKO: Very well. I would now like to draw your attention to Excerpt Number 4 of the same document, which is in

your possession, in connection with propaganda to keep alive the spirit of resistance in the German people, notwithstanding all evidence of Germany's obvious defeat. I would like to read this very short Excerpt Number 4 from the same document Number USSR-474. I quote:

"Beginning in 1943 I tried my best to assert through German radio propaganda that Germany was in possession of weapons which would shake the power of our enemies. For this I used invented data regarding the output of the German war industry which had been given me by the Reich Minister for Munitions, Speer."

Is that right?

FRITZSCHE: One part is wrong and the other part that is correct has been wrongly stated.

To begin with the latter part: It is correct that I received figures from the Ministry for Armaments and War Production which gave me great hopes for progress. I received, for instance, figures dealing with monthly aircraft production, figures dealing with new and especially effective fighter planes. In the meantime, through direct questioning of Speer himself, I have ascertained that the figures which I received were quite correct at the time and that the airplanes either were used wrongly, as, for instance, in the Ardennes offensive instead of for the protection of the home country, or that they could not be used because of the gasoline shortage. The first half however . . .

GEN. RUDENKO: You are going too much into details, Defendant Fritzsche. You are going into a lot of details which have already been dealt with here and which have nothing to do with you.

I would like to submit to you the testimony of Speer, who was interrogated by the Soviet prosecutor here in Nuremberg on 14 November 1945. I submit this document as USSR-492. I would like to read into the record only that part of the document which deals with the carrying out of propaganda during this particular period. I quote:

"In September 1944 I wrote a letter to Dr. Goebbels . . . In this letter I warned Goebbels that it was wrong to keep on giving out propaganda about new V-weapons, for in this way he would merely arouse vain hopes in the German people. This was secret propaganda which was carried out by Dr. Goebbels in order to inspire in the German people the hope of a favorable outcome of the war."

Is that correct?

FRITZSCHE: Only partially. It is a fact that Dr. Goebbels, more than a year before the use of the first V-weapon, himself made

propaganda with it. On the other hand, Speer in the meantime has stated in his testimony here that he now knows the actual source of the propaganda dealing with "miracle weapons," namely Standartenführer Schwarz van Berk. Finally, Dr. Goebbels in the last months of 1944, likewise tried to stifle this "miracle weapon" propaganda which he himself had once instigated.

GEN. RUDENKO: Now, I would like to remind you of the part you played in this propaganda. You propagandized these new weapons to instill in the hearts of the German people the hope of a successful resistance.

I submit to you Document USSR-496. You already have it. It is your radio speech of 1 July 1944.

THE PRESIDENT: General, are you going to finish very soon or shall we adjourn now?

GEN. RUDENKO: I believe we should adjourn now, Mr. President, because I will still need about half an hour.

[A recess was taken.]

GEN. RUDENKO: Well, Excerpt Number 6 from Document USSR-496 has been submitted to you. It is your speech, dated 1 July 1944. I am going to read it into the record:

"We Germans have been very reserved in our reports on the effect of the new weapons. We could afford this reserve, knowing that sometime or other Britain would break the silence with which she tried at first to gloss over the effect of the V-1. We were right about it. Reports from Britain during the last few days, and especially today, prove that the effects of the first thrusts with the new weapon are becoming all too obvious. It is completely beside the point for the British to complain now about the wave of hatred which is supposed to surge from Germany against the British Isles. In the fifth year of the war it is useless to talk about feelings, although much could be said about this."

Do you admit, Defendant Fritzsche, that by means of such propaganda you duped the German people and incited them to senseless resistance?

FRITZSCHE: On the contrary, in this case I spoke much more reservedly and much more modestly than, for instance, the German press did about the results of the V-1. For that matter the very next sentence following your quotation reads, "We can only repeat that for us the V-1 is the means with which we can break the enemy terror."

GEN. RUDENKO: Now I should like to remind you, Defendant Fritzsche, of your testimony of 12 September 1945 with regard to the activity of the Werewolf organization. This document is Exhibit USSR-474, Excerpt Number 5. Have you found it?

FRITZSCHE: Yes, I have found it.

GEN. RUDENKO: I am going to read it:

"At the end of February 1945 the State Secretary in the German Ministry of Propaganda, Dr. Naumann, sent on to me instructions from Goebbels to work out a plan for the organization of a secret broadcasting station. In reply to my question as to why this broadcasting station was needed, Naumann explained that the German Government had made the decision to transfer members of the NSDAP to an illegal secret organization called 'Werewolf.' Naumann also revealed that all these illegal Werewolf groups would be directed by means of this broadcasting station, which I was to establish."

As can be seen by your testimony you were opposed to the organization of this radio station and you spoke about it with Goebbels. In spite of this, the station was created, and the former chief of the Reich Propaganda Office, Schlesinger, was given the task of directing the broadcasts. Is that correct?

FRITZSCHE: No. Two things have been mixed up here. Firstly, the plan described in the paragraph which you have read for the creation of a Werewolf broadcasting station was a plan for a mobile station and that mobile station was not built. On the other hand—incidentally, it happened during my absence—on 1 April 1945, by direct order from Dr. Goebbels, the so-called "Old German Broadcasting Station" was opened as a Werewolf station.

GEN. RUDENKO: Very well. I do not want to argue with you about it and I should like to submit to you your own speech broadcast on 7 April 1945. It is the same Document USSR-496, Excerpt Number 7. Have you found it?

FRITZSCHE: Yes.

GEN. RUDENKO: At that time you broadcasted as follows:

"However, as a result of superiority in manpower and material reserves, the enemy has now penetrated deep into German territory, and at this moment is about to carry out his program of extermination directed against us."

I am skipping a few lines:

"Let no one be surprised if this desire of strong hearts to avenge oppressed human beings does not even need a short respite for temporary recovery, but leaps suddenly and unexpectedly into flame and becomes active. Let no one be

surprised if here and there in unoccupied areas civilians take part in the fight or even if, after the occupation has been carried out, the fight is continued by civilians, that is to say, if without preparation and without organization, there comes into being, springing from the pure instinct of self-preservation, that phenomenon which we call the 'Werewolf.'

Well, what can you tell us now?

FRITZSCHE: Although this quotation also has been torn from its context, I recognize it very well. Unfortunately the passage is missing in which I spoke of right and said, "Right is a sensitive concept which has its roots in tradition and ethical consciousness." At present . . .

GEN. RUDENKO: Excuse me if I interrupt you, Defendant. I did not ask you for such detailed explanations. I just wanted to determine the fact that you not only explained what the organization was, but also did your utmost to foster the Werewolf organization.

Is that correct?

FRITZSCHE: That is absolutely incorrect. This is certainly not propaganda for the Werewolf; it is in apology for cases of Werewolf activity.

GEN. RUDENKO: Very well. Let us drop that subject. I should like to ask you, do you know who the head of the Werewolf organization was?

FRITZSCHE: That has already been stated here. At the very head of it was Bormann. Under him there was a Higher SS Leader whose name I tried in vain to remember during my interrogations in Moscow. I knew one of his associates, however, and that was Gunter d'Alquen.

GEN. RUDENKO: Very well. Before putting the last few questions to you, I should like to ask you, is it not a fact that Rosenberg and Streicher had great influence on German propaganda?

FRITZSCHE: Their influence was negligible. Streicher had no influence at all on official German propaganda and Rosenberg only to an extent which was not noticeable to me.

GEN. RUDENKO: All right. I still have a few questions to put to you. You told the High Tribunal that had you known Hitler's decrees for the murdering of people you would never have followed Hitler. Did I understand you correctly?

FRITZSCHE: You have understood me perfectly correctly.

GEN. RUDENKO: Now, in other words, I understand you to say that you would have gone against Hitler?

FRITZSCHE: It is hard to say what I would have done. Of course, this is a question about which I have now thought a great deal.

GEN. RUDENKO: I should like to ask you, if, as you stated here to the High Tribunal, at the beginning of 1942 you received information that in one of the regions in the Ukraine, which was at the time occupied by the Germans, an extermination of the Jews and the Ukraine intelligentsia was being prepared, simply because they were Jews and members of the Ukrainian intelligentsia? Did you receive such information? Is that correct?

FRITZSCHE: That is correct.

GEN. RUDENKO: That was in the beginning. In May of 1942 you were with the 6th Army, and in the 6th Army you learned about the existence of an order to shoot the Soviet commissars; is that right?

FRITZSCHE: Yes.

GEN. RUDENKO: You considered that this bloody order should not be applied? Is that right?

FRITZSCHE: That is right.

GEN. RUDENKO: You knew that this order emanated from Hitler?

FRITZSCHE: Yes, I could imagine that.

GEN. RUDENKO: That is to say, in 1942 you knew already that Hitler's order to murder existed and yet you followed him?

FRITZSCHE: You are comparing two things which are not comparable. There is quite a difference, not treating commissars as prisoners of war and giving an order for the killing of 5 million Jews.

GEN. RUDENKO: Then, if I understand you correctly, the fact that you did not go against Hitler, meant that you considered such an order to be permissible in the conduct of the war by the German Army?

FRITZSCHE: No; I considered it was an impossible order; and that is why I opposed it, and not only passively as others did.

GEN. RUDENKO: But you continued to support Hitler?

FRITZSCHE: Yes.

GEN. RUDENKO: Here is the last question. Tell me, during the war, did you ever concern yourself with the question of preparations for biological warfare?

FRITZSCHE: Never.

GEN. RUDENKO: Did you ever hear the name of a certain Major Von Passavant?

FRITZSCHE: Yes, I know that name.

GEN. RUDENKO: He was the representative of the OKW in the Ministry of Propaganda, was he not?

FRITZSCHE: No, he was not. He was a radio expert in the Propaganda Department of the OKW.

GEN. RUDENKO: A copy of a letter of 19 October 1944 will be submitted to you. This letter bears your facsimile signature, and it is directed to Major Von Passavant of the OKW. This is a short document, and I am going to read it to you:

"To the Chief of Broadcasting, Major Von Passavant, OKW:

"A listener, factory owner Gustav Otto, Reichenberg, has sent me the enclosed sketch with the proposal to carry out biological warfare. I am submitting this to you with the request that you forward it to the proper office.

"Heil Hitler. Fritzsche."

Do you remember this document?

FRITZSCHE: Of course I do not remember it. At the same time I want to state that I have no doubt that it is genuine.

GEN. RUDENKO: Very well. I should like to put the last question to you: This shows that you were in favor of the planning and the carrying through by Germany of biological warfare, is that correct?

I have finished, Mr. President.

FRITZSCHE: But I must have an opportunity to answer the last question. I wish to state that I was by no means in favor of biological warfare, but the situation was merely this: Every day piles of letters came in from listeners and these were passed on by one of the departments to the office competent to deal with the matter concerned and the accompanying letter, which consisted of two or three lines, was submitted to me for signature. As a rule I did not read the contents of the letters.

THE PRESIDENT: Dr. Fritz, do you want to re-examine?

DR. FRITZ: Herr Fritzsche, just now during General Rudenko's cross-examination you were asked about the radio speech of 2 May 1940 in which you spoke about your journey to Norway. Can you tell me more exactly when you went on that trip?

FRITZSCHE: I am afraid I cannot tell you the date exactly, but if I am not mistaken it was at the end of April.

DR. FRITZ: The official report of the Norwegian Government on war damage after Norway's occupation by the Germans was put to you. Here it is said that the fighting which had caused this damage could not have taken place until after you had already completed your journey. Is that true?

FRITZSCHE: That is quite possible, but I should like to say this: In the extract which the Russian prosecutor has read without quoting the beginning, I described precisely what I had seen in clearly stated places; Lillehammer and Godenthal are a few names which occur to me now. To compare these statements now with the statements made by the Norwegian Government regarding the total damage is nothing less than the attempt to measure a liquid with a yard measure or vice versa.

DR. FRITZ: I have one other question in this connection. Was this journey of yours carried out before the British landing in Norway or afterward?

FRITZSCHE: I myself had an opportunity to watch a fight with British troops. I think it was just south of a place called Ottar in the Buldrenthal.

DR. FRITZ: Mr. President, General Rudenko, during his cross-examination, submitted three interrogation records. One was from Voss, USSR-471, one from Schörner, USSR-472, and one from Stahel, USSR-473. In the meantime I have looked through these three records and I should like to ask the High Tribunal also to compare these three records. I have ascertained that in these three records, of the statements of three different persons, parts of the answers are repeated; and they tally, word for word. It says, for example . . .

THE PRESIDENT: You are not getting this from the witness; you are making an argument to us, and you must do that at some other time.

DR. FRITZ: I just wanted to make an application, Mr. President. If these three records are used for the findings, then I wish to make an application that at least one of these persons who were interrogated be brought here in person for the purpose of cross-examination.

THE PRESIDENT: Were you meaning that you should see, or that we should examine, the whole of those three affidavits, or were you meaning that you wanted one of the people who made the affidavits to come here in order to give evidence and be cross-examined? Which do you mean?

DR. FRITZ: The latter, Mr. President. I should merely like to request that all three be summoned.

FRITZSCHE: All three. I can only ask to have all three called.

THE PRESIDENT: The Tribunal will consider your application.

DR. FRITZ: Apart from this, Mr. President, I do not wish to carry out any further redirect examination.

THE PRESIDENT: There is one thing, Defendant. You referred to the Commissar Decree, or order, and you spoke of it as though it were an order not to treat commissars as prisoners of war. That was not the order, was it? The order was to kill them.

FRITZSCHE: The order which I got to know about in the 6th Army was an order saying that commissars who had been captured should be shot.

THE PRESIDENT: Yes. That is a very different thing from not being treated as prisoners of war. The answer you gave was that you imagined the Commissar Order came from Hitler, but it is a very different thing, an order not to treat commissars as ordinary prisoners of war and to kill 5 million Jews. That was not a fair comparison at all, was it?

FRITZSCHE: In this case I must admit that my way of expressing myself with reference to these commissars was not correct.

THE PRESIDENT: There is one other thing I want to ask you. In October 1939 this untruthful statement about the *Athenia* was published in a German newspaper. That is right, is it not?

FRITZSCHE: In October 1939? During the whole of September and October untruthful statements about the *Athenia* were made in the German press as well as on the German radio.

THE PRESIDENT: Yes. But on the 23d of October 1939 a particularly untruthful statement attributing the sinking of the *Athenia* to Mr. Winston Churchill was made in a German newspaper. You told us about it.

FRITZSCHE: Yes.

THE PRESIDENT: And you continued to broadcast referring to those alleged facts for some time, did you not?

FRITZSCHE: Of course, because at the time I was still under the impression that they were true and my...

THE PRESIDENT: That is what I wanted to ask you about. You had a naval liaison officer in your office?

FRITZSCHE: Yes.

THE PRESIDENT: What inquiries did you make?

FRITZSCHE: This naval officer was not actually the liaison officer between us and the High Command of the Navy. He was censorship officer for the entire Armed Forces. Nevertheless I

naturally called on his services in connection with naval matters. And several times I ordered him, or rather, requested him to find out from the High Command of the Navy how the investigation of the *Athenia* case stood. The answer was always the same: "The position still is that no German submarine was near the place of the catastrophe."

THE PRESIDENT: And are you saying that that liaison officer of the Navy told you that after the 23d of October 1939?

FRITZSCHE: Yes.

THE PRESIDENT: Did he continue to tell you that?

FRITZSCHE: Yes.

THE PRESIDENT: That is all. He may return to the dock.

Yes, Dr. Fritz?

DR. FRITZ: Now, with the permission of the Tribunal, I should like to call the witness Herr Von Schirmeister.

[The witness Von Schirmeister took the stand.]

THE PRESIDENT: Will you state your full name, please?

MORITZ VON SCHIRMEISTER (Witness): Moritz von Schirmeister.

THE PRESIDENT: Will you repeat this oath after me: I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

DR. FRITZ: Witness, before beginning your examination, I should like to ask you to make your answers quite general and as brief as possible.

Will you please give the Tribunal very briefly some particulars of your career, so that the Tribunal may know more about you.

VON SCHIRMEISTER: I come from a family of officers and civil servants; studied theology for three terms; 10 years as a banking official, 5 of them in South America; then editor until my appointment in Berlin; on 1 October 1931 I became a member of the Party; SS Hauptsturmführer in the Allgemeine SS; during the war four times a soldier; the last time from 31 July 1944 on; on 22 September 1944 prisoner of war in British hands; since then I have been in Great Britain.

DR. FRITZ: When I discussed the subject of your examination with you a few days ago, you told me that your former positive attitude toward National Socialism would not prevent you in any way from making truthful statements here, is that true?

VON SCHIRMEISTER: I have already told you that I believed in this cause, that I have sacrificed everything to it, that I have lost everything through it. It was very bitter for me. But today I know that I have served a bad cause. I have freed myself entirely of it. In my last camp in England I was permitted to assist in the re-education of my comrades. There I was allowed to edit the camp newspaper. And if I only could, then I would help today to rebuild a democratic Germany.

DR. FRITZ: When did you become acquainted with the Defendant Fritzsche?

VON SCHIRMEISTER: On 1 July 1938.

DR. FRITZ: What were you at the time? What position were you to occupy?

VON SCHIRMEISTER: I was an editor in Braunschweig and I was called to the Ministry of Propaganda in order to become Dr. Goebbels' personal press expert.

DR. FRITZ: What position did you actually occupy in the Ministry of Propaganda?

VON SCHIRMEISTER: Up to 1 July 1943 I was Dr. Goebbels' personal press expert; then I was personal expert to State Secretary Dr. Gutterer until 1 April 1944; then I went with him for 3 months to the UFI which was the controlling company of all film companies. Then, on 31 July 1944, I went to the front.

DR. FRITZ: Did you have daily contact with Dr. Goebbels?

VON SCHIRMEISTER: Yes, since the outbreak of the war. Let me describe briefly what my main activities were.

DR. FRITZ: Very briefly, please.

VON SCHIRMEISTER: During the war I had to look through all the news and propaganda material coming in from enemy broadcasting stations and regularly submit extracts from it to Goebbels. These extracts formed the basis for Dr. Goebbels' propaganda instructions which he himself issued every morning. In the afternoon and evening I had to telephone them to the press section and radio section. So that during the war, except when my deputies took my place, I was with Dr. Goebbels in his apartment, I took my meals with him, slept in his house, accompanied him on journeys, and so on.

DR. FRITZ: What position did Fritzsche occupy at the time?

VON SCHIRMEISTER: Herr Fritzsche in those days was the deputy chief in the department Home Press.

DR. FRITZ: Will you please describe the nature and importance of Fritzsche's position in the Propaganda Ministry also during the period which followed. Very briefly, please.

VON SCHIRMEISTER: I was to get acquainted with the work of the department Home Press. Conditions there were as bad as they could be. The chief, Herr Berndt, adopted undisguised table-thumping tactics. He went about barking out commands and sacking editors *en masse*.

In ability and knowledge the officials in charge were inferior to the average editor. The only steadying influence was Herr Fritzsche; he was the only expert. He knew the needs and requirements of the press. On the one hand he had to mend the china which Herr Berndt was constantly smashing and on the other hand he tried to replace inefficient officials in the organization with better ones.

DR. FRITZ: Would it be correct to say, therefore, that Defendant Fritzsche was not appointed as an exponent of the Party, but as an expert?

VON SCHIRMEISTER: Only as an expert. The extremist Party men in the Ministry did not give Fritzsche his full due. But as an expert he was then and later the good spirit of the press.

DR. FRITZ: Was Fritzsche one of those collaborators in the Ministry who had regular conferences with Goebbels?

VON SCHIRMEISTER: These regular conferences had not yet begun to be held in those days, and Fritzsche did not partake in them in any case.

DR. FRITZ: So that he was not consulted until he became a department chief?

VON SCHIRMEISTER: Yes; only as far as such conferences were taking place, but actually only since the outbreak of war.

DR. FRITZ: In what way did Dr. Goebbels confer with his associates?

VON SCHIRMEISTER: After the war broke out there were daily conferences at 1100 hours, which were presided over by Dr. Goebbels personally and at which he gave all necessary propaganda instructions.

DR. FRITZ: How many people attended these 11 o'clock meetings?

VON SCHIRMEISTER: At the beginning, that is to say, up to the beginning of the Russian campaign, about 20 people. Later the circle grew to about 50 people.

DR. FRITZ: Were there discussions during these conferences or was it more or less the giving out of orders?

VON SCHIRMEISTER: There was no discussion during these conferences. First of all, the liaison officer from the OKW would give a survey of the military situation and then Dr. Goebbels would give his instructions regarding propaganda, mostly for the press, the radio, and the newsreels.

DR. FRITZ: Who presided over the conferences when Dr. Goebbels was not present?

VON SCHIRMEISTER: Normally the State Secretary.

DR. FRITZ: And who presided when the State Secretary was not there either?

VON SCHIRMEISTER: Usually Herr Fritzsche, sometimes also the head of the foreign press department or the foreign department, but mostly Herr Fritzsche.

DR. FRITZ: Did Fritzsche in these cases give the daily propaganda instructions on his own initiative or how was that done?

VON SCHIRMEISTER: No; if the Minister was not in Berlin, he was kept informed about news material coming in from abroad. He would then give the instructions to me or to one of my deputies in the same way as he did during the conferences. I had to pass on these instructions by telephone. In Berlin they were taken down by stenographers and then read out during the conference *verbatim* as instructions coming from the Minister. By the way, this must be seen by the minutes of the meetings. They were always called "Instructions from the Minister."

DR. FRITZ: If Fritzsche used written instructions such as you have described, given by Dr. Goebbels, did he not try to clear up questions which Goebbels had not dealt with, by bringing them up for discussion?

VON SCHIRMEISTER: When Dr. Goebbels was farther away from Berlin, it might happen that the latest news did not reach him in time. In these cases Herr Fritzsche would bring things up for discussion, consider the pros and cons and then give instructions on his own initiative. That was then put down in writing; the Minister read it afterward and he either approved it or altered it.

DR. FRITZ: But then, surely apart from the big conferences with 30 or 50 people present at which Goebbels gave his instructions there must have been more confidential conferences as well.

VON SCHIRMEISTER: In the course of the morning, naturally, individual department chiefs also came for official discussions with the Minister.

DR. FRITZ: Was Fritzsche also called to these more confidential conferences?

VON SCHIRMEISTER: Generally, no. The Minister used the conferences at which all departments were represented to summarize whatever he had to say for the press, radio, and newsreels. The heads of those departments whose special functions were not of interest to the others, came for individual conferences.

DR. FRITZ: How often was Herr Fritzsche consulted as compared with, say, the state secretaries—Hahnke, Gutterer, and Dr. Nau-
mann?

VON SCHIRMEISTER: The state secretaries could always be present during these individual conferences and so could the personal advisers who were always there. Herr Fritzsche was very rarely present at these individual conferences.

DR. FRITZ: What was the position of the 12 department heads of the Ministry of Propaganda, one of whom was the Defendant Fritzsche?

VON SCHIRMEISTER: These department heads can be classified into experts on the one side, such as, for instance, the head of the budget department, Dr. Ott, and confirmed Party men on the other side as, for instance, Herr Berndt. Officially they had not a particle of the authority which was normally exercised by a department head in a ministry. It was generally known that the Minister was using them as tools and that when he did not need them any more he would throw them out. That did not apply to the department heads only. I remember the unworthy manner in which he threw out State Secretary Gutterer when he had enough of him.

DR. FRITZ: The Indictment accuses Fritzsche of having made of Germany's news agencies, radio, and press an instrument that played an important part in the hands of the so-called conspirators in carrying out their plans. Was Fritzsche responsible for the organization of the press in the National Socialist State and what can you say to this charge?

VON SCHIRMEISTER: When Herr Fritzsche entered the Ministry, this press department had been set up and organized for some time. Moreover, I can also say that even Dr. Goebbels himself cannot be regarded as belonging to this circle of conspirators as defined by the Indictment; for, after all, he did not want to drive us into war, but always advocated the conquest of countries without bloodshed.

DR. FRITZ: So that the organization was already set up when Fritzsche took over the department German Press in the winter of 1938-39?

VON SCHIRMEISTER: Yes, already completely organized.

DR. FRITZ: As the head of that department was Fritzsche independent? If not, who was his superior?

VON SCHIRMEISTER: Unfortunately Fritzsche was not only subordinate as department chief to Dr. Goebbels, but he also stood between two fires. On the other side there was the Reich Press Chief, Dr. Dietrich, and the entire German press knew about this

discord between the two. Although Reich Press Chief, as State Secretary, was a staff member of the Ministry of Propaganda, nevertheless he demanded the right to be able to give orders independently in his capacity of Reich Press Chief. If, therefore, the Minister and the Reich Press Chief did not agree on a certain point, then it was the unfortunate chief of the department German Press who bore the brunt of this.

DR. FRITZ: In what way was Fritzsche active in the press organization? Did he tighten the fetters or did he try to loosen them?

VON SCHIRMEISTER: I have already said that Herr Fritzsche was the only real expert of any caliber who worked in the press department. He knew the needs, the worries, and the requirements of the press. He knew that an editor could work only if you give him a certain amount of freedom, and thus always and at every opportunity he fought to have the fetters loosened. He did much more than was apparent to the outside world, for the Minister would make such and such a decision and the outside world would come to know only what the Minister wanted.

THE PRESIDENT: Do you think he has answered the question?

DR. FRITZ: Did Dr. Goebbels have any objections to the way the press worked? Was it not aggressive enough for him? Please be very brief.

VON SCHIRMEISTER: No, it was not aggressive and not obdurate enough for him.

DR. FRITZ: And how did Fritzsche react to such demands both with reference to individual journalists and with reference to the newspapers as a whole?

VON SCHIRMEISTER: Again and again, at every opportunity, both during the conferences presided over by the Minister and at private meetings with the Minister, he spoke on behalf of the press and the journalists and tried to represent their point of view to the Minister.

DR. FRITZ: Can you mention a few names of journalists or papers whom Fritzsche tried to protect in the manner described?

THE PRESIDENT: Dr. Fritz, why should he give the names of individual journalists and papers? Isn't it too detailed to go into that?

DR. FRITZ: Very well; but Mr. President, may I, in that case, at least offer an affidavit in connection with this question as Document Number Fritzsche-5. It is in my Document Book Number 2 on Page 22. It comes from the editor of the *Frankfurter Zeitung*, Dr. Wendelin Hecht, and I should like to quote it very briefly:

"I herewith make the following affidavit for submission to the International Military Tribunal in Nuremberg:

"1. It is true that the Defendant Hans Fritzsche also helped to protect the *Frankfurter Zeitung* for several years against a ban by withholding copies of the *Frankfurter Zeitung* from the Führer's headquarters.

"2. In the numerous attacks directed against the *Frankfurter Zeitung* because of its political attitude the Defendant Hans Fritzsche repeatedly intervened in favor of the continued publication of the *Frankfurter Zeitung*.

"Leutkirch, 6 March 1946. Dr. Wendelin Hecht."

What other influential persons, apart from Dr. Goebbels, were there in the Ministry of Propaganda?

VON SCHIRMEISTER: After State Secretary Hahnke's departure there was only one man in the Ministry of Propaganda who had any real influence on the Minister, only one man with whom Dr. Goebbels had some personal relations, and that was his first personal adviser, Dr. Naumann, who later became his state secretary.

DR. FRITZ: Did Fritzsche come to you frequently to learn more about the Minister's views because the Minister did not inform Defendant Fritzsche?

VON SCHIRMEISTER: Very often, because Herr Fritzsche knew that I also had many private conversations with the Minister and he always complained that he was left in suspense and all at sea, and he asked me if I could not tell him the Minister's view about this or that matter. I did succeed in helping him by occasionally arranging for him to be invited by Dr. Goebbels to private meetings in which I spoke openly about Herr Fritzsche's needs.

DR. FRITZ: Did Goebbels keep the radio strictly under his own control?

VON SCHIRMEISTER: During the war the radio was for Dr. Goebbels the most important instrument of propaganda. He did not keep such a strict watch on any department as he did on the radio department. At meetings over which he presided he personally decided the most minute details of the artistic program...

DR. FRITZ: That is enough, Witness. Was Fritzsche really the leading man of German broadcasting, as he appeared to the outside world?

VON SCHIRMEISTER: By no means. The leading man was Dr. Goebbels himself. Apart from that, Fritzsche here again was between two stools, because on the other side demands came in from the Foreign Office with reference to foreign broadcasts.

DR. FRITZ: Was Fritzsche in his radio speeches perhaps too half-hearted for Dr. Goebbels?

VON SCHIRMEISTER: I myself, by order of the Minister, repeatedly had to reprimand Fritzsche, because the former claimed that his broadcasts were much too weak.

DR. FRITZ: Did Goebbels also praise him? And if so in what manner?

VON SCHIRMEISTER: If, as was often the case, the Minister did praise Fritzsche . . .

THE PRESIDENT: We haven't any interest in whether Goebbels praised him.

DR. FRITZ: Then another question: Did Defendant Fritzsche ever contradict the Minister?

VON SCHIRMEISTER: Herr Fritzsche was one of the few people in the Ministry of Propaganda who did contradict the Minister, both during conferences and in his apartment. He was always calm and determined and often it had a certain effect.

DR. FRITZ: Mr. President, may I have your permission to draw your attention at this point to a document, an affidavit by Scharping, Document Number Fritzsche-2, which has already been mentioned frequently. It is at the end of Page 7 and the beginning of Page 8 in my Document Book Number 2. Might I perhaps quote one short sentence: "At the so-called ministerial conferences it was Fritzsche alone who contradicted Goebbels on political questions."

Witness, who was responsible for the definitely false or exaggerated news in the German press during the Sudeten crisis?

VON SCHIRMEISTER: That was Alfred Ingemar Berndt, the head of the department. At that time he spent whole nights pouring over General Staff maps, directories, and lists of names, using them to fabricate atrocity reports from the Sudetenland. Herr Fritzsche watched this with anxiety. He came to me once and asked me, "What are we drifting into? Are we not drifting into war? If only we knew what they really want at the top and what is behind it all."

DR. FRITZ: And then another question on the same subject. Did Goebbels, in connection with any military or political actions, which were being carried out or were to be carried out, ever consult beforehand with the Defendant Fritzsche?

VON SCHIRMEISTER: Not only did he not consult with Herr Fritzsche, but with nobody at all. The Minister never had any such consultations.

DR. FRITZ: Fritzsche asserts that he did not hear of Dr. Goebbels' instigation of the anti-Semitic excesses in November 1938 until much later, a remark made by Dr. Goebbels himself. That does not sound very credible, because, after all, Defendant Fritzsche was a close associate of Dr. Goebbels. Can you give us an explanation?

VON SCHIRMEISTER: In 1938 certainly none of us in the Ministry realized that Dr. Goebbels was the instigator. During the night in question Dr. Goebbels was not in Berlin. As far as I remember, just before that he had been to see the Führer and he was still in southern Germany. The conversation which you have just mentioned did not take place until the middle of the war. It took place at Lanke, where the Minister had a house and it was on an occasion when Herr Fritzsche had also been invited. Someone put the direct question to the Minister as to the cause of these excesses of November 1938. Thereupon Dr. Goebbels said that the National Socialist economic leadership had come to the conclusion that the elimination of Jewry from Germany's economy could not be carried out further . . .

DR. FRITZ: Witness, excuse me, that is enough. We have heard about it already today. Did Fritzsche later on—I believe it is supposed to have been in June 1944—talk to you about his general attitude toward the Jewish problem?

VON SCHIRMEISTER: In May or June 1944 I talked to Fritzsche in his apartment about the fact that on the day of these outrages he had said to me, "Schirmeister, can one participate in this sort of thing and still be a decent human being?" And then Herr Fritzsche said to me, "You know, I have really always been an anti-Semitic, but only in the sense that some of the Jews themselves also were." And he mentioned a Jewish newspaper, I believe the *C. V. Zeitung* . . .

DR. FRITZ: That is enough, Witness. Then how do you explain Fritzsche's anti-Semitic statements in various of his radio speeches?

VON SCHIRMEISTER: They had been ordered by the Minister. We had seen from the British press that a certain anti-Semitic current in Britain was growing, but a law in England stopped this from appearing in the British press. Now the Minister tried to find a common factor against which our propaganda abroad could be directed. This common factor was the Jew.

To give support to the foreign propaganda by the Reich, Herr Fritzsche received orders that in Germany, too, he should touch upon this subject in some of his broadcasts.

THE PRESIDENT: How long do you think you will be in concluding the case of the Defendant Fritzsche?

DR. FRITZ: I think three-quarters of an hour at the most, Mr. President.

THE PRESIDENT: Well then, after that the Tribunal will continue the case of the Defendant Bormann until 1 o'clock tomorrow.

[The Tribunal adjourned until 29 June 1946 at 1000 hours.]

ONE HUNDRED AND SIXTY-SEVENTH DAY

Saturday, 29 June 1946

Morning Session

THE PRESIDENT: I will deal with the supplementary applications for documents.

The first application on this list was on behalf of the Defendant Von Neurath, and that has been dealt with.

The second was on behalf of the Defendant Streicher. That was withdrawn.

The third was on behalf of the Defendant Dönitz for an affidavit of former Fleet Judge Jäckel. That application is granted.

The next two, 4 and 5, were on behalf of the Defendant Von Neurath. Those have been withdrawn.

The next three, 6, 7, and 8, on behalf of the Defendant Rosenberg, are denied.

The next, on behalf of the Defendant Von Papen, have all been dealt with during the presentation of the defense on behalf of Von Papen.

The next two, on behalf of the Defendant Bormann, are granted.

The last three, 12, 13, and 14, on behalf of the Defendant Göring, are subject to the possibility of agreement being reached upon the question of whether affidavits are to be presented or witnesses called, and therefore that application is postponed.

That is all.

SIR DAVID MAXWELL-FYFE: My Lord, before the Tribunal goes on with the business of the day, I should like to inform the Tribunal of the results of my inquiries as to outstanding witnesses and perhaps these could be supplemented by any of the learned counsel who can.

My Lord, as far as I can see, there are the witnesses whom Your Lordship has just mentioned of the Defendant Göring, dealing with the question of Katyn.

My Lord, the next witnesses that were outstanding were three that the Tribunal allowed to be called for cross-examination if desired in respect to the case of the Defendant Kaltenbrunner. I have just had a word with Dr. Kauffmann, and he says that he will

not require the witnesses Tiefenbacher, Steinbauer, and Strupp for cross-examination.

As far as my information goes, the next is Admiral Böhm in the case of the Defendant Raeder.

THE PRESIDENT: Before you get to that, Sir David, on the list that I have there was a witness called Strupp for Kaltenbrunner.

SIR DAVID MAXWELL-FYFE: Yes, My Lord, there are three, Tiefenbacher, Steinbauer, and Strupp. Dr. Kauffmann tells me he does not want these.

THE PRESIDENT: Very well. Then you were speaking about the Defendant Raeder.

SIR DAVID MAXWELL-FYFE: My Lord, there is the question of Admiral Böhm. Dr. Siemers was going to let the Prosecution see an affidavit, and I have not seen it yet; but, My Lord, I do not anticipate that the Prosecution will require that witness unless the affidavit is in very different form from what I expect.

My Lord, the only other witnesses that I know about are the three for which application was made by Dr. Fritz yesterday in the present case. The Tribunal is considering that.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: My Lord, that, as far as I can see, is the full extent of the outstanding witnesses, unless I have missed some.

THE PRESIDENT: Was there an application for witnesses from the Defendant Bormann on the 26th of June?

SIR DAVID MAXWELL-FYFE: Well, I asked Bergold this morning. He has only got one witness that he is calling, he told me, who unfortunately is not here today.

THE PRESIDENT: Well, I am told he has just now arrived.

SIR DAVID MAXWELL-FYFE: My Lord, Your Lordship's information is later than mine.

THE PRESIDENT: It has only this moment come through.

But so far as the others are concerned, there is only the one that Dr. Bergold wants to call now?

SIR DAVID MAXWELL-FYFE: So Dr. Bergold informed me this morning.

DR. BERGOLD: May it please the Court, only one witness has arrived. But I have put in several more requests which have not been decided on, and I cannot say whether these witnesses will ever arrive or whether they can be found. The Bormann case is characterized by the fact that not only the defendant cannot be found but

almost all the witnesses cannot be found either. In the course of today's proceedings on the Bormann case I should like to put a special application before the High Tribunal which I do not wish to do just now.

THE PRESIDENT: One moment. Will you tell us exactly which witnesses you are referring to?

In your letter of the 29th of June you withdraw your application for Fräulein Christians.

DR. BERGOLD: Yes, Mr. President.

THE PRESIDENT: Dr. Klöpfer is the witness who just arrived in Nuremberg.

DR. BERGOLD: Yes. Then there are the witnesses Kupfer and Rattenhuber who are still not here and also the witness Christians.

THE PRESIDENT: Well, Helmut Friedrich has not been located?

DR. BERGOLD: No, he has not been found.

THE PRESIDENT: Are you wanting to call Fräulein Christians?

DR. BERGOLD: She has not yet arrived either. She was at Camp Oberursel. She received leave and while on leave disappeared—obviously she has fled.

THE PRESIDENT: Have you got your application of 26 June or did you make an application of 26 June?

DR. BERGOLD: Yes, I did make an application.

THE PRESIDENT: Whom did you ask for then?

DR. BERGOLD: Just a minute, I have to consult my secretary.

SIR DAVID MAXWELL-FYFE: Fräulein Christians and Dr. Helmut Friedrich.

THE PRESIDENT: Well, Dr. Klöpfer and Friedrich.

SIR DAVID MAXWELL-FYFE: Yes, and Fräulein Christians, My Lord.

DR. BERGOLD: On 26 June I applied for the witnesses Falkenhorst, Rattenhuber, and Kempka. I could dispense with Falkenhorst if I might have Dr. Klöpfer instead.

THE PRESIDENT: Well, Dr. Klöpfer is the only one who has arrived, as I understand it.

DR. BERGOLD: Yes, the only one who has arrived, Mr. President.

THE PRESIDENT: What the Tribunal wants to know is how many you want to call now, and with reference to the others you had better withdraw them if you cannot find them.

DR. BERGOLD: Very well, Your Lordship, I wanted to put in an application for postponement. The witness Dr. Klöpfer has only

just arrived. Up to now I have not had a chance to talk to him and I consider it unjust for him to have to testify here for the first time. Moreover, he is not prepared, he does not know the documents which have been presented by the Prosecution, and I myself do not know whether he has any knowledge about the things on which I want to question him. Therefore, I should like to apply for the proceedings in the case of Bormann to be postponed until 10 o'clock on Monday to give me the opportunity to hear my one chief witness and to discuss the case with him. I do not even know whether I want to have the witness interrogated for he may possibly make statements that are quite irrelevant. It is not my fault that I have not heard him until now. I applied many months ago to have him brought here and I would not have found him even today if at the last moment I had not had the very kind assistance of the American Prosecution. I believe—I have also spoken to Sir Maxwell-Fyfe—a postponement until Monday at 10 o'clock would be quite proper for my case in order to give me at least time to prepare; if not—my defendant has not been here and my witnesses have not been here and I have not been able to prepare anything.

THE PRESIDENT: Well, Dr. Bergold, you have had many months in which to prepare your case and the Tribunal has put the matter back for you already for a very long time and this witness is now here. You can see him immediately and the Tribunal thinks you ought to go on. You must have known that the case would come on, in the same way every other case has come on, in its proper place, subject to the license which has been allowed to you to have your case put back to the end and all your applications for witnesses and documents put back to the very latest possible moment; and the witness is here and we still have some time to deal with the witnesses for Fritzsche and documents.

The Tribunal thinks in those circumstances you ought to go on.

DR. BERGOLD: Mr. President, it is quite correct I have had months at my disposal; but if I can obtain no witnesses and no information—I ask the Tribunal to put themselves in my place. What is the use to me of waiting many months in vain, months during which I could do nothing. The witnesses were not here, nobody could tell me where the witness Klöpfer could be found. He was only found at the very last moment. I cannot discuss the entire case with him in 15 minutes. I am just asking for a very short postponement until Monday morning. The Tribunal will lose only a very few hours through that. It is not my fault that I have been assigned such an unusual defendant, one who is not present.

THE PRESIDENT: Dr. Bergold, the only thing you propose to prove by this witness is the alleged fact that Bormann is dead and

any evidence he can give about that. That is what the application says.

DR. BERGOLD: No, may it please the Court, that is a mistake. The witness Klöpfer cannot testify as to that. He can only give his opinion as to the rest of the Indictment, namely whether Bormann is guilty or not. Only the witnesses Christians, Lueger, and Rattenhuber can give evidence as to the death of the Defendant Bormann. But the witness Klöpfer can only testify concerning the Indictment itself.

THE PRESIDENT: Where is the application for Klöpfer? Where is your application?

DR. BERGOLD: It is my application of 26 May.

THE PRESIDENT: Let me see it. Have you got it there? Dr. Bergold, do you not have anything else at all in the way of documents or evidence that you can continue with without calling this witness Klöpfer?

DR. BERGOLD: My Lord, what I have is so small and meager that I myself do not know whether it is relevant until I have questioned the witness. Up to this point I have been dependent on pure supposition. I have not been able to receive or obtain any effective data. They are all legal constructions which can be made untenable by one word from the witness.

MR. THOMAS J. DODD (Executive Trial Counsel for the United States): Mr. President, I have an objection to any postponement for this case. As the Court has pointed out, counsel has had months and he had every co-operation from our office, both for his documents and for his seeking out of his witnesses; and if he would stop talking and go out and talk with his witness, who is here now, I think he might be prepared to go on with his case.

THE PRESIDENT: Dr. Bergold, the Tribunal will go on with the case against the Defendant Fritzsche now, and in the meantime, you will have an opportunity of seeing this witness Klöpfer; and if after seeing him you wish to make further application, you may do so; but the Tribunal hopes that, if you can ascertain what the nature of his evidence is, that you will be able to go on with it.

I now have your—I had it only in German before—but I now have in English your application for the witness Klöpfer, and a summary of it is that he was head of Section III in the Party Chancellery and he can deal with questions relating to the drafting and elaboration of laws and that he is to testify that the activity of Bormann in the proclamation of laws and ordinances was an entirely subordinate one. That is the only reason why you allege that you want to call him in your application.

DR. BERGOLD: That is my supposition. There is the possibility that the witness, of course, really knows much more, for he was one of the chief collaborators. I drew up my applications very carefully, because as a lawyer I did not want to submit a fantasy to the Court.

THE PRESIDENT: Well, I have said what you can do with reference to Klöpfer, and are you still asking to call a witness called Falkenhorst?

DR. BERGOLD: I can only decide on that after I have talked with the witness Klöpfer. In all probability I shall forego the calling of this witness Falkenhorst.

THE PRESIDENT: Well, you heard what I said, Dr. Bergold. You can now see Dr. Klöpfer.

SIR DAVID MAXWELL-FYFE: My Lord, I only wanted the Tribunal to know that that was the position as to witnesses; and when Your Lordship asked me, I said that the process of finishing off witnesses might take 2 days. My Lord, subject to the Katyn witnesses, it might take much shorter than that, as I am at present advised.

THE PRESIDENT: Yes. And when shall we be informed what the position is with reference to the Katyn witnesses, as to whether there is an agreement as to using affidavits or calling witnesses?

SIR DAVID MAXWELL-FYFE: My Lord, I will make inquiries and try to let Your Lordship know at the end of the session.

THE PRESIDENT: I take it that we shall not be able to go into that this morning.

SIR DAVID MAXWELL-FYFE: I do not think so. Apart from that, there are certain outstanding interrogatories which Counsel for the Defense may want to refer the Tribunal to; but that is the only other matter I know. From the point of view of the Prosecution, there may be a few documents which will be put in more or less to clarify points that have arisen during the case, rather than formal evidence and rebuttal. They will be quite small in number and will not take any time.

THE PRESIDENT: Were there any documents on behalf of the Defendant Von Neurath which have got to be dealt with?

SIR DAVID MAXWELL-FYFE: My recollection is that there were one or two interrogatories, but apart from that I do not know of any others.

THE PRESIDENT: Perhaps those matters had better be gone into on Monday morning.

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases.

THE PRESIDENT: Well, the Tribunal hopes that counsel for the defendants understand that the Tribunal will expect them to be prepared to go on with their speeches on behalf of the defendants directly the evidence is finished.

SIR DAVID MAXWELL-FYFE: My Lord, it is to try to give some indication of the time that I ventured to intervene this morning.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: As I understand it, the proposal is that Professor Jahrreiss will make his general speech first.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: I understand the professor is ready to do that and I thought it would be useful if it were known that that might occur even on Monday.

THE PRESIDENT: Yes. Then, now, Dr. Fritz, perhaps you will continue with your witness.

[The witness Von Schirmeister resumed the stand.]

DR. FRITZ: Mr. President, Gentlemen of the Tribunal, I beg to be permitted to continue with the examination of the witness Von Schirmeister.

Witness, yesterday, at the end of the session, we stopped at the point dealing with the anti-Semitism expressed by the Defendant Fritzsche in his radio speeches; in connection with that point, I have a further question. According to the statement made by Dr. Goebbels, to where were the Jews evacuated?

VON SCHIRMEISTER: Up to the first year of the Russian campaign, Dr. Goebbels in the conferences over which he presided, repeatedly mentioned the Madagascar plan. Later he changed this and said that a new Jewish state was to be formed in the East, to which the Jews were to be taken.

DR. FRITZ: Do you know whether, in dealing with reports from abroad concerning alleged German atrocities, not only towards the Jews but towards other peoples as well, Fritzsche always had inquiries made at the RSHA or other authorities concerned?

VON SCHIRMEISTER: Yes. Not only with regard to atrocity reports but all propaganda reports from abroad which were embarrassing to us. He made inquiries sometimes at the office of Müller, at the RSHA in Berlin, and sometimes he inquired of the authorities that were directly concerned in these matters.

DR. FRITZ: And what other agencies were concerned besides the RSHA where he might have made inquiries?

VON SCHIRMEISTER: For example, the Ministry of Food and Agriculture, the Armament Ministry, the OKW; it all depended.

DR. FRITZ: Do you know whether in reply to such inquiries a clear and completely plausible denial was given, or how was a matter of this sort handled?

VON SCHIRMEISTER: There were not always denials, not at all; very frequently we had quite precise answers. For example, if it was asserted that there had been a strike in Bohemia-Moravia, then the answer was: Yes, in such and such a factory a strike took place. But always and without exception, there was a very definite denial of concentration camp atrocities and so forth. That is precisely why these denials were so widely believed. I must emphasize that this was our only possibility of getting information. These pieces of information were not intended for the public, but for the minister, and again and again the answer came: "No, there is no word of truth in this." Even today I do not know by what other means we could have obtained information.

DR. FRITZ: Can you say anything about Fritzsche's attitude on church questions?

VON SCHIRMEISTER: Herr Fritzsche adopted the views taken by the minister during the war. At the beginning of the war, the minister demanded complete cessation of the strife regarding this question, for anything which could have brought dissension among the German people would have had a disturbing influence. I do not know whether I should go into further details.

DR. FRITZ: No, I shall turn to another very important topic. Do you know what reasons Goebbels gave to his assistants for the various military actions of Germany?

VON SCHIRMEISTER: He gave no reasons of his own at all. He only added his comments to the announcements coming from the Führer.

DR. FRITZ: To quote some examples, can you say briefly whether the Defendant Fritzsche knew in advance that a military attack was being planned on first, Poland; second, Belgium and Holland; third, Yugoslavia?

VON SCHIRMEISTER: In the case of Poland, we knew of course that the question of Danzig and the Corridor was awaiting a decision. But Dr. Goebbels himself repeatedly assured us, and he himself believed, that this question would not lead to war because, completely mistaken in his view of the attitude of the Western Powers, he was convinced that they were only bluffing and that Poland would not risk a war without the military support of the Western Powers.

DR. FRITZ: What about Belgium and Holland?

VON SCHIRMEISTER: On the day before the attack on Belgium and Holland events were overshadowed by the state visit of the

Italian Minister Pavolini. In the evening there was a performance at the theater and afterwards a reception in the House of the Airmen. At night Dr. Goebbels went with me to the ministry where he occasionally spent the night. During the night I had to telephone to several gentlemen; and in the morning the minister, in my presence, presented to Herr Fritzsche the two announcements which were then broadcast, the first containing the military reasons and the second containing the secret service reasons. Herr Fritzsche did not even have time to look at these announcements; moreover, he had a sore throat and I had to read the second broadcast, with the secret service reasons; I also had not seen these announcements beforehand.

DR. FRITZ: What about Yugoslavia?

VON SCHIRMEISTER: The same thing happened. In the evening the minister had dismissed his adjutant, had given him leave. During the night I had to call the various gentlemen over the phone and ask them to assemble; and early in the morning the statement, which up to that time had been completely unknown to us, was read to us over the radio.

DR. FRITZ: And what happened in the case of the attack on the Soviet Union?

VON SCHIRMEISTER: That was even more preposterous. Before the attack on the Soviet Union, the minister, for purposes of camouflage, had lied to his own department chiefs. Around the beginning of May he selected 10 of his colleagues out of the 20 who ordinarily participated in the conferences, and he told them:

"Gentlemen, I know that some of you think that we are going to fight Russia, but I must tell you today that we are going to fight England; the invasion is imminent. Please adapt your work accordingly. You, Dr. Glasmeier, will launch a new propaganda campaign against England..."

These were impudent lies told to his own department chiefs for purposes of camouflage.

DR. FRITZ: Are you implying that no one in the Propaganda Ministry knew of the imminent campaign against Russia?

VON SCHIRMEISTER: No. The following gentlemen in the Propaganda Ministry knew about the Russian campaign—if I may presume, a letter to Dr. Goebbels from Lammers offered a clue for it, for in it Lammers told the minister in confidence that the Führer intended to appoint Herr Rosenberg to be Minister for the Occupied Eastern Territories; the letter also asked Dr. Goebbels to name a liaison man from our ministry to Herr Rosenberg personally, and that, of course, gave away the secret. The people who knew of this were the minister; Herr Hadamowsky, as his provisional personal

representative; Dr. Tauber, the liaison man to be appointed; I, myself, because by accident I had read this letter; and the head of the foreign press department, Dr. Böhme. Dr. Böhme, and this is very important, told me on the day before his arrest in the presence of Prince Schaumburg-Lippe that he had received this information from Rosenberg's circle, that is—and I want to emphasize this—not from our ministry or from our minister. Otherwise, as heads of two parallel departments, both would, of course, have been informed. If Böhme did not know it from the minister, then Herr Fritzsche could not have known it either. As a result of a careless remark on this subject, Böhme was arrested on the following day and later killed in action.

DR. FRITZ: Now I want to summarize this part of my examination in the following general question: Did you ever notice that before important political or military actions of the Government or the NSDAP, Goebbels exchanged ideas about future plans with the Defendant Fritzsche?

VON SCHIRMEISTER: It is quite impossible that that occurred; it would have been in complete contradiction to the minister's principles. Not only did he not exchange ideas on future plans but he did not even inform anyone.

DR. FRITZ: Now we shall turn to a different subject. The Prosecution charges the Defendant Fritzsche with having influenced the German people in the idea of the master race and thus with having incited hatred against other nations. Did Fritzsche ever receive instructions at all to conduct a propaganda campaign on behalf of the theory of the master race?

VON SCHIRMEISTER: No, under no circumstances. In this connection, one must know that Dr. Goebbels could not at all use this Party dogma and myth. These are not things which attract the masses. To him the Party was a large reservoir in which as many different sections of the German people as possible should be united; and particularly this idea of the master race, perhaps on account of his own physical disability, he ridiculed and rejected completely; it did not appeal to him. Shall I answer the question of hatred now? You also asked me about that.

DR. FRITZ: Yes.

VON SCHIRMEISTER: A propaganda of hatred against other nations was quite contrary to the propaganda line as set out by Dr. Goebbels, for he hoped, and to the end he clung to this hope like a *fata morgana*, that one day he could change from the policy of "against England" and "against America" to the policy of "with England" and "with America." And if one wants to do that one

cannot foster hatred against a nation. He wanted to be in line with the nations, not against them.

DR. FRITZ: Against whom then was this propaganda in the press and on the radio directed?

VON SCHIRMEISTER: Primarily, against systems; it was Dr. Goebbels who established the concept "plutocracy" in the sense in which the whole world knows it today, later the concept "Bolshevism" was added from the other side. Sometimes his propaganda was directed against some of the men in power; but he could not get the full co-operation of the German press on that point. That annoyed him; and in a conference he once said, "Gentlemen, if I could put 10 Jews in your place, I could get it done." But later he stopped these attacks on personalities such as Churchill; he was afraid that these men would become too popular as a result of his counterpropaganda. Apart from that he did not hate Churchill personally at all, secretly he actually admired him; just as, for example, throughout the war he had a picture of the Duke of Windsor on his desk. Therefore the propaganda of hatred was directed temporarily against individual men but always against systems.

DR. FRITZ: Witness, before answering the next question, will you check your memory very carefully, and particularly remember your oath. Was it the aim of this propaganda for which Fritzsche received orders and which he carried out, to arouse unrestrained passions tantamount to incitement to murder and violence, or what was its purpose?

VON SCHIRMEISTER: No. The minister could not use passions at all in his propaganda, for passions flare up and die down again. What the minister did need was a steady and constant line, steadfastness even in hard times. Stirring up of passions, inciting to hatred, or even murder would not have appealed to the German people nor could Dr. Goebbels use anything like that.

DR. FRITZ: Did German propaganda abroad, especially in Russia, come under the direction of the Propaganda Ministry at all?

VON SCHIRMEISTER: I must differentiate here. I do not know whether I should go into the well-known differences between Dr. Goebbels and Ribbentrop. At the beginning of the war the Foreign Office had demanded charge of all foreign propaganda, namely, propaganda in foreign countries, radio propaganda broadcasts to foreign countries, and propaganda directed towards foreigners living in Germany. Very disagreeable controversies resulted; the problem was put to the Führer himself, but finally both sides interpreted his decision in their own favor.

DR. FRITZ: Witness, would you, perhaps, be a little more brief?

VON SCHIRMEISTER: Very well, I can leave that. The differences between the two men are well known. However, in regard to Russia, I must add that there both press and propaganda came under the jurisdiction of Herr Rosenberg up to about March of 1944. And in this sphere as well, Dr. Goebbels...

THE PRESIDENT: Wait a minute, wait a minute. What has this Russian propaganda got to do with the defendant?

DR. FRITZ: No; the German propaganda in Russian territory—that is what I asked him about. He is only going to say one sentence about it; in fact, he has already said it.

VON SCHIRMEISTER: Up to 1944, Rosenberg—to the great concern of Dr. Goebbels who believed that the Russian campaign could have been won in the field of propaganda.

DR. FRITZ: I have one more question to put to you.

Yesterday, when Herr Fritzsche was being cross-examined, the Prosecution submitted several interrogation records; among them, for example, that of Field Marshal Schörner, in which the testimony is unanimous in saying that Fritzsche was the permanent deputy of Goebbels as Propaganda Minister. Is that correct?

VON SCHIRMEISTER: That is bare nonsense. I cannot imagine how a statement like that came to be made. There is not a word of truth in it.

DR. FRITZ: Thank you. Mr. President, I have no further questions.

THE PRESIDENT: Does any of the other defendants' counsel want to ask any questions of the witness?

[There was no response.]

Does the Prosecution wish to cross-examine?

GEN. RUDENKO: Mr. President, the Prosecution do not intend to question this witness; but this does not mean that we accept without objection the testimony which he has given here.

THE PRESIDENT: The witness may retire.

DR. FRITZ: Mr. President, I should like to point out and request the Tribunal to take judicial notice also of the documents which are contained in both my document books but which I did not quote. In my Document Book Number 2 there is another affidavit deposed by Dr. Scharping, a document which I offer to the Tribunal as Document Number Fritzsche-3, Pages 16 to 19. This affidavit deals with the attitude of the Defendant Fritzsche on measures which Hitler had planned after the large-scale air attacks on the city of Dresden. May I ask the Tribunal to take judicial notice of the entire contents of this affidavit, on Page 16 and the following pages, Document Book Number 2.

THE PRESIDENT: Dr. Fritz, the Tribunal observe that in Exhibit 3, which you have just presented to us, there is a statement by the person making the affidavit that after the bombing of German cities in the fall of 1944, "Dr. Goebbels stated that there was no longer any objection to handing over crew members of crashed airplanes to the wrath of the people."

The Tribunal would like to have the Defendant Fritzsche back in the witness box and to question him about that.

Did you ask any questions of the Defendant Fritzsche in reference to this matter in your examination of him?

DR. FRITZ: No, Mr. President, I expected—I wanted to say at the conclusion of my case that I had expected a statement on this subject from the representative of the protecting power, the Swiss Ambassador in Berlin. This statement has, however, not yet reached me. I wanted to ask permission to submit it later if it arrives in time.

THE PRESIDENT: Is that another interrogatory or affidavit that you mean?

DR. FRITZ: Yes, it is a statement which deals with this subject.

THE PRESIDENT: Yes.

DR. FRITZ: And if I may be permitted to add this, Mr. President, I also expect a statement from a British radio commentator, Clifton Delmar. That statement has not yet arrived. May I perhaps submit that?

THE PRESIDENT: Certainly, you may. But what the Tribunal is concerned with at the moment is that they think it material that they should know . . .

DR. FRITZ: Yes, I quite understand, Mr. President.

[The Defendant Fritzsche resumed the stand.]

THE PRESIDENT: You are still under oath. You may sit down. You have read this affidavit?

FRITZSCHE: But I no longer remember it in detail.

THE PRESIDENT: We did not hear the answer to that.

FRITZSCHE: I no longer recall in detail this affidavit which my counsel has just submitted to the Tribunal. I know that it exists, however.

THE PRESIDENT: The statement that the Tribunal wished you to be asked about was this:

"Beginning in the fall of 1944, Dr. Goebbels also spoke about this frequently during his so-called conferences of ministers . . ."

I'll begin before that:

"The increasing effect of English and American air bombardments on German cities caused Hitler and his more intimate advisers to seek drastic measures of reprisal. Beginning in the fall of 1944, Dr. Goebbels also spoke about this frequently during his so-called conferences of ministers, to which numerous officials and technicians of his ministry were convened and which, as a rule, I also attended."

That is Franz Scharping?

FRITZSCHE: Yes.

THE PRESIDENT:

"On such occasions Dr. Goebbels stated that there was no longer any objection to handing over crew members of crashed planes to the wrath of the people."

As you know, there has been a great deal of evidence about that before this Tribunal. Did you in your propaganda speeches make any references to this subject?

FRITZSCHE: No, I never advocated in my propaganda speeches that the crews of aircraft which had been shot down should be killed. On the other hand, I know that Dr. Goebbels, for reasons of intimidation, ordered reports to be sent abroad already in the fall of 1944, reports to the effect that, to quote an example, an Anglo-Saxon airplane which had machine-gunned church-goers in the street on a Sunday had been shot down and the members of the crew had been lynched by the people. Actually this report had no factual basis; it hardly could have been true, since it is quite improbable that an airplane is shot down at just such a moment.

I know that Dr. Goebbels, through a circular letter addressed to the Gau Propaganda Offices, asked that details of such incidents, if they actually occurred, should be transmitted to him; but to my knowledge he did not receive any factual details of this sort. That was also the time in which he had an article on this subject written in *Reich*; I cannot recall the title of this article at the moment. In any event, this campaign, having died down in January or February, flared up again in the days after the air attack on Dresden, and the following incident occurred. Dr. Goebbels announced in the "11 o'clock morning conference," which has been mentioned quite frequently in this courtroom, that in the Dresden attack 40,000 people had been killed. It was not known then that the actual figure was a considerably higher one. Dr. Goebbels added that in one way or another an end would now have to be put to this terror; and Hitler was firmly determined to have English, American, and Russian flyers shot in Dresden in numbers equal to the figure of Dresden inhabitants who had lost their lives in this air attack. Then

he turned to me and asked me to prepare and announce this action. There followed an incident: I jumped up and refused to do this. Dr. Goebbels broke off the conference, asked me to come to his room, and there a very heated discussion developed between us.

Finally I had persuaded him at least to the point where he promised me to use his influence with Hitler himself, so that this plan would not be carried through. I then spoke to Ambassador Rühle, the liaison man of the Foreign Office and asked him to enlist the aid of his minister to the same end. I also requested State Secretary Naumann to speak along the same lines with Bormann, whose predominant influence was well known.

Following that, I had a discussion—under the existing regulations this was not really permitted—with the representative of the protecting power. In confidence, I gave him certain indications about the plan of which I had heard and asked him whether he could suggest or supply me with some argument or some means for countering this plan more intensively.

He said he would attend to the matter with the utmost speed and he called me up on the following morning. We had a second discussion, and he told me that in the meantime a prospect for an exchange of prisoners had been held out to him—that is, an exchange of German and English prisoners—to comprise, I believe, 50,000 men.

I asked him to have this matter go through the normal diplomatic channels, but to permit me to discuss this possibility of an exchange of prisoners of war with Dr. Goebbels, Naumann, and Bormann. I did so, and since just at that time the leaders were obviously especially interested in returning prisoners of war who could perhaps still be used at the front, this prospective offer . . .

THE PRESIDENT: How did you think that this possible exchange of prisoners was going to affect the question of whether 40,000 English and American, and Russian fliers would be killed as a reprisal?

FRITZSCHE: It appeared to me that at a time when we had the opportunity of effecting an exchange of prisoners of war, all thought of an action which was quite outside all human laws had to be repressed; that is, if there was talk about an exchange of prisoners of war, the idea of a gigantic shooting of prisoners had to be shunted into the background.

I conclude briefly. This plan was discussed. I told Dr. Goebbels about it; and it was discussed in the evening with Hitler, according to concurring reports which I had from two different sources. By some strange accident the offer itself ran aground somewhere along the bureaucratic channels many days after the settlement of this exciting incident.

THE TRIBUNAL (Mr. Biddle): Can you hear now? I am asking you when you heard about Hitler's order, not with respect to these prisoners, but with respect to the fliers who had landed? When did you first hear of that? You said that in the fall Goebbels had sent abroad some propaganda with respect to that order. Did you know about it then?

FRITZSCHE: Yes.

THE TRIBUNAL (Mr. Biddle): In the autumn of 1944 you knew about that order?

FRITZSCHE: No.

THE TRIBUNAL (Mr. Biddle): When did you?

FRITZSCHE: I cannot say exactly, but in the autumn of 1944 I did not know this order. I have to be extremely careful since I am under oath. I believe I heard of the order only here in this courtroom, but that is somewhat confused in my memory with the campaign of Dr. Goebbels which I have just described. I cannot clearly...

THE TRIBUNAL (Mr. Biddle): Surely in that meeting in February that order was discussed when they were discussing the killing of 40,000 prisoners, was it not?

FRITZSCHE: No, on that occasion not at all.

THE TRIBUNAL (Mr. Biddle): You had no doubt that Hitler wished to have those prisoners killed, did you?

FRITZSCHE: Yes, at the time when Dr. Goebbels related the plan, I believed that Hitler wished to carry through this action.

THE TRIBUNAL (Mr. Biddle): Then the answer is "yes." Now, you had no doubt that Goebbels wanted them killed, did you?

FRITZSCHE: The 40,000 in Dresden?

THE TRIBUNAL (Mr. Biddle): Yes.

FRITZSCHE: In general, yes.

THE TRIBUNAL (Mr. Biddle): Yes.

FRITZSCHE: Yes, I had no doubt that Goebbels also approved it.

THE TRIBUNAL (Mr. Biddle): And which other of the leaders wished them killed? It was apparently discussed a good deal; who else in the Government was in favor of this policy?

FRITZSCHE: I cannot say with certainty whether Bormann was in favor of it; he was the only other concerned. I do know, however, that Von Ribbentrop, through Ambassador Rühle, made an attempt to dissuade Hitler from this step. He opposed Hitler's plan.

THE TRIBUNAL (Mr. Biddle): Ribbentrop was working in this particular problem of killing the prisoners? I am not clear about that. Did Ribbentrop know about it?

FRITZSCHE: At that time I told Ambassador Rühle about this affair and asked him to inform Ribbentrop and to enlist his aid. A day or two later Rühle told me—we had frequent excited telephone conversations on this matter—that Ribbentrop was...

THE TRIBUNAL (Mr. Biddle): I do not need the details. The answer is that the Foreign Office knew, even if Ribbentrop may not have known personally. Is that right?

FRITZSCHE: Ribbentrop was informed personally.

THE TRIBUNAL (Mr. Biddle): That is all I want to know.

FRITZSCHE: Yes.

THE TRIBUNAL (Mr. Biddle): Do you know what attitude Bormann took in this matter?

FRITZSCHE: According to the accounts that I heard, he at first supported Hitler's plan to shoot those 40,000; but afterwards, under the influence of Goebbels and Naumann, he took the opposite view and co-operated in dissuading Hitler from his intention.

THE TRIBUNAL (Mr. Biddle): Were they only consulted in the matter as far as the commanders of the Wehrmacht were concerned?

FRITZSCHE: I know nothing about that.

THE TRIBUNAL (Mr. Biddle): It is suggested that I should also ask you this: Do you know what attitude Ribbentrop took on the shooting of these prisoners?

FRITZSCHE: Yes. After Ambassador Rühle's report to him, he used his influence to prevent the execution of Hitler's plan; in what way, I do not know.

THE PRESIDENT: Dr. Fritz, do you wish to ask the defendant any question?

DR. FRITZ: No, Mr. President.

THE PRESIDENT: Do the Prosecution wish to ask any questions arising out of the questions that the Tribunal has asked?

GEN. RUDENKO: No, Mr. President.

THE PRESIDENT: Then the defendant can return to the dock.

DR. FRITZ: Mr. President, this brings me to the end of the evidence in the case of the Defendant Fritzsche.

THE PRESIDENT: Are you offering in evidence all of the documents in your two document books, each one of them?

DR. FRITZ: Yes.

THE PRESIDENT: Are they marked with exhibit numbers?

DR. FRITZ: Yes, I submitted all the originals.

THE PRESIDENT: Very well.

Have you not got two Exhibits 1; Exhibit 1 in one book and Exhibit 1 in the other book?

DR. FRITZ: No, there are no Fritzsche exhibits at all in my Document Book 1, Mr. President.

THE PRESIDENT: Oh! I see. Very well. Well, that concludes the case of Fritzsche?

DR. FRITZ: Yes, Mr. President.

THE PRESIDENT: The Tribunal will adjourn now.

[A recess was taken.]

DR. BERGOLD: May it please the Tribunal, first of all I want to say that I can also dispense with the witness Dr. Klöpfer, since he worked in close contact with Bormann only after 1942, since he cannot testify on most of the documents on which the Prosecution based its case, and since he only directed the constitutional law department in the Party Chancellery.

Mr. President, I want to begin my case by making a very brief basic statement. The Defendant Bormann is absent; his associates, generally speaking, are not at my disposal either. For that reason, I can only attempt, on the basis of the documents presented by the Prosecution, to submit some little evidence to prove that the defendant did not play the large, legendary part which is now, after the collapse, attributed to him. As a lawyer it has always been much against my will to build something out of nothing; and I beg the High Tribunal to take this into consideration when weighing my evidence, which must, therefore, be extremely small in quantity. It is not negligence on my part that I present so little, but it is the inability to find anything positive from the available documents without the assistance of the defendant.

First of all, then, I come to the question of whether the case against Bormann can be tried at all. I have offered evidence to show that it is most likely that the Defendant Bormann died on 1 May 1945, during an attempted escape from the Reich Chancellery. As my first witness who could testify on this, I named the witness Else Krüger, and my application for her was granted by the Tribunal. In my application of 26 June, I stated that I would waive the examining of this witness if the High Tribunal would permit me to submit instead an affidavit containing her testimony. I have not yet received an answer to this application; but I presume, since I heard from Dr. Kempner that the Prosecution will agree to this, that the High Tribunal also will not raise any objection.

THE PRESIDENT: I thought the application was withdrawn with reference to the witness Krüger.

DR. BERGOLD: I stated that I would dispense with the witness provided that I could submit her affidavit. There appears to be a misunderstanding. The Prosecution informed me that it has no objection.

MR. DODD: We have said we had no objection, Mr. President, to the use of the affidavit since he was waiving the calling of the witness.

DR. BERGOLD: I submit the affidavit as Document Number Bormann-12.

Then, I named three other witnesses who could testify that Bormann had died. First, the witness Kempka, who for many years was Hitler's chauffeur and who was present when the attempted escape from the Reich Chancellery failed. This witness is not here. According to information which I have, he was interned at the camp at Freising in December 1945 in the hands of the American authorities; but unfortunately he has not yet been produced.

I also named the witness Rattenhuber, who was also present when Bormann died and who, according to the information which I have, is said to be in the hands of the U.S.S.R.

The woman witness, Christians, who had been granted me, could not be located. She was interned in the camp at Oberursel; from there she was given leave of which she took advantage to vanish. Apart from the affidavit of the witness Krüger, therefore, I have no proof for my statement that Bormann is dead. I regret very much indeed that I am not in a position to present clear evidence on this point and that the members of the Prosecution were not able to give me more support, for in this way the formation of legends will be considerably strengthened. Indeed, a sort of false Demetrius, false Martin Bormann, have already made their appearance and are sending me letters which are signed Martin Bormann but which cannot possibly have been written by him. I believe that a service would have been rendered to the German nation, to the Allies, and to the world generally if I had been in a position to furnish this proof for which I had asked.

I come now to my documents.

THE PRESIDENT: Well, the Tribunal would like to hear this affidavit of Krüger read.

DR. BERGOLD: The text is as follows:

"Fräulein Else Krüger, born 9 February 1915, at Hamburg-Altona; secretary, at present residing at Hamburg (39), Hansenberg 1... From approximately the end of 1942 was one of several secretaries of the Defendant Martin Bormann; there

were, roughly, 30 to 40 secretaries. I can no longer give accurate figures and names. I occupied this position until the end and after Hitler's death.

"On 1 May 1945 I saw and talked to Bormann in the bunker of the Reich Chancellery for the last time; but I was then no longer working for him, since at that time he was writing his own orders and wireless messages by hand. All I had to do in those days in the bunker of the Reich Chancellery was to prepare myself mentally for my death. The last words he spoke to me, when he met me accidentally in the bunker, were, 'Well, then, farewell. There is not much sense in it now, but I will try to get through. Very probably I shall not succeed.' These approximately, were his last words, I can no longer recollect them literally.

"Later in the course of the evening when I thought that the Russians had come very close to the shelter of the Reich Chancellery I, together with a group of about 20 people, mostly soldiers, fled from the shelter through subterranean passages, then through an exit in one of the walls of the Chancellery, across the Wilhelmsplatz into the entrance of the underground station Kaiserhof. From there we fled through more subterranean passages to the Friedrichstrasse, and then through a number of streets, debris of houses, and so on; I can no longer remember the exact details on account of the confusion and excitement of those days. Eventually, in the course of the following morning, we reached another shelter; I no longer recollect where it was; it might have been the shelter at Humboldthain."

THE PRESIDENT: Dr. Bergold, does not the affidavit deal with the Defendant Bormann at all?

DR. BERGOLD: Oh yes, I am now coming to that:

"After some time the SS-Gruppenführer Rattenhuber appeared there quite suddenly. He had been severely wounded in the leg and was put on a camp bed. Other people asked him where he had come from; and he said, in my presence, that he, together with Bormann and others, had fled by car through the Friedrichstrasse. Presumably everybody was dead; there had been masses of bodies. I gathered from his statement that he believed Bormann was dead. This also appeared probable to me because, according to reports I heard from some soldiers whom I did not know, all people who had left the shelter after us had been taken under strong Russian fire and hundreds of dead were said to have been left behind on the Weidendammer Bridge."

I omit one unimportant sentence.

"I remember reading afterwards in a British paper that Hitler's driver for many years, Kempka, made a statement somewhere that Bormann, with whom apparently he fled, was dead."

That is all I am able to submit, Mr. President; the real witnesses have unfortunately not been found.

I now come to the documents. In order to shorten my evidence, may I refer to the document book which I have submitted. All these documents contain orders of Bormann which were collected and have appeared in a body of laws called *Orders of the Deputy of the Führer*. I request that the Tribunal take judicial notice of these official orders. I shall bring up the legal argument arising from these documents in my final speech.

I merely want to refer now briefly to Order Number 23/36; it is the order under the figure 8.

THE PRESIDENT: Do you mean PS?

DR. BERGOLD: No, it is order Number 8 in my document book, Mr. President. I particularly want to draw the Tribunal's attention to it without quoting from it.

I now turn to the document book submitted by the Prosecution, and I should like to read a short passage from 098-PS, on Page 4, the second paragraph at the top.

THE PRESIDENT: Did you say 098-PS?

DR. BERGOLD: Yes, Document 098-PS, Bormann's letter dated 22 February 1940 and addressed to Reichsleiter Alfred Rosenberg.

THE PRESIDENT: Page 4?

DR. BERGOLD: Page 4. It is the letter in which Bormann rails against the Christian religion. Nevertheless, he writes as follows, Page 4:

"With regard to religious instruction in schools it seems to me that the existing conditions need not be changed. No National Socialist teacher, according to the clear-cut directives of the Deputy of the Führer, must be accused in any way, if he is prepared to teach the Christian religion in the schools."

I omit one sentence.

"In the circular of the Deputy of the Führer Number 3/39, of 4 January 1939, it is expressly stated that teachers of religion are not by any means to make their own choice of Biblical material for religious instruction but are obliged to give instruction on all the Biblical subjects. They are to abstain from all reinterpreting, analyzing, or paraphrasing of this

directive; attempts of this sort have been made several times by certain church groups."

This is a reference to the so-called German Christians.

I then quote from Document 113-PS, document book of the Prosecution. It is Directive Number 104/38, I quote:

"The neutrality of the Party with respect to the Church, which has been emphasized from the beginning, demands that any possible friction be avoided. Clergymen, as political leaders or as leaders or section leaders in the Party and its affiliated organizations, do not possess the required freedom of decision in this dual obligation, as has been shown by experience; moreover, there is the danger that owing to their church office they will make use of the Movement for their purposes in the church struggle. The Deputy of the Führer has therefore ordered:

"1. Clergymen holding positions in the Party are to be immediately relieved of their Party functions."

I then quote from Document 099-PS, in which Bormann, in a letter of 19 January 1940, addressed to the Reich Minister of Finance, criticizes the low contributions of the Church toward the war. I quote from the second paragraph:

"The assessment of so low a contribution has surprised me. I gather from numerous reports that the political communities have to raise so high a war contribution that the carrying out of their own tasks, which are often very important, as for instance their work in public welfare, is in jeopardy."

I omit one sentence.

"I understand that the assessment of so low a contribution is partly explained by the fact that only the churches of the old Reich which are entitled to raise taxes are called upon to make their contribution to the war, whereas the sections of the Protestant and Catholic Church, which are entitled to demand church dues in Austria and the Sudetenland, are exempted..."

I omit the rest of the sentence.

"This differentiation in the treatment of individual sections of the churches and church organizations is, in my opinion, quite unjustified."

I then quote from Document 117-PS, a letter from Bormann to Rosenberg, dated 28 January 1939. I quote from the second paragraph:

"The Party has repeatedly in recent years had to explain its attitude on the plan for a State Church or for some other measure establishing closer connection between the State and

the Church. The Party has always emphatically rejected such plans for two reasons. First, a connection between the State and the Church, as the organization of a religious community which does not in all fields aim at the practical application of National Socialist principles, would not fulfill the ideological demands of National Socialism. Second, purely practical and political considerations speak against such a formal union."

I then refer to Document L-22, which deals with a conference in the Führer's headquarters on 16 July 1941, at which Hitler, Rosenberg, Lammers, Keitel, Göring, and Bormann were present.

THE PRESIDENT: Could you tell us in what part of the book this is and what is the number?

DR. BERGOLD: L-22. It is approximately in the middle of the book. Bormann acted as secretary of the conference and wrote the minutes. The Prosecution stated that Bormann's incidental remarks showed that he had participated in the discussion, at that conference, of plans for the incorporation of Russian territory into the Reich. I shall therefore have to read this incidental remark which he made.

THE PRESIDENT: This is L-221, not L-22.

DR. BERGOLD: The first incidental remark is in the 14th paragraph and reads as follows:

"Incidentally, does an educated class still exist in the Ukraine, or are the Ukrainians of a higher class to be found only as emigrants outside Russia?"

THE PRESIDENT: Dr. Bergold, could you not tell us what original page it is? In our document book there are headings "original page" so and so.

DR. BERGOLD: Yes, they are there, but—one moment, please, I shall have to look for it again. The translation which I have received has a different type of division—Page 4.

THE PRESIDENT: Thank you.

"We have to create a garden of Eden..." The first part of Page 4 is, "We have to create a garden of Eden..."

DR. BERGOLD: Yes, yes, yes, the second paragraph, the third paragraph, no, after each one—it is the third paragraph.

THE PRESIDENT: Go on, then.

DR. BERGOLD: Have you got it, Mr. President?

THE PRESIDENT: I shall not know until you tell me how it begins.

DR. BERGOLD: It begins, "Incidentally, does an educated class still exist in the Ukraine...?"

THE PRESIDENT: Yes, I have got that, yes. Page 3.

DR. BERGOLD: It is on Page 3.

THE PRESIDENT: I think it is on Page 4. It goes like this: "Is there still anything like an educated class in the Ukraine?"

DR. BERGOLD: According to the document book which has just been submitted to me, it is on Page 3, but it may be Page 4.

THE PRESIDENT: The original is Page 4.

DR. BERGOLD: Then on Page 5, Page 4, no, it is Page 3, Your Lordship. Page 4 has a very similar remark which reads:

"It has frequently become apparent that Rosenberg has a great deal of liking for the Ukrainians. He wants to enlarge the old Ukraine considerably."

And then the last remark on Page 8—Page 5 in the English text, third paragraph from the end, a note for Party member Klöpfer:

"Please ask Dr. Meyer as soon as possible for the data on the proposed organization and the filling of the positions."

Then at the end, Page 6 of your original, last paragraph:

"Incidentally, the Führer emphasized that activity of the churches was out of the question. Papen had already submitted to him through the Foreign Office a long memorandum stating that now the right moment for re-establishing the churches had arrived. But that was definitely out of the question."

This refers to a statement by Hitler.

Then I come to Document 1520-PS. I want first of all to draw the Tribunal's attention to the fact that in this record, which Lamers wrote, Bormann is not at all mentioned at the beginning among those present, apparently because his activity as secretary was considered a matter of course.

I should now like to read from Page 2 of your original, from the paragraph beginning, "Then the discussion turned to the question of freedom of religion..." I shall begin on the eighth line of the fourth paragraph:

"Bormann agreed with this attitude absolutely but said that the only question was whether the Reich Minister for the East, who after all had a name in Germany, would not through such a law create too far-reaching obligations which would then have repercussions in the Reich. The churches themselves were going to define what was meant by 'religious freedom,' and he predicted that such a law would result in hundreds of new letters and complaints on the part of the churches within the Reich."

I omit one sentence.

"Finally it was agreed that the entire question should not be settled by me"—that is, Lammers—"in the form of a law but that the Reich Commissioners should take the existing religious freedom for granted and should issue the necessary directives."

Then Document 072-PS, a letter from Bormann to Rosenberg; of that I should like to read the third paragraph:

"The Führer emphasized that in the Balkans the use of your experts would not be necessary, since there were no art objects to be confiscated. In Belgrade there was only the collection of Prince Paul which would be returned to him intact. The remaining material of the lodges, *et cetera*, would be taken care of by the representatives of the Gruppenführer Heydrich."

From Document 062-PS I should like to read the introduction, in which the Defendant Hess deals with the orders he had issued for the treatment of airmen. I quote:

"The French civilian population received official instructions by radio and otherwise on what they were to do at landings of German aircraft."

From Document 205-PS I should like to read the opening words of Bormann, the second paragraph.

THE PRESIDENT: What is the date of 062-PS? [*The interpreter wrongly translated this as 205-PS.*]

DR. BERGOLD: 5th of May 1943, circular letter Number 70/43.

THE PRESIDENT: I think I have got it now.

THE INTERPRETER: You have 205, My Lord.

DR. BERGOLD: 5th of May 1943.

THE PRESIDENT: No, but I wanted to know the date of 062-PS. It appears to be 13 March 1940.

DR. BERGOLD: 062-PS? Yes, the date of that is 13 March 1940. That is the one I read before.

THE PRESIDENT: The Tribunal does not understand why you read the document in view of Paragraph 4 of it which is as follows:

"Likewise, enemy parachutists are immediately to be arrested or liquidated."

DR. BERGOLD: I shall return to that in my final speech, Mr. President. I can present my arguments now if the Tribunal so desires, but I do not think the argument is wanted now.

THE PRESIDENT: No, no; I thought you might have another paragraph in the document which you wish to refer to.

DR. BERGOLD: No. I referred to the introduction, which was the reason for this document, namely, the statement of the Defendant Hess preceding Bormann's document.

I come then to Document 205-PS, dated 5 May 1943, circular letter Number 70/43. I shall quote the following sentence:

"I request that along the lines set out in the attached copy the necessity for a firm but just treatment of the foreign workers be made clear in a suitable manner to members of the Party and the population."

This circular letter itself was issued by the Defendant Sauckel. I now come to Document 025-PS, of 4 September 1942 and I read...

THE PRESIDENT: Which number are you going to now?

DR. BERGOLD: 025-PS, dated 4 September 1942. I shall quote the last sentence of the second paragraph:

"Therefore, and this is also the opinion of the Reich Marshal and of Reichsleiter Bormann, the problem of domestic workers must be solved in a way different from that mentioned above."

And then I quote from Paragraph 3, starting with the second sentence:

"In connection with this"—namely, the employment in Germany of women workers from the East—"Reichsleiter Bormann also agrees that members of the Armed Forces or other agencies who have brought female domestic workers into the Reich illegally will have their action subsequently approved; approval of such action in the future will not be withheld, regardless of the official recruiting scheme. The determining factor in the recruiting of Ukrainian female workers is the specific wish of the Führer that only girls whose conduct and appearance permit a permanent stay in Germany should be brought into the Reich."

Then I shall read from Figure 1, almost the last paragraph on Page 3 of your document book:

"Recruiting, especially in the case of domestic servants, must be on a voluntary basis and must in practice be carried out with the help of the offices of the Reichsführer SS."

This concludes my quotations from the document book of the Prosecution, and I should like now to refer only to the Russian Document USSR-172 and to Document Dönitz-91, of which I shall make use in my final speech.

This, then, brings me to the end of the presentation of my evidence.

MR. DODD: Mr. President, may I suggest that if this witness Kempka can be located, counsel might submit an affidavit or an

interrogatory to any persons who have knowledge of the alleged death of Defendant Bormann. We certainly would have no objection to it.

DR. BERGOLD: I have no objection either.

THE PRESIDENT: Dr. Bergold, have you any information as to what this witness Kempka can tell us about the death of Bormann?

DR. BERGOLD: According to the affidavit, which I read to the Tribunal, he is said to have been present when Bormann was killed by a tank explosion. He would, therefore, be an eye witness of Bormann's death, like the witness Rattenhuber, from whom the witness Krüger obtained her information. If the witnesses Kempka and Rattenhuber were found, I would be satisfied with affidavits and interrogatories.

MR. DODD: Mr. President, I have seen this statement by Kempka some time ago, which is in affidavit form and which has come to our attention. But my recollection is that he does not state positively that he saw him die. But I again suggest we might make further efforts to get an affidavit from him, or an interrogatory, or carefully question him about the circumstances of the death.

THE PRESIDENT: A statement was made to the Tribunal at one time by the Prosecution suggesting that Bormann had escaped from the Chancellery in a tank and then the tank had been stopped or blown up on a bridge and that two of the persons inside the tank had last seen Bormann wounded, or something of that sort.

MR. DODD: Yes, I think that is the best information.

THE PRESIDENT: Mr. Dodd, if the Prosecution has any material in the shape of affidavits or anything of that sort, the Tribunal would like to have them placed before them.

MR. DODD: Yes, Sir. I am sure we do not have an affidavit. As I recall, it was last fall when someone sent down here what purported to be a narrative account by Kempka of the last days in Berlin. Now, I will try to look that up and present it to you.

THE PRESIDENT: If you can go into the matter, then possibly they might be located through the investigations which you would make.

MR. DODD: Very well.

THE PRESIDENT: Then interrogatories or affidavits could be obtained.

MR. DODD: Very well, Sir.

THE PRESIDENT: Then that concludes your presentation of evidence on behalf of Bormann?

DR. BERGOLD: That is all I have, Mr. President.

THE PRESIDENT: Very well. Thank you.

Colonel Pokrovsky, is there anything you wish to say? I beg your pardon.

Dr. Bergold, you have offered in evidence all the exhibits that you want to offer and have given them exhibit numbers, have you?

DR. BERGOLD: Yes, in my document book.

THE PRESIDENT: You are intending to offer your document book as evidence?

DR. BERGOLD: Yes.

THE PRESIDENT: It has exhibit numbers on each document, has it?

DR. BERGOLD: Yes, each document has a number.

THE PRESIDENT: Very well.

Colonel Pokrovsky, the Tribunal would like to know whether you have arrived at any agreement with Dr. Stahmer on behalf of the Defendant Göring with reference to affidavit evidence or witnesses, with reference to the Katyn matter.

COLONEL Y. V. POKROVSKY (Deputy Chief Prosecutor for the U.S.S.R.): My Lord, we have had three conferences with the Defense Counsel. After the second meeting I told the Tribunal that, in order to shorten the proceedings, the Soviet Prosecution was willing to read into the record only a part of the evidence submitted. About 15 minutes ago I had a meeting with Dr. Exner and Dr. Stahmer, and they told me that their understanding of the Tribunal's ruling was that the old decision for the summoning of two witnesses was still in force and that only additional documents were now under discussion.

In view of this interpretation of the Tribunal's ruling, I do not think that we shall be able to come to an agreement with the Defense. As I see it, the decision in this matter must now rest in the hands of the Tribunal.

THE PRESIDENT: The Tribunal orders that, unless an agreement is arrived at, the evidence shall not be given entirely by affidavits and that the three witnesses on either side shall be called first thing on Monday morning at 10 o'clock, unless you can arrive at an agreement before that, that the evidence is to be offered in affidavits.

DR. SIEMERS: Mr. President, may I say something on this subject?

A number of counsel who are interested in the Katyn case had a conference this morning; among them were Professor Exner and Dr. Stahmer. We agreed to ask the Tribunal to allow two witnesses

to be examined here in person by the Defense. These witnesses would be Colonel Ahrens and First Lieutenant Von Eichborn. We also agreed to dispense with the hearing of the third witness but decided to request that an affidavit of this witness, and in addition two other affidavits, be submitted. I believe this to be a suggestion which both satisfies us and saves the most time: Two witnesses would be heard and three affidavits submitted.

THE PRESIDENT: Dr. Siemers, the Tribunal sees no objection to there being two witnesses called and one affidavit. But their order was that three witnesses on either side—that the evidence should be limited to three witnesses on either side; and they, therefore, are not prepared to allow further affidavits to be given. The evidence must be confined to the evidence of three persons on either side. They may give their evidence either by oral evidence or by affidavit.

DR. SIEMERS: Mr. President, as far as I was informed, the original decision stated that three witnesses were allowed but did not mention affidavits. That was the reason why Dr. Stahmer and Professor Exner assumed that, regardless of the witnesses, certain individual points could be proved by means of affidavits. I think that the hearing of two witnesses and three affidavits would be quicker than the examination of three witnesses.

THE PRESIDENT: I am afraid Dr. Stahmer and Dr. Exner drew a wrong inference from the order of the Tribunal. The Tribunal intended and intends that the evidence should be limited to the evidence of three witnesses on either side, and whether they give their evidence orally or by affidavit does not matter. We left it to the Soviet Prosecution and to defendant's counsel to see whether they could agree that it should be given by affidavit in order to save time. But that was not intended to extend the number of witnesses who might give evidence.

DR. SIEMERS: Mr. President, in that case, I should be grateful if Dr. Stahmer and Professor Exner would be heard. I myself have not been in Nuremberg recently; I was therefore not present when these details were discussed and it is difficult for me—I see that Dr. Stahmer is now—perhaps Dr. Stahmer himself could speak about it.

DR. STAHMER: I have just heard Dr. Siemers' report, at least a part of it. I mentioned already during the last discussion, Mr. President, that Professor Exner and I had understood the decision to mean that besides the three witnesses we were also allowed to submit affidavits. Indeed, the original decision granted us five witnesses, though it made the reservation that only three of them could give evidence here in Court. We assumed, therefore, that we

could submit affidavits of those witnesses out of the five who had been originally granted us but who would not give evidence in Court. The original decision granted us five witnesses, and then a later decision of the Tribunal...

THE PRESIDENT: Listen, that is not the recollection of the Tribunal; and if you say so, you must produce written evidence that that was the decision. The Tribunal's recollection is not that five witnesses were allowed.

DR. STAHMER: Yes, yes, yes. I shall submit written evidence of these decisions to the Tribunal. I cannot remember offhand when they were made, but originally five witnesses were granted; then I named another witness, who was also granted, and it was only afterwards that the decision to allow only three witnesses to give evidence in Court was announced.

THE PRESIDENT: Dr. Stahmer, when the order was made limiting it to three out of five, there was no reference in that order to affidavits, as far as I know.

DR. STAHMER: No, affidavits were not mentioned then.

THE PRESIDENT: What I am telling you is that the Tribunal in making that order of limitation intended to limit the whole of the evidence to three witnesses on either side, because the matter is only a subsidiary allegation of fact; and the Tribunal thinks that at this stage of the proceedings such an allegation of fact ought not to be investigated by a great number of witnesses, and three witnesses are quite sufficient on either side.

Therefore the Tribunal does not desire to hear and did not intend that it should have to hear any evidence except the evidence of three witnesses, either orally or by affidavit.

The Tribunal will now adjourn.

[The Tribunal adjourned until Monday 1 July at 1000 hours.]

ONE HUNDRED AND SIXTY-EIGHTH DAY

Monday, 1 July 1946

Morning Session

THE PRESIDENT: I have an announcement to make.

The Tribunal orders that any of the evidence taken on commission which the Defense Counsel or the Prosecution wish to use shall be offered in evidence by them. This evidence will then become a part of the record, subject to any objections.

Counsel for the organizations should begin to make up their document books as soon as possible and put in their requests for translations.

That is all.

Dr. Stahmer.

DR. STAHLER: With reference to the events at Katyn, the Indictment contains only the remark: "In September 1941, 11,000 Polish officers, prisoners of war, were killed in the Katyn woods near Smolensk." The Russian Prosecution only submitted the details at the session of 14 February 1946. Document USSR-54 was then submitted to the Tribunal. This document is an official report by the Extraordinary State Commission, which was officially authorized to investigate the Katyn case. This commission, after questioning the witnesses . . .

THE PRESIDENT: Dr. Stahmer, the Tribunal are aware of the document and they only want you to call your evidence; that is all.

DR. STAHLER: I wanted only to add, Mr. President, that according to this document, there are two accusations: One, that the period of the shooting of the Polish prisoners of war was the autumn of 1941; and the second assertion is, that the killing was carried out by some German military authority, camouflaged under the name of "Staff of Engineer Battalion 537."

THE PRESIDENT: That is all in the document, is it not? I have just told you we know the document. We only want you to call your evidence.

DR. STAHLER: Then, as my first witness for the Defense, I shall call Colonel Friedrich Ahrens to the witness stand.

DR. SIEMERS: Mr. President, I have a request to make before the evidence is heard in the Katyn case. The Tribunal decided that three witnesses should be heard, and it hinted that in the interests of equality, the Prosecution could also produce only three witnesses, either by means of direct examination or by means of an affidavit. In the interests of that same principle of equality, I should be grateful if the Soviet Delegation, in the same way as the Defense, would state the names of their witnesses before the hearing of the evidence. The Defense submitted the names of their witnesses weeks ago. Unfortunately, up to now, I note that in the interests of equality and with regard to the treatment of the Defense and the Prosecution, the Soviet Delegation has so far not given the names of the witnesses.

THE PRESIDENT: General Rudenko, were you going to give me the names of the witnesses?

GEN. RUDENKO: Yes, Mr. President. Today we notified the General Secretary of the Tribunal that the Soviet Prosecution intends to call three witnesses to the stand: Professor Prosorovsky, who is the Chief of the Medico-Legal Experts Commission; the Bulgarian subject, Professor of Legal Medicine at Sofia University Markov, who at the same time was a member of the so-called International Commission created by the Germans; and Professor Bazilevsky, who was the deputy mayor of Smolensk during the time of the German occupation.

[The witness Ahrens took the stand.]

THE PRESIDENT: Will you state your full name?

FRIEDRICH AHRENS (Witness): Friedrich Ahrens.

THE PRESIDENT: Will you repeat this oath after me: I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

DR. STAHLER: Witness, did you, as a professional officer in the German Armed Forces, participate in the second World War?

AHRENS: Yes, of course; as a professional officer I participated in the second World War.

DR. STAHLER: What rank did you hold finally?

AHRENS: At the end as colonel.

DR. STAHLER: Were you stationed in the eastern theater of war?

AHRENS: Yes.

DR. STAHLER: In what capacity?

AHRENS: I was the commanding officer of a signal regiment of an army group.

DR. STAHLER: What were the tasks of your regiment?

AHRENS: The signal regiment of an army group had the task of setting up and maintaining communications between the army group and the neighboring units and subordinate units, as well as preparing the necessary lines of communication for new operations.

DR. STAHLER: Did your regiment have any special tasks apart from that?

AHRENS: No, with the exception of the duty of defending themselves, of taking all measures to hinder a sudden attack and of holding themselves in readiness to defend themselves with the forces at their disposal, so as to prevent the capture of the regimental battle headquarters.

This was particularly important for an army group signal regiment and its battle headquarters because we had to keep a lot of highly secret material in our staff.

DR. STAHLER: Your regiment was the Signal Regiment 537. Was there also an Engineer Battalion 537, the same number?

AHRENS: During the time when I was in the Army Group Center I heard of no unit with the same number, nor do I believe that there was such a unit.

DR. STAHLER: And to whom were you subordinated?

AHRENS: I was directly subordinated to the staff of the Army Group Center, and that was the case during the entire period when I was with the army group. My superior was General Oberhäuser.

With regard to defense, the signal staff of the regiment with its first battalion, which was in close touch with the regimental staff, was at times subordinated to the commander of Smolensk; all orders which I received from that last-named command came via General Oberhäuser, who either approved or refused to allow the regiment to be employed for a particular purpose.

In other words, I received my orders exclusively from General Oberhäuser.

DR. STAHLER: Where was your staff accommodated?

AHRENS: I prepared a sketch of the position of the staff headquarters west of Smolensk.

DR. STAHLER: I am having the sketch shown to you. Please tell us whether that is your sketch.

AHRENS: That sketch was drawn by me from memory.

DR. STAHLER: I am now going to have a second sketch shown to you. Will you please have a look at that one also, and will you tell me whether it presents a correct picture of the situation?

AHRENS: May I briefly explain this sketch to you? At the right-hand margin, that large red spot is the town of Smolensk. West of Smolensk, and on either side of the road to Vitebsk, the staff of the army group was situated together with the Air Force corps, that is south of Krasnibor. On my sketch I have marked the actual area occupied by the Army Group Center.

That part of my sketch which has a dark line around it was very densely occupied by troops who came directly under the army group; there was hardly a house empty in that area.

The regimental staff of my regiment was in the so-called little Katyn wood. That is the white spot which is indicated on the sketch; it measures about 1 square kilometer of the large forest and is a part of the entire forest around Katyn. On the southern edge of this small wood there lay the so-called Dnieper Castle, which was the regimental staff headquarters.

Two and a half kilometers to the east of the staff headquarters of the regiment there was the first company of the regiment, which was the operating company, which did teleprinting and telephone work for the army group. About 3 kilometers west of the regimental staff headquarters there was the wireless company. There were no buildings within the radius of about 1 kilometer of the regimental staff headquarters.

This house was a large two-story building with about 14 to 15 rooms, several bath installations, a cinema, a rifle range, garages, Sauna (steam baths) and so on, and was most suitable for accommodating the regimental staff. Our regiment permanently retained this battle headquarters.

DR. STAHLER: Were there also any other high-ranking staff headquarters nearby?

AHRENS: As higher staff headquarters there was the army group, which I have already mentioned, then a corps staff from the Air Force, and several battalion staffs. Then there was the delegate of the railway for the army group, who was at Gnesdovo in a special train.

DR. STAHLER: It has been stated in this Trial that certain events which have taken place in your neighborhood had been most secret and most suspicious. Will you please, therefore, answer the following questions with particular care?

How many Germans were there in the staff personnel, and what positions did they fill?

AHRENS: I had 3 officers on my staff to begin with, and then 2, and approximately 18 to 20 noncommissioned officers and men; that is to say, as few as I could have in my regimental staff, and every man in the staff was fully occupied.

DR. STAHLER: Did you have Russian personnel in your staff?

AHRENS: Yes, we had four auxiliary volunteers and some female personnel living in the immediate vicinity of the regimental staff quarters. The auxiliary volunteers remained permanently with the regimental staff, whereas the female personnel changed from time to time. Some of these women also came from Smolensk and they lived in a separate building near the regimental staff.

DR. STAHLER: Did this Russian personnel receive special instructions from you about their conduct?

AHRENS: I issued general instructions on conduct for the regimental headquarters, which did not solely apply to the Russian personnel.

I have already mentioned the importance of secrecy with reference to this regimental headquarters, which not only kept the records of the position of the army group, but also that of its neighboring units, and on which the intentions of the army group were clearly recognizable. Therefore, it was my duty to keep this material particularly secret. Consequently, I had the rooms containing this material barred to ordinary access. Only those persons were admitted—generally officers—who had been passed by me, but also a few noncommissioned officers and other ranks who were put under special oath.

DR. STAHLER: To which rooms did this "no admission" order refer?

AHRENS: In the first place, it referred to the telephone expert's room, it also referred to my own room and partly, although to a smaller degree, to the adjutant's room. All remaining rooms in the house and on the site were not off limits.

THE PRESIDENT: Dr. Stahlmer, how is this evidence about the actual conditions in these staff headquarters relevant to this question?

DR. STAHLER: Mr. President, in the Russian document the allegation is contained that events of a particularly secret nature had taken place in this staff building and that a ban of silence had been imposed on the Russian personnel by Colonel Ahrens, that the rooms had been locked, and that one was only permitted to enter the rooms when accompanied by guards. I have put the questions in this connection in order to clear up the case and to prove that these events have a perfectly natural explanation on account of the

tasks entrusted to the regiment and which necessitated quite obviously, a certain amount of secrecy.

For that reason, I have put these questions. May I be permitted...

THE PRESIDENT: Very well.

DR. STAHLER: I have almost finished with these questions.

[Turning to the witness.] Was the Katyn wood cordoned off, and especially strictly guarded by soldiers?

Mr. President, may I remark with reference to this question that here also it had been alleged that this cordon had only been introduced by the regiment. Previously, there had been free access to the woods, and from this conclusions are drawn which are detrimental to the regiment.

AHRENS: In order to secure antiaircraft cover for the regimental staff headquarters, I stopped any timber from being cut for fuel in the immediate vicinity of the regimental staff headquarters. During this winter the situation was such that the units cut wood wherever they could get it.

On 22 January, there was a fairly heavy air attack on my position during which half a house was torn away. It was quite impossible to find any other accommodation because of the overcrowding of the area, and I therefore took additional precautions to make sure that this already fairly thin wood would be preserved so as to serve as cover. Since, on the other hand, I am against the putting up of prohibition signs, I asked the other troop units by way of verses to leave us our trees as antiaircraft cover. The wood was not closed off at all, particularly as the road had to be kept open for heavy traffic, and I only sent sentries now and then into the wood to see whether our trees were left intact.

DR. STAHLER: The Prosecution...

THE PRESIDENT: Dr. Stahlmer, at a time that is convenient to you, you will, of course, draw our attention to the necessary dates, the date at which this unit took over its headquarters and the date at which it left.

DR. STAHLER: Very well.

[Turning to the witness.] When did your unit, your regiment, move into this Dnieper Castle?

AHRENS: As far as I know, this house was taken over immediately after the combat troops had left that area in August 1941, and it was confiscated together with the other army group accommodations, and was occupied by advance parties. It was then permanently occupied by the regimental headquarters as long as I was there up to August 1943.

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DR. STAHLER: So, if I understand you correctly, it was first of all in August 1941 that an advance party took it over?

AHRENS: Yes, as far as I know.

DR. STAHLER: When did the staff actually arrive?

AHRENS: A few weeks later.

DR. STAHLER: Who was the regimental commander at that time?

AHRENS: My predecessor was Colonel Bedenck.

DR. STAHLER: When did you take over the regiment?

AHRENS: I joined the army group during the second half of November 1941, and after getting thoroughly acquainted with all details I took over the command of the regiment, at the end of November, if I remember rightly, on 30 November.

DR. STAHLER: Was there a proper handing over from Bedenck to you?

AHRENS: A very careful, detailed, and lengthy transfer took place, on account of the very considerable tasks entrusted to this regiment. Added to that, my superior, General Oberhäuser, was an extraordinarily painstaking superior, and he took great pains to convince himself personally whether, by the transfer negotiations and the instructions which I had received, I was fully capable of taking over the responsibilities of the regiment.

DR. STAHLER: The Prosecution further alleges and claims that it was suspicious that shots were often fired in the forest. Is that true, and to what would you attribute that?

AHRENS: I have already mentioned that it was one of the main tasks of the regiment to take all the necessary measures to defend themselves against sudden attack. Considering the small number of men which I had in my regimental staff, I had to organize and take the necessary steps to enable me to obtain replacements in the shortest time possible. This was arranged through wireless communication with the regimental headquarters. I ordered that defensive maneuvers should be carried out and that defense works should be prepared around the regimental headquarters sector and that there should be maneuvers and exercises in these works together with the members of the regimental headquarters. I personally participated in these maneuvers at times and, of course, shots were fired, particularly since we were preparing ourselves for night fighting.

DR. STAHLER: There is supposed to have been a very lively and rather suspicious traffic to and around your staff building. Will you please tell us quite briefly what this traffic signified?

AHRENS: There was an extraordinary lively traffic around staff headquarters which still increased in the spring of 1941 as I was having the house rebuilt. I think I mentioned that it had been destroyed through air attacks. But, of course, the traffic increased also through the maneuvers which were held nearby. The battalions in the front area operating at 300 and 400 kilometers distance had to, and could perform their job only by maintaining personal contact with the regiment and its staff headquarters.

DR. STAHLER: There is supposed to have been considerable truck traffic which has been described as suspicious.

AHRENS: Besides our supplies, which were relatively small, the Kommandos, as I have just mentioned, were brought in by trucks; but so was, of course, all the building material which I required. Apart from that, the traffic was not unusually heavy.

DR. STAHLER: Do you know that about 25 kilometers west of Smolensk there were three Russian prisoner-of-war camps, which had originally been inhabited by Poles and which had been abandoned by the Russians when the German troops approached in July 1941?

AHRENS: At that time I had not yet arrived. But never during the entire period I served in Russia did I see a single Pole; nor did I hear of Poles.

DR. STAHLER: It has been alleged that an order had been issued from Berlin according to which Polish prisoners of war were to be shot. Did you know of such an order?

AHRENS: No. I have never heard of such an order.

DR. STAHLER: Did you possibly receive such an order from any other office?

AHRENS: I told you already that I never heard of such an order and I therefore did not receive it, either.

DR. STAHLER: Were any Poles shot on your instructions, your direct instructions?

AHRENS: No Poles were shot on my instructions. Nobody at all was ever shot upon my order. I have never given such an order in all my life.

DR. STAHLER: Well, you did not arrive until November 1941. Have you heard anything about your predecessor, Colonel Bedenck, having given any similar orders?

AHRENS: I have not heard anything about it. With my regimental staff, with whom I lived closely together for 21 months, I had such close connections, I knew my people so well, and they also

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knew me, that I am perfectly convinced that this deed was not perpetrated by my predecessor nor by any member of my former regiment. I would undoubtedly have heard rumors of it at the very least.

THE PRESIDENT: This is argument, you know, Dr. Stahmer. This is not evidence; it is argument. He is telling you what he thinks might have been the case.

DR. STAHMER: I asked whether he had heard of it from members of his regiment.

THE PRESIDENT: The answer to that would be "no," I suppose, that he had not heard—not that he was convinced that he had not done it.

DR. STAHMER: Very well.

[Turning to the witness.] After your arrival at Katyn, did you notice that there was a grave mound in the woods at Katyn?

AHRENS: Shortly after I arrived—the ground was covered by snow—one of my soldiers pointed out to me that at a certain spot there was some sort of a mound, which one could hardly describe as such, on which there was a birch cross. I have seen that birch cross. In the course of 1942 my soldiers kept telling me that here in our woods shootings were supposed to have taken place, but at first I did not pay any attention to it. However, in the summer of 1942 this topic was referred to in an order of the army group later commanded by General Von Harsdorff. He told me that he had also heard about it.

DR. STAHMER: Did these stories prove true later on?

N.B. | AHRENS: Yes, they did turn out to be true and I was able to confirm, quite by accident, that there was actually a grave here. During the winter of 1943—I think either January or February—quite accidentally I saw a wolf in this wood and at first I did not believe that it was a wolf; when I followed the tracks with an expert, we saw that there were traces of scratchings on the mound with the cross. I had investigations made as to what kind of bones these were. The doctors told me "human bones." Thereupon I informed the officer responsible for war graves in the area of this fact, because I believed that it was a soldier's grave, as there were a number of such graves in our immediate vicinity.

DR. STAHMER: Then, how did the exhumation take place?

AHRENS: I do not know about all the details. Professor Dr. Butz arrived one day on orders from the army group, and informed me that following the rumors in my little wood, he had to make exhumations, and that he had to inform me that these exhumations would take place in my wood.

DR. STAHLER: Did Professor Butz later give you details of the result of his exhumations?

AHRENS: Yes, he did occasionally give me details and I remember that he told me that he had conclusive evidence regarding the date of the shootings. Among other things, he showed me letters, of which I cannot remember much now; but I do remember some sort of a diary which he passed over to me in which there were dates followed by some notes which I could not read because they were written in Polish. In this connection he explained to me that these notes had been made by a Polish officer regarding events of the past months, and that at the end—the diary ended with the spring of 1940—the fear was expressed in these notes that something horrible was going to happen. I am giving only a broad outline of the meaning.

DR. STAHLER: Did he give you any further indication regarding the period he assumed the shooting had taken place?

AHRENS: Professor Butz, on the basis of the proofs which he had found, was convinced that the shootings had taken place in the spring of 1940 and I often heard him express these convictions in my presence, and also later on, when commissions visited the grave and I had to place my house at the disposal of these commissions to accommodate them. I personally did not have anything to do whatsoever with the exhumations or with the commissions. All I had to do was to place the house at their disposal and act as host.

DR. STAHLER: It was alleged that in March 1943 lorries had transported bodies to Katyn from outside and these bodies were buried in the little wood. Do you know anything about that?

AHRENS: No, I know nothing about that.

DR. STAHLER: Would you have had to take notice of it?

AHRENS: I would have had to take notice of it—at least my officers would have reported it to me, because my officers were constantly at the regimental battle headquarters, whereas I, as a regimental commander, was of course, frequently on the way. The officer who in those days was there constantly was First Lieutenant Hodt, whose address I got to know last night from a letter.

DR. STAHLER: Were Russian prisoners of war used for these exhumations?

AHRENS: As far as I remember, yes.

DR. STAHLER: Can you tell us the number?

AHRENS: I cannot say exactly as I did not concern myself any further with these exhumations on account of the dreadful and revolting stench around our house, but I should estimate the number as being about 40 to 50 men.

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DR. STAHLER: It has been alleged that they were shot afterward; have you any knowledge of that?

AHRENS: I have no knowledge of that and I also never heard of it.

DR. STAHLER: I have no further questions, Mr. President.

FLOTTENRICHTER OTTO KRANZBÜHLER (Counsel for Defendant Dönitz): Colonel, did you yourself ever discuss the events of 1940 with any of the local inhabitants?

AHRENS: Yes. At the beginning of 1943 a Russian married couple were living near my regimental headquarters; they lived 800 meters away and they were beekeepers. I, too, kept bees, and I came into close contact with this married couple. When the exhumations had been completed, approximately in May 1943, I told them that, after all, they ought to know when these shootings had taken place, since they were living in close proximity to the graves. Thereupon, these people told me it had occurred in the spring of 1940, and that at the Gnesdovo station more than 200 Poles in uniform had arrived in railway trucks of 50 tons each and were then taken to the woods in lorries. They had heard lots of shots and screams, too.

FLOTTENRICHTER KRANZBÜHLER: Was the wood off limits to the local inhabitants at the time?

AHRENS: We have . . .

THE PRESIDENT: That is a leading question. I do not think you should ask leading questions.

FLOTTENRICHTER KRANZBÜHLER: Do you know whether the local inhabitants could enter the woods at the time?

AHRENS: There was a fence around the wood and according to the statements of the local inhabitants, civilians could not enter it during the time the Russians were there. The remains of the fence were still visible when I was there, and this fence is indicated on my sketch and is marked with a black line.

FLOTTENRICHTER KRANZBÜHLER: When you moved into Dnieper Castle did you make inquiries as to who the former owners were?

AHRENS: Yes, I did make inquiries because I was interested. The house was built in a rather peculiar way. It had a cinema installation and its own rifle range and of course that interested me; but I failed to ascertain anything definite during the whole time I was there.

FLOTTENRICHTER KRANZBÜHLER: Apart from mass graves in the neighborhood of the castle, were there any other graves found?

AHRENS: I have indicated by a few dots on my sketch, that in the vicinity of the castle there were found a number of other small graves which contained decayed bodies; that is to say, skeletons which had disintegrated. These graves contained perhaps six, eight, or a few more male and female skeletons. Even I, a layman, could recognize that very clearly, because most of them had rubber shoes on which were in good condition, and there were also remains of handbags.

FLOTTENRICHTER KRANZBÜHLER: How long had these skeletons been in the ground?

AHRENS: That I cannot tell you. I know only that they were decayed and had disintegrated. The bones were preserved, but the skeleton structure was no longer intact.

FLOTTENRICHTER KRANZBÜHLER: Thank you, that is all.

DR. HANS LATERNSEER (Counsel for General Staff and High Command of the German Armed Forces): Mr. President . . .

THE PRESIDENT: Dr. Laternser, you know the Tribunal's ruling.

DR. LATERNSEER: Yes, Sir.

THE PRESIDENT: Well, you have no right to ask any questions of the witness here.

DR. LATERNSEER: Mr. President, I just wanted to ask you, in this unusual case, to allow me to put questions . . .

THE PRESIDENT: I said to you that you know the Tribunal's ruling and the Tribunal will not hear you. We have already ruled upon this once or twice in consequence of your objections and the Tribunal will not hear you.

DR. LATERNSEER: Mr. President, the Katyn case is one of the most serious accusations raised against the group.

THE PRESIDENT: The Tribunal is perfectly well aware of the nature of the allegations about Katyn and the Tribunal does not propose to make any exceptional rule in that case and it therefore will not hear you and you will kindly sit down.

DR. LATERNSEER: Mr. President, I wish to state that on account of this ruling I feel myself unduly handicapped in my defense.

THE PRESIDENT: As Dr. Laternser knows perfectly well, he is entitled to apply to the Commission to call any witness who is called here, if his evidence bears upon the case of the particular organizations for which Dr. Laternser appears. I do not want to hear anything further.

DR. LATERNSEER: Mr. President, the channel you point out to me is of no practical importance. I cannot have every witness who appears here called by the Commission.

THE PRESIDENT: Dr. Siemers, you are appearing for the Defendant Dönitz, or is it Raeder?

DR. SIEMERS: Defendant Raeder.

THE PRESIDENT: Well, unless the questions you are going to ask particularly refer to the case of the Defendant Raeder, the Tribunal is not prepared to hear any further examination. The matter has been generally covered by Dr. Stahmer and also by Dr. Kranzbühler. Therefore, unless the questions which you want to ask have some particular reference to the case of Raeder, the Tribunal will not hear you.

DR. SIEMERS: Mr. President, I had merely assumed that there were two reasons on the strength of which I could put a few questions: First, because the Tribunal itself has stated that within the framework of the conspiracy all defendants had been participants; and second, that according to the statements by the Prosecution Grossadmiral Raeder, too, is considered a member of the alleged criminal organizations, the General Staff and the OKW. It was for that reason I wanted to ask one or two supplementary questions.

THE PRESIDENT: Dr. Siemers, if there were any allegations that in any way bore on the case against Defendant Raeder, the Tribunal would of course allow you to ask questions; but there is no allegation which in any way connects the Defendant Raeder with the allegations about the Katyn woods.

DR. SIEMERS: I am grateful to the Tribunal for that statement, Mr. President.

DR. LATERNSEER: Mr. President, may I be allowed to ask something else? May I have the question put to the Prosecution, who is to be made responsible for the Katyn case?

THE PRESIDENT: I do not propose to answer questions of that sort.

The Prosecution may now cross-examine if they want to.

CHIEF COUNSELLOR OF JUSTICE L. N. SMIRNOV (Assistant Prosecutor for the U.S.S.R.): Please tell me, Witness, since when, exactly, have you been in the Smolensk district territory?

AHRENS: I have already answered that question: since the second half of November 1941.

MR. COUNSELLOR SMIRNOV: Please answer me further, where were you prior to the second part of 1941? Did you in any way have anything to do with Katyn or Smolensk or this district in general? Were you there personally in September and October 1941?

AHRENS: No, I was not there.

MR. COUNSELLOR SMIRNOV: That is to say that you were not there, either in September or in October 1941, and therefore do not know what happened at that time in the Katyn forest?

AHRENS: I was not there at that time, but I mentioned earlier on that...

MR. COUNSELLOR SMIRNOV: No, I am actually only interested in a short question. Were you there personally or not? Were you able to see for yourself what was happening there or not?

THE PRESIDENT: He says he was not there.

AHRENS: No, I was not there.

THE PRESIDENT: He said he was not there in September or October 1941.

MR. COUNSELLOR SMIRNOV: Thank you, Mr. President.

[Turning to the witness.] Maybe you recall the family names of the Russian women workers who were employed at the country house in the woods?

AHRENS: Those female workers were not working in different houses. They merely worked as auxiliary kitchen personnel in our Dnieper Castle. I have not known their names at all.

MR. COUNSELLOR SMIRNOV: That means that the Russian women workers were employed only in the villa situated in Katyn forest where the staff headquarters were located?

AHRENS: I believe that question was not translated well. I did not understand it.

MR. COUNSELLOR SMIRNOV: I asked you whether the Russian women workers were employed exclusively in the villa in Kosig Gory where the staff headquarters were located? Is that right?

AHRENS: The women workers worked for the regimental headquarters as kitchen help, and as kitchen helpers they worked on our premises; and by our premises I mean this particular house with the adjoining houses—for instance, the stables, the garage, the cellars, the boiler room.

MR. COUNSELLOR SMIRNOV: I will mention a few names of German military employees. Will you please tell me whether they belonged to your unit? First Lieutenant Rex?

AHRENS: First Lieutenant Rex was my regimental adjutant.

MR. COUNSELLOR SMIRNOV: Please tell me, was he already assigned to that unit before your arrival at Katyn?

AHRENS: Yes, he was there before I came.

MR. COUNSELLOR SMIRNOV: He was your adjutant, was he not?

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AHRENS: Yes, he was my adjutant.

MR. COUNSELLOR SMIRNOV: Lieutenant Hodt? Hodt or Hoth?

AHRENS: Lieutenant Hodt is right; but what question are you putting about Lieutenant Hodt?

MR. COUNSELLOR SMIRNOV: I am only questioning you about whether he belonged to your unit or not.

AHRENS: Lieutenant Hodt was a member of the regiment. Whether . . .

MR. COUNSELLOR SMIRNOV: Yes, that is what I was asking. He belonged to the regiment which you commanded, to your army unit?

AHRENS: I did not say by that that he was a member of the regimental staff, but that he belonged to the regiment. The regiment consisted of three units.

MR. COUNSELLOR SMIRNOV: But he lived in the same villa, did he not?

AHRENS: That I do not know. When I arrived he was not there. I ordered him to report to me there for the first time.

MR. COUNSELLOR SMIRNOV: I will enumerate a few other names. Corporal Rose, Private Giesecken, Oberfeldwebel Krimmiski, Feldwebel Lummert, a cook named Gustav. Were these members of the Armed Forces who were billeted in the villa?

AHRENS: May I ask you to mention the names individually once again, and I will answer you individually.

MR. COUNSELLOR SMIRNOV: Feldwebel Lummert?

AHRENS: Yes.

MR. COUNSELLOR SMIRNOV: Corporal Rose?

AHRENS: Yes.

MR. COUNSELLOR SMIRNOV: And I believe, if my memory serves me correctly, Storekeeper Giesecke.

AHRENS: That man's name was Giesecken.

MR. COUNSELLOR SMIRNOV: Yes, that is right. I did not pronounce this name quite correctly. These were all your people or at least they belonged to your unit, did they not?

AHRENS: Yes.

MR. COUNSELLOR SMIRNOV: And you assert that you did not know what these people were doing in September and October 1941?

AHRENS: As I was not there, I cannot tell you for certain.

THE PRESIDENT: We will adjourn now.

[A recess was taken.]

MR. COUNSELLOR SMIRNOV: May I continue? Mr. President, since the witness has stated that he cannot give any testimony concerning the period of September to October 1941, I will limit myself to very short questions.

[Turning to the witness.] Witness, would you please point out the location of the villa and the forest with respect to the Smolensk-Vitebsk highway? Did the estate cover a large area?

AHRENS: My sketch is on a scale of 1 to 100,000 and is drawn from memory. I estimate, therefore, that the graves were situated 200 to 300 meters directly west of the road to our Dnieper Castle, and 200 to 300 meters south of the Smolensk-Vitebsk road so that the Dnieper Castle lay a further 600 meters away.

THE PRESIDENT: Will you repeat that?

AHRENS: South of the Smolensk-Vitebsk highway, approximately 15 kilometers west of Smolensk. According to the scale 1 to 100,000, as far as one is able to draw such a sketch accurately from memory, the site of these graves was 200 to 300 meters to the south, and a further 600 meters to the south, directly on the northern bend of the Dnieper, was situated our regimental staff quarters, the Dnieper Castle.

MR. COUNSELLOR SMIRNOV: Consequently, the villa was approximately 600 meters away from the Smolensk-Vitebsk highway?

AHRENS: No, that is not correct. What I said . . .

MR. COUNSELLOR SMIRNOV: Please give a more or less exact figure. What was the distance between the highway and the villa, please?

AHRENS: I just mentioned it in my testimony, that is to say, the graves were about 200 to 300 meters away, and there were a further 600 meters to the castle, therefore, in all about 900 to 1,000 meters. It might have been 800 meters, but that is the approximate distance as can also be seen by this sketch.

THE PRESIDENT: I am not following this. Your question, Colonel Smirnov, was: How far was it from the road to what you called the country house? Was it not?

MR. COUNSELLOR SMIRNOV: No, Mr. President, I asked how far was the villa from the Smolensk-Vitebsk highway.

THE PRESIDENT: What do you mean by the "Villa"?

MR. COUNSELLOR SMIRNOV: The headquarters of the unit commanded by the witness in 1941 was quartered in a villa, and this villa was situated not far from the Dnieper River, at a distance of about 900 meters from the highroad. The graves were nearer to the

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highway. I would like to know how far away were the headquarters from the highway, and how far away from the highway were the graves in Katyn forest.

THE PRESIDENT: What you want to know is: How far was the house in which the headquarters was situated from the highway? Is that right?

MR. COUNSELLOR SMIRNOV: Yes, that is exactly what I wanted to know, Mr. President.

AHRENS: You put two questions to me: first of all, how far were the graves from the highway; and secondly, how far was the house from the highway. I will repeat the answer once more, the house was 800 to 1,000 meters south of the Smolensk-Vitebsk highway.

MR. COUNSELLOR SMIRNOV: One minute, please. I asked you primarily only about the house. Your answer concerning the graves was given on your own initiative. Now I will ask you about the graves, how far were these mass graves from the Smolensk-Vitebsk highway?

AHRENS: From 200 to 300 meters. It might also have been 350 meters.

MR. COUNSELLOR SMIRNOV: Consequently, the graves were 200 or 300 meters from the main road which connected two important centers? Is that right?

AHRENS: Yes, indeed. They were at a distance of 200 to 300 meters south of this, and I may say that at my time this was the most frequented road I ever saw in Russia.

MR. COUNSELLOR SMIRNOV: That was just what I was asking you. Now, please tell me: Was the Katyn wood a real forest, or was it, rather, a park or a grove?

AHRENS: Up to now I have only spoken about the wood of Katyn. This wood of Katyn is the fenced-in wooded area of about 1 square kilometer, which I drew in my sketch. This wood is of mixed growth, of older and younger trees. There were many birch trees in this little wood. However, there were clearings in this wood, and I should say that from 30 to 40 percent was cleared. One could see this from the stumps of newly felled trees.

Under no circumstances could you describe this wood as a park; at any rate one could not come to such a conclusion. Fighting had taken place in this wood, as one could still see trenches and fox holes.

MR. COUNSELLOR SMIRNOV: Yes, but anyway, you would not call Katyn wood a real forest since it was relatively a small grove in the immediate vicinity of the Smolensk-Vitebsk highway. Is that right?

AHRENS: No, that is not right. It was a forest. The entire Katyn forest was a regular forest which began near our grove and extended far beyond that. Of this Katyn forest, which was a mixed forest, part of it had been fenced in, and this part, extending over 1 square kilometer, was what we called the little Katyn wood, but it did belong to this entire wooded region south of the highway. The forest began with our little wood and extended to the west.

MR. COUNSELLOR SMIRNOV: I am not interested in the general characteristics of the wood. I would like you to answer the following short question: Were the mass graves located in this grove?

AHRENS: The mass graves were situated directly west of our entrance drive in a clearing in the wood, where there was a growth of young trees.

MR. COUNSELLOR SMIRNOV: Yes, but this clearing, this growth of young trees, was located inside this small grove, near the Smolensk-Vitebsk highway, is that correct?

AHRENS: It was 200 to 300 meters south of the Smolensk-Vitebsk highway, and directly west of the entrance drive leading from this road to the Dnieper Castle. I have marked this spot on my sketch with a fairly large white dot.

MR. COUNSELLOR SMIRNOV: One more question. As far as you know did the Smolensk-Vitebsk highway exist before the German occupation of Smolensk, or was it constructed only after the occupation?

AHRENS: When I arrived in Russia at the end of November 1941, everything was covered with snow. Later I got the impression that this was an old road, whereas the road Minsk-Moscow was newer. That was my impression.

MR. COUNSELLOR SMIRNOV: I understand. Now tell me, under what circumstances, or rather, when did you first discover the cross in the grove?

AHRENS: I cannot tell the exact date. My soldiers told me about it, and on one occasion when I was going past there, about the beginning of January 1942—it could also have been at the end of December 1941—I saw this cross rising above the snow.

MR. COUNSELLOR SMIRNOV: This means you saw it already in 1941 or at the latest the beginning of 1942?

AHRENS: That is what I have just testified.

MR. COUNSELLOR SMIRNOV: Yes, certainly. Now, please be more specific concerning the date when a wolf brought you to this cross. Was it in winter or summer and what year?

AHRENS: It was the beginning of 1943.

MR. COUNSELLOR SMIRNOV: In 1943? And around the cross you saw bones, did you not?

AHRENS: No.

MR. COUNSELLOR SMIRNOV: No?

AHRENS: No, at first I did not see them. In order to find out whether I had not been mistaken about seeing a wolf, for it seemed rather impossible that a wolf should be so near to Smolensk, I examined the tracks together with a gamekeeper and found traces of scratching on the ground. However, the ground was frozen hard, there was snow on the ground and I did not see anything further there. Only later on, after it had been thawing my men found various bones. However, this was months later and then, at a suitable opportunity I showed these bones to a doctor and he said that these were human bones. Thereupon I said, "Then most likely it is a grave, left as a result of the fighting which has taken place here," and that the war graves registration officer would have to take care of the graves in the same way in which we were taking care of other graves of fallen soldiers. That was the reason why I spoke to this gentleman—but only after the snow had melted.

MR. COUNSELLOR SMIRNOV: By the way, did you personally see the Katyn graves?

AHRENS: Open or before they were opened?

MR. COUNSELLOR SMIRNOV: Open, yes.

AHRENS: When they were open I had constantly to drive past these graves, as generally they were approximately 30 meters away from the entrance drive. Therefore, I could hardly go past without taking any notice of them.

MR. COUNSELLOR SMIRNOV: I am interested in the following: Do you remember what the depth of the layer of earth was, which covered the mass of human bodies in these graves?

AHRENS: That I do not know. I have already said that I was so nauseated by the stench which we had to put up with for several weeks, that when I drove past I closed the windows of my car and rushed through as fast as I could.

MR. COUNSELLOR SMIRNOV: However, even if you only casually glanced at those graves, perhaps you noticed whether the layer of earth covering the corpses was deep or shallow? Was it several centimeters or several meters deep? Maybe Professor Butz told you something about it?

AHRENS: As commander of a signal regiment I was concerned with a region which was almost half as large as Greater Germany and I was on the road a great deal. My work was not entirely carried out at the regimental battle headquarters. Therefore, in

general, from Monday or Tuesday until Saturday I was with my units. For that reason, when I drove through, I did cast an occasional glance at these graves; but I was not especially interested in the details and I did not speak to Professor Butz about such details. For this reason I have only a faint recollection of this matter.

MR. COUNSELLOR SMIRNOV: According to the material submitted to the High Tribunal by the Soviet Prosecution, it has been established that the bodies were buried at a depth of 1½ to 2 meters. I wonder where you met a wolf who could scratch the ground up to a depth of 2 meters.

AHRENS: I did not meet this wolf, but I saw it.

MR. COUNSELLOR SMIRNOV: Tell me please, why you started the exhumation on these mass graves in March 1943 only, after having discovered the cross and learned about the mass graves already in 1941?

AHRENS: That was not my concern, but a matter for the army group. I have already told you that in the course of 1942 the stories became more substantial. I frequently heard about them and spoke about it to Colonel Von Gersdorff, Chief of Intelligence, Army Group Center, who intimated to me that he knew all about this matter and with that my obligation ended. I had reported what I had seen and heard. Apart from that, all this matter did not concern me and I did not concern myself with it. I had enough worries of my own.

MR. COUNSELLOR SMIRNOV: And now the last question. Please tell me who were these two persons with whom you had this conversation, and maybe you can recollect the names of the couple who told you about the shootings in the Katyn woods?

AHRENS: This couple lived in a small house about 800 to 1,000 meters north of the entrance to our drive leading to the Vitebsk road. I do not recall their names.

MR. COUNSELLOR SMIRNOV: So you do not remember the names of this couple?

AHRENS: No, I do not recall the names.

MR. COUNSELLOR SMIRNOV: So you heard about the Katyn events from a couple whose names you do not remember, and you did not hear anything about it from other local inhabitants?

AHRENS: Please repeat the question for me.

MR. COUNSELLOR SMIRNOV: Consequently, you heard about these Katyn events only from this couple, whose names you do not remember? From none of the other local inhabitants did you hear anything about the events in Katyn?

AHRENS: I personally heard the facts only from this couple, whereas my soldiers told me the stories current among the other inhabitants.

MR. COUNSELLOR SMIRNOV: Do you know that during the investigation of the Katyn affair, or rather of the Katyn provocation, posters were placarded by the German Police in the streets of Smolensk, promising a reward to anyone giving any information in connection with the Katyn event? It was signed by Lieutenant Voss.

AHRENS: I personally did not see that poster. Lieutenant Voss is known to me by name only.

MR. COUNSELLOR SMIRNOV: And the very last question. Do you know of the report of the Extraordinary State Commission concerning Katyn?

AHRENS: Do you mean the Russian *White Paper* when you mention this report?

MR. COUNSELLOR SMIRNOV: No, I mean the report of the Soviet Extraordinary State Commission, concerning Katyn, the Soviet report.

AHRENS: Yes, I read that report.

MR. COUNSELLOR SMIRNOV: Therefore, you are acquainted with the fact that the Extraordinary State Commission names you as being one of the persons responsible for the crimes committed in Katyn?

AHRENS: It mentions a Lieutenant Colonel Arnes.

MR. COUNSELLOR SMIRNOV: I have no further questions, Mr. President.

THE PRESIDENT: Dr. Stahmer, do you wish to re-examine?

DR. STAHMER: Witness, just a little while ago you said that you did not know when First Lieutenant Hodt joined your staff. Do you know when he joined the regiment?

AHRENS: I know that he belonged to the regiment during the Russian campaign and actually right from the beginning.

DR. STAHMER: That is, he belonged to the regiment from the beginning?

AHRENS: Yes. He belonged to this regiment ever since the beginning of the Russian campaign.

DR. STAHMER: Just one more question dealing with your discussion with Professor Butz. Did Professor Butz mention anything about the last dates on the letters which he found?

AHRENS: He told me about the spring of 1940. He also showed me this diary and I looked at it and I also saw the dates, but I do

not recall in detail just which date or dates they were. But they ended with the spring of 1940.

DR. STAHLER: Therefore no documents were found of a later date?

AHRENS: Professor Butz told me that no documents or notes were found which might have given indications of a later date, and he expressed his conviction that these shootings must have taken place in the spring of 1940.

DR. STAHLER: Mr. President, I have no further questions to put to the witness.

THE TRIBUNAL (Gen. Nikitchenko): Witness, can you not remember exactly when Professor Butz discussed with you the date at which the corpses were buried in the mass graves?

AHRENS: May I ask to have the question repeated?

THE TRIBUNAL (Gen. Nikitchenko): When did Professor Butz speak to you about the mass graves and assert that the burial of the corpses must have taken place in the spring of 1940?

AHRENS: I cannot tell you the date exactly, but it was in the spring of 1943, before these exhumations had started—I beg your pardon—he told me that he had been instructed to undertake the exhumation and during the exhumations he was with me from time to time; therefore it may have been in May or the end of April. In the middle of May he gave me details of his exhumations and told me among other things that which I have testified here. I cannot now tell you exactly on which days Professor Butz visited me.

THE TRIBUNAL (Gen. Nikitchenko): So far as I can remember, you stated that Professor Butz arrived in Katyn. When did he actually arrive there?

AHRENS: In the spring of 1940 Professor Butz came to me and told me that on instructions of the army group, he was to undertake exhumations in my woods. The exhumations were started, and in the course of . . .

THE TRIBUNAL (Gen. Nikitchenko): You say 1940? Or perhaps the translation is wrong?

AHRENS: 1943, in the spring of 1943. A few weeks after the beginning of the exhumations, Professor Butz visited me, when I happened to be there, and informed me; or, rather, he discussed this matter with me, and he told me that to which I have testified here. It may have been the middle of May 1943.

THE TRIBUNAL (Gen. Nikitchenko): According to your testimony, I understood you to say in answer to a question put by the defense counsel, that Professor Butz asserted that the shootings

had taken place in the spring of 1940 before the arrival of the commission for the exhumations. Is that correct?

AHRENS: May I repeat once more that Professor Butz...

THE TRIBUNAL (Gen. Nikitchenko): It is not necessary to repeat what you have already said. I am only asking you, is it correct or not? Maybe the translation was incorrect, or maybe your testimony was incorrect at the beginning.

AHRENS: I did not understand the question just put to me. That is the reason why I wanted to explain this once more. I do not know just what is meant by this last question. May I ask this question be repeated?

THE TRIBUNAL (Gen. Nikitchenko): At the beginning, when you were interrogated by the defense counsel, I understood you to say that Professor Butz told you that the shooting had taken place in the spring of 1940, that is before the arrival of the commission for the exhumations.

AHRENS: No, that has not been understood correctly. I testified that Professor Butz came to me and told me that he was to make exhumations since it concerned my woods. These exhumations then took place, and approximately 6 to 8 weeks later Professor Butz came to me—of course, he visited me on other occasions as well—but approximately 6 to 8 weeks later he came to me and told me that he was convinced that, as a result of his discoveries, he was now able to fix the date of the shootings. This statement which he made to me, refers approximately to the middle of May.

THE TRIBUNAL (Gen. Nikitchenko): Were you present when the diary and the other documents which were shown to you by Professor Butz were found?

AHRENS: No.

THE TRIBUNAL (Gen. Nikitchenko): You do not know where he found the diary and other documents?

AHRENS: No, that I do not know.

THE PRESIDENT: When did you first report to superior authority the fact that you suspected that there was a grave there?

AHRENS: At first, I was not suspicious. I have already mentioned that fighting had taken place there; and at first I did not attach any importance to the stories told to me and did not give this matter any credence. I believed that it was a question of soldiers who had been killed there—of war graves, like several in the vicinity.

THE PRESIDENT: You are not answering my question. I am asking you, when did you first report to superior authority that there was a grave there?

AHRENS: In the course of the summer 1942 I spoke to Colonel Von Gersdorff about these stories which had come to my knowledge. Gersdorff told me that he had heard that too, and that ended my conversation with Von Gersdorff. He did not believe it to be true; in any case he was not thoroughly convinced. That I do not know, however.

Then in the spring of 1943, when the snow had melted, the bones which had been found there were brought to me, and I then telephoned to the officer in charge of war graves and told him that apparently there were some soldiers' graves here. That was before Professor Butz had visited me.

THE PRESIDENT: Did you make any report in writing?

AHRENS: No, I did not do that.

THE PRESIDENT: Never?

AHRENS: No, I was not in any way concerned with this matter.

THE PRESIDENT: The witness can retire.

DR. STAHLER: Then, as another witness, I should like to call Lieutenant Reinhard von Eichborn.

THE PRESIDENT: Yes.

[The witness Von Eichborn took the stand.]

Will you state your full name please.

REINHARD VON EICHBORN (Witness): Reinhard von Eichborn.

THE PRESIDENT: Will you repeat this oath after me: I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

DR. STAHLER: Witness, what is your occupation?

VON EICHBORN: Assistant judge.

DR. STAHLER: Were you called up for service in the German Armed Forces during this war?

VON EICHBORN: Yes, in August 1939.

DR. STAHLER: And what was your unit?

VON EICHBORN: Army Group Signal Regiment 537.

DR. STAHLER: And what was your rank?

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VON EICHBORN: At the outbreak of the war, platoon leader and lieutenant.

DR. STAHLER: And at the end?

VON EICHBORN: First lieutenant.

DR. STAHLER: Were you on the Eastern Front during the war?

VON EICHBORN: Yes, from the beginning.

DR. STAHLER: With your regiment?

VON EICHBORN: No, from 1940 onward, on the staff of Army Group Center.

DR. STAHLER: Apart from this Regiment 537, was there an Engineer Battalion 537?

VON EICHBORN: In the sphere of the Army Group Center there was no Engineer Battalion 537.

DR. STAHLER: When did you arrive with your unit in the vicinity of Katyn?

VON EICHBORN: About 20 September the staff of Army Group Center transferred its headquarters to Smolensk, that is to say in the Smolensk region.

DR. STAHLER: Where had you been stationed before?

VON EICHBORN: How am I to understand this question?

DR. STAHLER: Where did you come from?

VON EICHBORN: We came from Borisov.

THE PRESIDENT: One moment. The witness said 20 September. That does not identify the year.

DR. STAHLER: In what year was this 20 September?

VON EICHBORN: 20 September 1941.

DR. STAHLER: Was Regiment 537 already there at that time?

VON EICHBORN: The staff of Regiment 537 was transferred at about the same time together with the staff of the army group to the place where the headquarters of the army group was. Advance units had already been stationed there previously, in order to set up communication facilities.

DR. STAHLER: And where was this staff accommodated?

VON EICHBORN: The staff of Army Group Signal Regiment 537 was accommodated in the so-called Dnieper Castle.

DR. STAHLER: Where was the advance unit?

VON EICHBORN: The advance unit may have occupied this building, too—or at least a part of this advance unit did—to safeguard this building for the regimental staff.

DR. STAHLER: Do you know who was in command of this advance unit?

VON EICHBORN: Lieutenant Hodt was in command of this advance unit.

DR. STAHLER: When did this advance unit come to Katyn?

VON EICHBORN: Smolensk fell on about 17 July 1941. The army group had planned to put up its headquarters in the immediate vicinity of Smolensk, and, after this group had selected its quarters, this region was seized immediately after the fall of the city. The advance unit arrived at the same time as this area was seized, and that was probably in the second half of July of 1941.

DR. STAHLER: Therefore the advance unit was there from July of 1941 until 20 September 1941?

VON EICHBORN: Yes.

DR. STAHLER: And the entire staff was there from 20 September 1941?

VON EICHBORN: Yes. It may be that part of the staff arrived somewhat later, but the majority of the staff arrived on 20 September.

THE PRESIDENT: Are you speaking of the staff of the army group or the staff of the signal regiment?

VON EICHBORN: I am speaking of both staffs, because the moving of large staffs such as that of an army group could not be undertaken in 1 day; usually 2 to 3 days were needed for that. The operations of the signal corps had to be assured, and therefore the regiment had to leave some of the staff behind until the entire staff had been moved.

DR. STAHLER: Where was the advance unit accommodated?

VON EICHBORN: At least part of the advance unit was accommodated in the Dnieper Castle. Some of the others were in the neighborhood of those places where later on the companies were billeted. The reason for that was to keep the billets ready for this regiment until the bulk of it had been moved.

DR. STAHLER: How about the Regimental Staff 537?

VON EICHBORN: That was in the Dnieper Castle.

DR. STAHLER: Can you give us the names of the officers who belonged to the regimental staff?

VON EICHBORN: At that time there was Lieutenant Colonel Bedenck, the commanding officer; Lieutenant Rex, adjutant; Lieutenant Hodt, orderly officer; and a Captain Schäfer, who was a

telephone expert. It may be that one or two others were there as well, but I can no longer remember their names.

DR. STAHLER: The preceding witness has already told us about the tasks of the regimental staff. How were the activities of the regimental staff controlled?

VON EICHBORN: The regiment, which consisted of 10 to 12 companies, had to give an exact report each evening as to what work had been allotted to the various companies. This was necessary as we had to know what forces were available in case of emergency, for undertaking any new tasks.

DR. STAHLER: How far away from the Dnieper Castle were you billeted?

VON EICHBORN: Approximately 4 to 5 kilometers. I cannot give you the exact distance as I always made it by car, but it would be about 4 to 5 kilometers.

DR. STAHLER: Did you frequently go to Dnieper Castle?

VON EICHBORN: Very frequently when I was off duty, as I had belonged to this regiment and knew most of the officers, with whom I was on friendly terms.

DR. STAHLER: Can you tell us about the kind and extent of the traffic to the Dnieper Castle?

VON EICHBORN: In order to judge this you have to differentiate between persons and things. So far as people were concerned, the traffic was very lively because the regiment had to be very centrally organized in order to be equal to its tasks. Therefore, many couriers came and commanders of the various companies frequently came to visit the regimental staff.

On the other hand there was a heavy traffic of trucks and passenger cars, because the regiment tried to improve its billets there; and since we remained there for some time all sorts of building alterations were carried out in the house.

DR. STAHLER: Did you hear anything about there being three Russian camps with captured Polish officers, 25 to 45 kilometers west of Smolensk, which had allegedly fallen into German hands?

VON EICHBORN: I never heard anything about any kind of Polish officers' camps or Polish prisoner-of-war camps.

DR. STAHLER: Did your army group receive reports about the capture of such Polish officers?

VON EICHBORN: No. I would have noticed that, since the number of prisoners, and especially the number of officers, was always submitted to me in the evening reports of the armies which

took these prisoners. It was our responsibility to receive these signal reports and we therefore saw them every evening.

DR. STAHLER: You did not receive a report to that effect?

VON EICHBORN: I neither saw such a report from an army, which would have issued it, nor did I ever receive a report from an army group which would have had to transmit this report in their evening bulletin to the High Command of the Army (OKH).

DR. STAHLER: Could a report like that have been handed in from another source or been sent to another office?

VON EICHBORN: The official channel in the Army was very stringent, and the staffs saw to it that official channels were strictly adhered to. In any case the armies were always required to make the detailed reports, following the lines stipulated in the form sheets and this applied especially to the figures concerning prisoners. Therefore, it is quite out of the question that if such a number of officers had fallen into the hands of an army, it would not have reported the matter through the appropriate channel.

DR. STAHLER: You said, just a little while ago, that you were in particularly close relationship with the officers of this regiment. Did you ever hear that Polish prisoners of war, officers, were shot at some time or other in the Katyn forest at the instigation of Regiment 537 under Colonel Bedenck or under Colonel Ahrens?

VON EICHBORN: I knew nearly all the officers of the regiment, as I myself had been over a year with the regiment, and I was on such familiar terms with most of the officers that they told me everything that took place, even anything of an unofficial nature. Therefore, it is quite out of the question that such an important matter should not have come to my knowledge. From the nature of the whole character moulding in the regiment, it is quite impossible that there should not have been at least one who would have come to tell me about it immediately.

DR. STAHLER: Were all the operational orders for Regiment 537 officially known to you?

VON EICHBORN: The operational orders for this army group signal regiment were twofold: The orders which concerned only the wireless company and those which applied to the nine telephone companies. Since I was a telephone expert, it was quite natural for me to draft these orders and submit them to my superior, General Oberhäuser. Therefore, each order which was issued had either been drafted by me or I had seen it beforehand.

DR. STAHLER: Was there ever at any time an order given out by your office to shoot Polish prisoners of war?

VON EICHBORN: Such an order was neither given to the regiment by our office nor by any other office. Neither did we receive a report to this effect, nor did we hear about things like that through any other channel.

DR. STAHLER: If an order like that came through official channels, it could come only through you?

VON EICHBORN: This order would have necessitated a great many members of the regiment being taken away from their own duties, which were to safeguard the system of communications. As we were very short of signallers, we had to know what almost every man in the regiment was doing. It would have been quite out of the question for any member of the regiment to have been taken away from such a duty without our knowledge.

DR. STAHLER: I have no further questions, Mr. President.

THE PRESIDENT: Dr. Kranzbühler, whom are you appearing on behalf of?

FLOTTENRICHTER KRANZBÜHLER: For Grossadmiral Dönitz, Mr. President.

THE PRESIDENT: There is no charge made against Grossadmiral Dönitz in connection with this offense at all.

FLOTTENRICHTER KRANZBÜHLER: Mr. President, the exhumations and the propaganda connected with them occurred during the period when Grossadmiral Dönitz was Commander-in-Chief of the Navy. The Prosecution alleges that at that time Grossadmiral Dönitz was a member of the Cabinet and had participated in all acts taken by the Government. Therefore, I must consider him as being implicated in all the problems arising out of the Katyn case.

THE PRESIDENT: That would mean that we should have to hear examination from everybody who was connected with the Government. And the Tribunal has already pointed out, with reference to Admiral Raeder, that his case was not connected with this matter. It is only when a case is directly connected with the matter that counsel for the individual defendants are allowed to cross-examine, in addition to the defendant's counsel who calls the witness. If there is any suggestion that you want to make to the counsel who is calling the witness, you can make it to him, but you are not entitled . . .

FLOTTENRICHTER KRANZBÜHLER: But I am asking your permission to put two or three questions to this witness.

THE PRESIDENT: If you have any special questions to put, you may suggest them to Dr. Stahmer, and Dr. Stahmer will put

them. Dr. Kranzbühler, if you want to put any questions, you may put them to Dr. Stahmer, and he will put them to the witness.

FLOTTENRICHTER KRANZBÜHLER: Mr. President, I did not quite understand. Shall I propose to Dr. Stahmer to put the questions or...

THE PRESIDENT: If you cannot do it verbally, you may do it in writing, and you may do it later on. But I really do not think there can be any questions which are so difficult to suggest to Dr. Stahmer as all that.

FLOTTENRICHTER KRANZBÜHLER: They can also be put through Dr. Stahmer. I was only thinking that I would save some time by putting the questions myself.

THE PRESIDENT: I told you if you wish to ask any questions, you must ask them through Dr. Stahmer.

FLOTTENRICHTER KRANZBÜHLER: Thank you, Mr. President.

THE PRESIDENT: In the meantime, the Tribunal will go on with the cross-examination, and any questions which you wish to put can be put in re-examination.

Does the Prosecution wish to cross-examine?

MR. COUNSELLOR SMIRNOV: Witness, I am interested to know your exact function in the army. Were you in charge of teleprinter communications at the headquarters of Army Group Center or were you a wireless expert?

VON EICHBORN: No, Mr. Prosecutor, you are wrong. I was the telephone expert of Army Group Center, not the wireless expert.

MR. COUNSELLOR SMIRNOV: That is exactly what I am asking you. The translation was evidently incorrect. So you were in charge of telephone communications, were you not?

VON EICHBORN: Yes; you are right.

MR. COUNSELLOR SMIRNOV: Ordinary telegrams, or ciphered telegrams?

VON EICHBORN: The task of a telephone expert connected with an army group consisted in keeping the telephone lines intact...

MR. COUNSELLOR SMIRNOV: No, I am not interested in the tasks in a general way. I would like to know whether these were secret ciphered telegrams or the ordinary army mail, army communications which were not secret.

VON EICHBORN: There were two kinds of telegrams; open and secret.

MR. COUNSELLOR SMIRNOV: Were secret telegrams transmitted by you, too?

VON EICHBORN: Both came through me.

MR. COUNSELLOR SMIRNOV: Consequently, all communications between the Wehrmacht, between Army units and the highest police authorities also passed through you; is that correct?

VON EICHBORN: The most important telegrams, and especially the secret ones were submitted to the telephone expert.

MR. COUNSELLOR SMIRNOV: Yes. Consequently, the correspondence between the police authorities and the Armed Forces units passed through you; is that correct? I am asking you this question for a second time.

VON EICHBORN: I must answer with the reservation that the messages did not pass through the telephone expert, but only the most important secret teletype matters were submitted to him—not the whole correspondence, because that went also through the mail as well as by courier service.

MR. COUNSELLOR SMIRNOV: That is clear. Do you know in this case that in September and October 1941 there were special detachments in Smolensk whose duty, in close co-operation with the Army, was to carry out the so-called purge of the prisoner-of-war camps and the extermination of prisoners of war?

DR. LATERNSEER: Mr. President, I must decisively object to this questioning of the witness. This questioning can have only the purpose of determining the relations between the General Staff and the OKW and any commands of the Security Service. Therefore, they are accusing the General Staff and the OKW; and if I, Mr. President, as defense counsel for the General Staff and the OKW am not permitted to put questions, then on the basis of equal treatment, the same rules must apply to the Prosecution as well.

MR. COUNSELLOR SMIRNOV: May I, Mr. President, make a short statement?

THE PRESIDENT: Colonel Smirnov, the question is competent.

MR. COUNSELLOR SMIRNOV: I beg your pardon.

THE PRESIDENT: I said the question was competent. You may ask the question.

MR. COUNSELLOR SMIRNOV: I would like to ask you the following question, Witness. Since all secret teletypes passed through you, did you ever encounter among these telegrams any from the so-called 1st Einsatzgruppe "B"—that was the so-called first command—or from the Special Command "Moscow" which at

that time was located at Smolensk and kept in reserve in anticipation of better times? The latter had the order to perpetrate mass murders in Moscow. Both commands were located at Smolensk at that time.

VON EICHBORN: No such reports came into my hands. I can fully explain this to you, Mr. Prosecutor. When any detachments of this sort had been established in the area of Army Group Center, these detachments had their own wireless stations. It was only later on in the course of the Russian campaign that these posts had teletype facilities as well; then they used the army group network. However, that only happened later.

MR. COUNSELLOR SMIRNOV: Consequently, the telegrams of those special units which, by order of high police authorities, were assigned to carry out special actions in co-operation with military units, did not pass through your hands in September and October of 1941?

VON EICHBORN: That is correct. At that time, there were no teletype facilities and offices for such special units, even if they were in that area at all.

MR. COUNSELLOR SMIRNOV: Mr. President, this document was already presented to the Court together with the Extraordinary State Commission Report, Document Number USSR-3. If the High Tribunal will permit it, I should like to present to the Tribunal and to the Defense photostatic copies of one of the documents which was attached to the report of the Extraordinary State Commission. If the Tribunal will look at Page 2 of this document, it will see that the Special Command "Moscow" and the Einsatzgruppe "B" were both located in Smolensk. It says on the first page that these detachments together with units of the Armed Forces, were assigned to carry out mass killings in the camps. If the Tribunal will permit me, I shall submit this document now...

THE PRESIDENT: Colonel Smirnov, that is a matter of argument. We shall take judicial notice of it, of course, of everything which is in the Soviet Government's publication. And I understand you to say that this document is a part of the Soviet Government communication or Soviet Government report.

MR. COUNSELLOR SMIRNOV: Yes, Mr. President; but I would like to ask permission to present an original German document, a secret document, which states that in the Smolensk area there were two large special commands whose duties were to carry out mass murders in the camps, and that these actions had to be carried out together with the Armed Forces units which had to co-operate with them.

THE PRESIDENT: Colonel Smirnov, is this document which you have just handed up to us a part of the report USSR-3?

MR. COUNSELLOR SMIRNOV: Yes, Mr. President, it is a part of the report, Document USSR-3, called "Special Directives of the Hitler Government Concerning the Annihilation of Prisoners of War." I would like to ask the Tribunal to allow me to present one of the original documents even if the report, USSR-3, has been already submitted in full.

It says there that these special units were located in Smolensk and were assigned together with the Armed Forces units to carry out mass killings in the camps.

THE PRESIDENT: Yes, Colonel Smirnov. This document is already in evidence, if the Tribunal understands correctly.

MR. COUNSELLOR SMIRNOV: Thank you, Mr. President.

[Turning to the witness.] Consequently, we may consider it as an established fact that the correspondence, the telegraphic messages of these special detachments did not pass through your hands; is that correct?

THE PRESIDENT: He has said that twice already.

MR. COUNSELLOR SMIRNOV: Excuse me, Mr. President.

[Turning to the witness.] Why did you assert with such certainty that there were no reports about the killing of the Poles? You know that the killing of the Polish prisoners of war was a special action, and any report about this action would have to pass through your hands? Is that correct?

VON EICHBORN: I answered the prosecutor—rather, I answered Dr. Stahmer—that if in the area of Army Group Signal Regiment 537 killings of that sort had taken place, I would undoubtedly have known about them. I did not state what the prosecutor is now trying to ascribe to me.

THE PRESIDENT: Colonel Smirnov, the Tribunal think you had better read this passage from this document, which is in the German language, to the Tribunal so that it will go into the record.

MR. COUNSELLOR SMIRNOV: In this document, Mr. President, it is stated . . .

THE PRESIDENT: Go on, Colonel Smirnov.

MR. COUNSELLOR SMIRNOV: Thank you, Mr. President.

This document is dated "Berlin, 29 October 1941." It is headed, "The Chief of the Security Police and of the Security Service." It has a classification, "Top Secret; Urgent letter; Operational Order Number-14." Reference is made to decrees of 17 July and 12 September 1941. I shall now read a few short sentences, and I shall begin with the first sentence:

"In the appendix, I am sending directions for the evacuation of Soviet civilian prisoners and prisoners of war out of permanent prisoner-of-war camps and transit camps in the rear of the Army...

"These directives have been worked out in collaboration with the Army High Command. The Army High Command has notified the commanders of the armies in the rear as well as the local commanders of the prisoner-of-war camps and of the transit camps.

"The task force groups, depending on the size of the camp in their territory, are setting up special commands in sufficient strength under the leadership of an SS leader. The commands are instructed immediately to start work in the camps."

I break off here, and will continue reading the last paragraph:

"I emphasize especially that Operational Orders Number 8 and 14 as well as the appendix are to be destroyed immediately in the case of immediate danger."

I shall finish my reading and now I shall only mention the distribution list. On Page 2 I quote the part concerning Smolensk. It says here that in Smolensk the Einsatzgruppe "B" was located, consisting of Special Commands 7a, 7b, 8, and 9; and in addition to this, there was already located in Smolensk a special command, which had been rather prematurely named "Moscow" by its organizers.

These are the contents of the document, Mr. President.

THE PRESIDENT: The Tribunal directs that the whole document shall be translated. We will now recess until 5 minutes past 2 o'clock.

[The Tribunal recessed until 1405 hours.]

Afternoon Session

MR. COUNSELLOR SMIRNOV: Mr. President, I have no more questions to put to this witness.

THE PRESIDENT: Dr. Stahmer.

DR. STAHLER: Witness, do you know who owned that little castle near the Dnieper before the occupation by German troops? Who owned it, who lived there?

VON EICHBORN: I cannot say that for certain. We noticed that the little castle was astonishingly well furnished. It was very well laid out. It had two bathrooms, a rifle range, and a cinema. We drew certain conclusions therefrom, when the facts became known, but I do not know anything about the previous owner.

DR. STAHLER: The Russian Prosecutor submitted to you a document dated 29 October 1941, "Directives to the Chief of the Sipo for the Detachments in the Stalags." With reference to that document, I want to ask you whether you had an opportunity personally to ascertain the attitude of Field Marshal Kluge, your commander of Army Group Center, regarding the shooting of prisoners of war?

VON EICHBORN: By chance I became the ear-witness of a conversation between the Commanders Bock and Kluge. That conversation took place about 3 or 4 weeks before the beginning of the Russian campaign. I cannot tell you the exact time. At the time Field Marshal Von Bock was the commander of Army Group Center, and Field Marshal Von Kluge was commander of the 4th Army. The army group was in Posen and the 4th Army at Warsaw. One day I was called by the aide-de-camp of Field Marshal Von Bock, who was Lieutenant Colonel Count Hardenberg. He gave me the order...

THE PRESIDENT: These details are entirely irrelevant, aren't they. All you want to ask him is: What was the attitude of Von Kluge? That is all.

DR. STAHLER: The answer did not come through. I did not understand what you said, Mr. President.

THE PRESIDENT: What I said was that all these details about the particular place where Von Kluge met some other army group commander are utterly irrelevant. All you are trying to ask him is: What was Von Kluge's attitude toward the murder of war prisoners? Isn't that all?

DR. STAHLER: Yes.

[Turning to the witness.] Will you answer the question briefly, Witness. Please just tell us what Von Kluge said.

VON EICHBORN: Von Kluge told Von Bock, during a telephone conversation, that the order for the shooting of certain prisoners of

war was an impossibility and could not be carried out, with regard to the discipline of the troops. Von Bock shared this point of view and both these gentlemen talked for half an hour about the measures which they wanted to adopt against this order.

DR. STAHLER: According to the allegations of the Prosecution, the shooting of these 11,000 Polish officers is supposed to have been carried out sometime in September 1941. The question now is: Do you consider it possible, in view of local conditions, that such mass shootings and burials could have been carried out next door to the regimental headquarters without you yourself having heard about it?

VON EICHBORN: We were very busy in preparation for the move of the army group to Smolensk. We had assigned a great number of signal troops for setting up perfect installations. On the entire site there was a constant going and coming of troops laying cables and telephone lines. It is out of the question that anything of this kind could have occurred in that particular area without the regiment and I getting knowledge of it. ✓

DR. STAHLER: I have no further questions to put to the witness, Mr. President.

THE PRESIDENT: The witness can retire.

DR. STAHLER: Mr. President, before calling my third witness, Lieutenant General Oberhäuser, may I ask your permission to make the following remarks?

The Prosecution has up to now only alleged that Regiment Number 537 was the one which had carried out these shootings and that under Colonel Ahrens' command. Today again, Colonel Ahrens has been named by the Prosecution as being the perpetrator. Apparently this allegation has been dropped and it has been said that if it was not Ahrens then it must have been his predecessor, Colonel Bedenck; and if Colonel Bedenck did not do it, then apparently—and this seems to be the third version—it was done by the SD. The Defense had taken the position solely that Colonel Ahrens was accused as the perpetrator and it has refuted that allegation. Considering the changed situation and the attitude adopted by the Prosecution, I shall have to name a fourth witness in addition. That is First Lieutenant Hodt, who has been mentioned today as the perpetrator and who was with the regimental staff right from the beginning and who was, as we have told, the senior of the advance party which arrived at the Dnieper Castle in July. I got the address of First Lieutenant Hodt by chance yesterday. He is at Glücksburg near Flensburg; and I, therefore, ask to be allowed to name as a witness First Lieutenant Hodt, who will give evidence that during the time between July and September such shootings did not occur.

THE PRESIDENT: Dr. Stahmer, the Tribunal will consider your application, when they adjourn at half past 3, with reference to this extra witness.

DR. STAHLER: Yes, Sir. Then I shall now call Lieutenant General Oberhäuser as witness.

[The witness Oberhäuser took the stand.]

THE PRESIDENT: Will you state your full name, please?

EUGEN OBERHÄUSER (Witness): Eugen Oberhäuser.

THE PRESIDENT: Will you repeat this oath after me: I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

DR. STAHLER: General, what position did you hold during the war?

OBERHÄUSER: I was the signal commander in an army group, first of all during the Polish campaign, in Army Group North; then, in the Western campaign Army Group B; and then in Russia, Army Group Center.

DR. STAHLER: When did you and your staff reach the neighborhood of Katyn?

OBERHÄUSER: Sometime during September 1941.

DR. STAHLER: Where was your staff located?

OBERHÄUSER: My staff was located in the immediate vicinity of the commander of the army group; that is to say, about 12 kilometers west of Smolensk, near the railroad station of Krasnibor.

DR. STAHLER: Was Regiment Number 537 under your command?

OBERHÄUSER: Regiment 537 was directly under my command.

DR. STAHLER: What task did that regiment have?

OBERHÄUSER: That regiment had the task of establishing both telegraph and wireless communications between the command of the army group and the various armies and other units which were directly under its command.

DR. STAHLER: Was the staff of the regiment stationed near you?

OBERHÄUSER: The staff of that regiment was located about 3, perhaps 4 kilometers west from my own position.

DR. STAHLER: Can you give us more detailed information regarding the exact location of the staff headquarters of Number 537?

OBERHÄUSER: The staff headquarters of 537 was in a very nice Russian timber house. Commissars were supposed to have been living there before. It was on the steep bank of the Dnieper River. It was somewhat off the road, perhaps 400 to 500 meters away. It was, from my place, 4 kilometers west of the main highway Smolensk to Vitebsk.

DR. STAHLER: Who was the commanding officer of the regiment after the capture of Smolensk?

OBERHÄUSER: After the capture of Smolensk, Colonel Bedenck was the commander of the regiment.

DR. STAHLER: For how long?

OBERHÄUSER: Until about November 1941.

DR. STAHLER: Who was his successor?

OBERHÄUSER: His successor was Colonel Ahrens.

DR. STAHLER: How long?

OBERHÄUSER: Approximately until September—it may have been August—1943.

DR. STAHLER: Were you near Katyn as long as that, too?

OBERHÄUSER: I was there until the command of the army group transferred its headquarters farther west.

DR. STAHLER: What were your relations with the commanders of this regiment?

OBERHÄUSER: My relations with the regimental commanders were most hearty, both officially and privately, which is due to the fact that I had been the first commander of that regiment. I myself had formed the regiment and I was most attached to it.

DR. STAHLER: Did you personally visit the little Dnieper Castle frequently?

OBERHÄUSER: I went to the Dnieper Castle frequently; I can well say in normal times once or twice a week.

DR. STAHLER: Did the commanders visit you in the meantime?

OBERHÄUSER: The commanders came to see me more frequently than I went to see them.

DR. STAHLER: Did you know anything about the fact that near Smolensk, about 25 to 45 kilometers to the west, there were three Russian camps which contained Polish prisoners of war...

OBERHÄUSER: I knew nothing of that.

DR. STAHLER: ... who had fallen into the hands of the Germans?

OBERHÄUSER: I never heard anything about it.

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DR. STAHLER: Was there an order, which is supposed to have come from Berlin, that Polish officers who were prisoners of war were to be shot?

OBERHÄUSER: No, such an order was never issued.

DR. STAHLER: Did you yourself ever give such an order?

OBERHÄUSER: I have never given such an order.

DR. STAHLER: Do you know whether Colonel Bedenck or Colonel Ahrens ever caused such shootings to be carried out?

OBERHÄUSER: I am not informed, but I consider it absolutely impossible.

DR. STAHLER: Why?

OBERHÄUSER: First, because such a decisive order would necessarily have gone through me, for I was the direct superior of the regiment; and second, because if such an order had been given, for a reason which I could not understand, and transmitted to the regiment through some obscure channel, then the commanders would most certainly have rung me up or they would have come to see me and said, "General, they are asking something here which we cannot understand."

DR. STAHLER: Do you know First Lieutenant Hodt?

OBERHÄUSER: Yes, I know him.

DR. STAHLER: What position did he have in Regiment 537?

OBERHÄUSER: Hodt held various posts in the regiment. Usually, he was sent ahead because he was a particularly qualified officer—especially in regard to technical qualifications—in order to make preparations when headquarters was being changed. He was therefore used as advance party of the so-called technical company in order to establish the new command posts; and then he was the regimental expert for the telephone system, dealing with all matters relating to the telephone and teletype system with the command headquarters of the army group. In my staff he was occasionally detailed to fill the positions of any of my officers when they were on leave.

DR. STAHLER: Was he also in charge of the advance party during the advance on Katyn?

OBERHÄUSER: That I cannot say. I can only say that I personally heard from my staff signal commander that he had sent an officer ahead, after it had been ascertained how the headquarters were to be laid out, that this officer was acting on my behalf, as at the time I still remained in the old quarters, and he was preparing things in the way I wanted them from the point of view of the signal commander. I do not know who was in charge of that

advance party at the time, but it is quite possible that it was First Lieutenant Hodt.

DR. STAHLER: Were you in Katyn or the vicinity during the period after the capture of Smolensk, which was, I believe, on or about 20 July 1941, and up to the transfer of your staff to Katyn on 20 September?

OBERHÄUSER: I was in the vicinity. I was where the headquarters of the army group wanted to settle down; that is, in the woods west of Smolensk, where Katyn is located.

DR. STAHLER: Were you frequently there during that time?

OBERHÄUSER: I should say three or four times.

DR. STAHLER: Did you talk to Hodt on those occasions?

OBERHÄUSER: If he was the officer in charge of the advance party, which I cannot say today, then I must certainly have talked to him. At any rate, I did talk to the officer whom I had sent ahead and also to the one from my regiment.

DR. STAHLER: Did you hear anything about shootings occurring during that time?

OBERHÄUSER: I heard nothing, nor did I hear anything at all except in 1943, when the graves were opened.

DR. STAHLER: Did you or Regiment 537 have the necessary technical means, pistols, ammunition, and so on, at your disposal which would have made it possible to carry out shootings on such a scale?

OBERHÄUSER: The regiment, being a signal regiment in the rear area, was not equipped with weapons and ammunition as well as the actual fighting troops. Such a task, however, would have been something unusual for the regiment; first, because a signal regiment has completely different tasks, and secondly it would not have been in a position technically to carry out such mass executions. ✓

DR. STAHLER: Do you know the place where these graves were discovered later on?

OBERHÄUSER: I know the site because I drove past it a great deal.

DR. STAHLER: Can you describe it more accurately?

OBERHÄUSER: Taking the main road Smolensk-Vitebsk, a path led through wooded undulating ground. There were sandy spaces, which were, however, covered with scrub and heather, and along that narrow path one got to the Dnieper Castle from the main road. ✓

DR. STAHLER: Were the places where these graves were later discovered already overgrown when you got there?

OBERHÄUSER: They were overgrown just like the surrounding ground, and there was no difference between them and the rest of the surroundings.

DR. STAHLER: In view of your knowledge of the place, would you consider it possible that 11,000 Poles could have been buried at that spot, people who may have been shot between June and September 1941?

OBERHÄUSER: I consider that it is out of the question, for the mere reason that if the commander had known it at the time he would certainly never have chosen this spot for his headquarters, next to 11,000 dead.

DR. STAHLER: Can you tell me how the graves were discovered?

OBERHÄUSER: Officially I had nothing to do with that. I only heard that through local inhabitants or somebody else it had become known that large-scale executions had taken place there years ago.

DR. STAHLER: From whom did you hear that?

OBERHÄUSER: Quite probably from the commander himself, who, because he was located on the spot, had heard more about it than I had. But I cannot remember exactly now.

DR. STAHLER: So you did not receive official notice about the discovery of the graves, did you?

OBERHÄUSER: No, I never did.

DR. STAHLER: After the opening of the graves, did you talk to the German or foreign members of the commission?

OBERHÄUSER: I have never talked to any members of that commission.

DR. STAHLER: I have no further questions, Mr. President.

THE PRESIDENT: Colonel Smirnov.

J MR. COUNSELLOR SMIRNOV: Witness, you arrived in the region of Katyn in September 1943?

✓ OBERHÄUSER: 1941, not 1943.

MR. COUNSELLOR SMIRNOV: Excuse me, I meant September 1941. Is that correct?

OBERHÄUSER: Yes, September 1941.

MR. COUNSELLOR SMIRNOV: And you contend that you did not know anything either about the camps for Polish prisoners of war or the prisoners in the hands of the German troops, is that so?

OBERHÄUSER: I have never heard anything about Polish prisoners of war being in the hands of German troops.

MR. COUNSELLOR SMIRNOV: I understand that this had no relation to your official activity as the commander of a signal regiment. But in spite of this you may perhaps have witnessed that various German troops combed the woods in the vicinity of the Smolensk-Vitebsk highway to capture Polish prisoners of war who had escaped from the camps?

OBERHÄUSER: I never heard anything about troops going there in order to, shall we say, recapture escaped Polish prisoners of war. I am hearing this here for the first time.

MR. COUNSELLOR SMIRNOV: Please answer me. Have you perhaps seen German military units escorting Polish prisoners of war who were captured in the woods?

OBERHÄUSER: I have not seen that.

MR. COUNSELLOR SMIRNOV: Please answer the following question: You were on good terms with Colonel Ahrens, were you not?

OBERHÄUSER: I have had good relations with all commanders of the regiment.

MR. COUNSELLOR SMIRNOV: And in addition to that, you were his immediate superior?

OBERHÄUSER: Right.

MR. COUNSELLOR SMIRNOV: Colonel Ahrens found out about the mass graves at the end of 1941 or at the beginning of 1942. Did he tell you anything about his discovery? ✓

OBERHÄUSER: I cannot believe that Colonel Ahrens could have discovered the graves in 1941. I cannot imagine that—I especially cannot imagine that he would tell me nothing about it.

MR. COUNSELLOR SMIRNOV: In any case do you contend that neither in 1942 nor in 1943 did Colonel Ahrens report to you in regard to this affair?

OBERHÄUSER: Colonel Ahrens never told me anything about it, and he would have told me if he had known.

MR. COUNSELLOR SMIRNOV: I am interested in the following answer which you gave to a question by defense counsel. You remarked that the signal regiment had not enough weapons to carry out shootings. What do you mean by that? How many, and what kind of weapons did the regiment possess?

OBERHÄUSER: The signal regiment were mostly equipped with pistols and with carbines. They had no automatic arms.

MR. COUNSELLOR SMIRNOV: Pistols? Of what caliber?

OBERHÄUSER: They were Parabellum pistols. The caliber, I think, was 7.65, but I cannot remember for certain. ✓

✓ MR. COUNSELLOR SMIRNOV: Parabellum pistols, 7.65, or were there Mauser pistols or any other kind of weapons?

OBERHÄUSER: That varied. Noncommissioned officers, as far as I know, had the smaller Mauser pistols. Actually, only non-commissioned officers were equipped with pistols. The majority of the men had carbines.

MR. COUNSELLOR SMIRNOV: I would like you to tell us some more about the pistols. You say that they were 7.65 caliber pistols, is that so?

OBERHÄUSER: I cannot now, at the moment, give you exact information about the caliber. I only know that the Parabellum pistol was 7.65 or some such caliber. I think the Mauser pistol had a somewhat smaller caliber.

MR. COUNSELLOR SMIRNOV: And Walter pistols?

OBERHÄUSER: There were also Walters. I think they had the same caliber as the Mauser. It is a smaller, black pistol; and it is better than the somewhat cumbersome Parabellum pistol which is heavier.

MR. COUNSELLOR SMIRNOV: Yes, that is quite correct. Please tell me whether in this regiment the noncommissioned officers possessed those small pistols.

OBERHÄUSER: As a rule, noncommissioned officers had pistols but not carbines.

MR. COUNSELLOR SMIRNOV: I see. Perhaps you can tell us about how many pistols this signal regiment possessed?

OBERHÄUSER: Of course I cannot tell you that now. Let us assume that every noncommissioned officer had a pistol . . .

MR. COUNSELLOR SMIRNOV: And how many noncommissioned officers were there? How many pistols in all were there in your regiment if you consider that every noncommissioned officer had a pistol?

OBERHÄUSER: Assuming that every noncommissioned officer in the regiment had a pistol that would amount to 15 per company, a total of 150. However, to give a definite statement about that figure retrospectively now is impossible. I can only give you clues.

MR. COUNSELLOR SMIRNOV: Why do you consider that 150 pistols would be insufficient to carry out these mass killings which went on over a period of time? What makes you so positive about that?

OBERHÄUSER: Because a signal regiment of an army group deployed over a large area as in the case of Army Group Center is never together as a unit. The regiment was spread out from Kolodov

as far as Vitebsk, and there were small detachments everywhere, and in the headquarters of the regiment there were comparatively few people; in other words, there were never 150 pistols in one and the same place.

MR. COUNSELLOR SMIRNOV: The main part of the signal regiment was located in the Katyn woods, was it not?

OBERHÄUSER: I did not understand your question.

MR. COUNSELLOR SMIRNOV: The main portions of your regiment were located in the Katyn woods, were they not?

OBERHÄUSER: The first company was mainly located between the regimental staff quarters and the actual command post of the army group. That was the company which was handling the communications, the telephone and teleprinted communications for the army group. It was the company, therefore, which was nearest.

MR. COUNSELLOR SMIRNOV: One more question. The officers of your regiment were obviously armed with pistols and not with carbines?

OBERHÄUSER: Officers had pistols only, and as a rule they only had small ones. Possibly one or the other may have had a Parabellum pistol.

MR. COUNSELLOR SMIRNOV: That is to say either a Walter or a Mauser?

OBERHÄUSER: Yes.

MR. COUNSELLOR SMIRNOV: Did you frequently visit the villa where the headquarters of Regiment 537 was located?

OBERHÄUSER: Yes, I was there at least once, sometimes twice, a week.

MR. COUNSELLOR SMIRNOV: Were you ever interested as to why soldiers from other military units visited the villa in Kozy Gory and why special beds were prepared for them as well as drinks and food?

OBERHÄUSER: I cannot imagine that there were any large-scale visits of other soldiers or members of other units. I do not know anything about that.

MR. COUNSELLOR SMIRNOV: I am not speaking about a great number. I am speaking of 20 or sometimes 25 men.

OBERHÄUSER: If the regimental commander summoned his company and detachment commanders for an officers' meeting, then, of course, there would be a few dozen of such officers who normally would not be seen there.

MR. COUNSELLOR SMIRNOV: No, I am not talking about officers who belonged to the unit. I would like to ask you another

somewhat different question. Would the number 537 appear on the shoulder straps of the soldiers belonging to that regiment?

OBERHÄUSER: As far as I recollect the number was on the shoulder straps, but at the beginning of the war it could be concealed by a camouflage flap. I cannot remember whether during that particular period these covers were used or not. At any rate at the street entrance to the regimental headquarters there was a black-yellow-black flag, which bore the number 537.

MR. COUNSELLOR SMIRNOV: I am speaking of soldiers who came to the villa in Kozy Gory, and who did not have the number 537 on their shoulder straps. Were you ever interested in finding out what those soldiers did there in September and October of 1941? Did the commander of the unit report to you about this?

OBERHÄUSER: May I ask what year this was supposed to be, 1941?

MR. COUNSELLOR SMIRNOV: Yes, 1941, that is the year which is concerned.

OBERHÄUSER: I do not think that at that time there was much coming and going of outsiders at staff headquarters because during that period everything was in course of construction and I cannot imagine that other units, even small groups of 20 or 25 people should have been there. I personally, as I have told you, was there only once or twice weekly, and not before September or October.

MR. COUNSELLOR SMIRNOV: Beginning with what date of September did you start visiting there? You said it was in September but not from what date.

OBERHÄUSER: I cannot tell you. The commander of the army group moved at the end of September from Borossilov, shortly before the battle of Vyazma, which was on 2 October, into that district.

MR. COUNSELLOR SMIRNOV: Consequently, you could start visiting this villa for instance only at the end of September or the beginning of October 1941?

OBERHÄUSER: It was only then that the little castle was finally occupied, for the regiment did not arrive much earlier than we from the command of the army group.

THE PRESIDENT: Colonel Smirnov, is it necessary to go into this detail? Have you any particular purpose in going into so much detail?

MR. COUNSELLOR SMIRNOV: Mr. President, I ask this question for the following reasons: Later we shall interrogate witnesses for the Soviet Prosecution on the same point and particularly the

chief of the medico-legal investigation. That is why I would like to ask the permission of the Court to clarify this point concerning the time when the witness visited the villa. That will be my last question to this point.

THE PRESIDENT: Yes, very well. Do not go into greater detail than you find absolutely necessary.

MR. COUNSELLOR SMIRNOV: Consequently, at the beginning of September and the first part of October 1941 you were not in the villa of Katyn woods and you could not be there at the time, is that true?

OBERHÄUSER: I cannot remember that exactly. The regimental commander had spotted the little castle and set it up for his staff headquarters. When exactly he moved in I cannot know, because I had other jobs to do.

MR. COUNSELLOR SMIRNOV: No, I asked whether you personally could not have been in the villa during the first part of September. Could you not possibly have been there before 20 September?

OBERHÄUSER: I do not think so.

MR. COUNSELLOR SMIRNOV: I have no further questions, Mr. President.

THE PRESIDENT: Do you wish to re-examine, Dr. Stahmer?

DR. STAHLER: Unfortunately, Mr. President, I shall have to come back to the question of time because it was not brought out too clearly during these last questions.

When did Regiment 537 move into the castle? ✓

OBERHÄUSER: I assume it was during September. ✓

DR. STAHLER: Beginning or end of September?

OBERHÄUSER: Probably rather more toward the end of September.

DR. STAHLER: Until then only the advance party was there, or ...

OBERHÄUSER: The advance party of the regiment was there and my officers whom I had sent ahead.

DR. STAHLER: How many noncommissioned officers were with the advance party?

OBERHÄUSER: I cannot tell you exactly how many the regiment sent. I personally had sent one officer. Generally the regiment could not have sent very many. As a rule, as is always the case, the regiment was still operating at the old command post in

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Borossilov and simultaneously it had to set up the new post. Consequently, during this period of regrouping, on the point of moving a command of an army group, there is always a considerable shortage of men. The old headquarters still has to be looked after, the new post requires men for its construction, so that as always during this period there were certainly too few people.

DR. STAHLER: Can you not even give us an estimate of the figure of that advance party?

OBERHÄUSER: There were 30, 40, or 50 men.

DR. STAHLER: How many noncommissioned officers?

OBERHÄUSER: Probably one or two officers, a few noncommissioned officers, and some men.

DR. STAHLER: The regiment was very widely spread out, was it not?

OBERHÄUSER: Yes.

DR. STAHLER: How far, approximately?

OBERHÄUSER: In the entire area of Army Group Center, shall we say between Orel and Vitebsk—in that entire area they were widely dispersed.

DR. STAHLER: How many kilometers was that, approximately?

OBERHÄUSER: More than 500 kilometers.

DR. STAHLER: Do you know Judge Advocate General Dr. Konrad of Army Group Center?

OBERHÄUSER: Yes.

DR. STAHLER: Do you know whether, in 1943, he interrogated the local inhabitants under oath about the date when the Polish officers were supposed to have been shot in the woods of Katyn?

OBERHÄUSER: No, I do not know.

DR. STAHLER: I have no further questions, Mr. President.

THE PRESIDENT: Were there any Einsatzkommandos in the Katyn area during the time that you were there?

OBERHÄUSER: Nothing has ever come to my knowledge about that.

THE PRESIDENT: Did you ever hear of an order to shoot Soviet commissars?

OBERHÄUSER: I only knew of that by hearsay.

THE PRESIDENT: When?

OBERHÄUSER: Probably at the beginning of the Russian campaign, I think.

THE PRESIDENT: Before the campaign started or after?

OBERHÄUSER: I cannot remember having heard anything like that before the beginning of the campaign.

THE PRESIDENT: Who was to carry out that order?

OBERHÄUSER: Strictly speaking, signal troops are not really fighting troops. Therefore, they really had nothing to do with that at all, and therefore we were in no way affected by the order.

THE PRESIDENT: I did not ask you that. I asked you who had to carry out the order.

OBERHÄUSER: Those who came into contact with these people, presumably.

THE PRESIDENT: Anybody who came in contact with Russian commissars had to kill them; is that it?

OBERHÄUSER: No, I assume that it was the troops, the fighting troops, the actual fighting troops at the front who first met the enemy. That could only have applied to the army group. The signal regiment never came into a position to meet commissars. That is probably why they were not mentioned in the order or affected by it in any way.

THE PRESIDENT: The witness can retire.

MR. COUNSELLOR SMIRNOV: Mr. President, I ask permission to call as witness the former deputy mayor of the city of Smolensk during the German occupation, Professor of Astronomy, Boris Bazilevsky.

THE PRESIDENT: Yes, let him come in then.

[The witness Bazilevsky took the stand.]

Will you state your full name, please?

BORIS BAZILEVSKY (Witness): Boris Bazilevsky.

THE PRESIDENT: Will you make this form of oath: I, a citizen of the USSR—called as a witness in this case—solemnly promise and swear before the High Tribunal—to say all that I know about this case—and to add or to withhold nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

MR. COUNSELLOR SMIRNOV: With the permission of the Tribunal, I should like to start with my interrogation, Mr. President.

THE PRESIDENT: Certainly.

MR. COUNSELLOR SMIRNOV: Please tell us, Witness, what your activity was before the German occupation of the city and district of Smolensk and where you were living in Smolensk.

BAZILEVSKY: Before the occupation of Smolensk and the surrounding region...

MR. COUNSELLOR SMIRNOV: Please speak slowly.

BAZILEVSKY: ... I lived in the city of Smolensk and was professor first at the Smolensk University and then of the Smolensk Pedagogical Institute, and at the same time I was director of the Smolensk Astronomical Observatory. For 10 years I was the dean of the physics and mathematics faculty, and in the last years I was deputy to the director of the scientific department of the Institute.

MR. COUNSELLOR SMIRNOV: How many years did you live in Smolensk previous to the German occupation?

BAZILEVSKY: From 1919.

MR. COUNSELLOR SMIRNOV: Do you know what the so-called Katyn wood was?

BAZILEVSKY: Yes.

MR. COUNSELLOR SMIRNOV: Please speak slowly.

BAZILEVSKY: Actually, it was a grove. It was the favorite resort of the inhabitants of Smolensk who spent their holidays and vacations there.

MR. COUNSELLOR SMIRNOV: Was this wood before the war a special reservation which was fenced or guarded by armed patrols, by watch dogs?

BAZILEVSKY: During the many years that I lived in Smolensk, this place was never fenced; and no restrictions were ever placed on access to it. I personally used to go there very frequently. The last time I was there was in 1940 and in the spring of 1941. In this wood there was also a camp for engineers. Thus, there was free access to this place for everybody.

MR. COUNSELLOR SMIRNOV: Please tell me in what year there was an engineer camp?

BAZILEVSKY: As far as I know, it was there for many years.

MR. COUNSELLOR SMIRNOV: Please speak slowly.

THE PRESIDENT: Wait a minute. Professor, will you wait a minute, please? When you see that yellow light go on, it means that you are going too fast; and when you are asked a question, will you pause before you answer it? Do you understand?

BAZILEVSKY: Yes.

MR. COUNSELLOR SMIRNOV: Will you please repeat your answer, and very slowly, if you please.

BAZILEVSKY: The last time I know that the engineer camp was in the area of the Katyn wood was in 1941.

MR. COUNSELLOR SMIRNOV: Consequently, if I understand you correctly, in 1940 and 1941 before the beginning of the war at any rate—and you speak of the spring of 1941—the Katyn wood was not a special reservation and was accessible to everybody?

BAZILEVSKY: Yes. I say that that was the situation.

MR. COUNSELLOR SMIRNOV: Do you say this as an eyewitness or from hearsay?

BAZILEVSKY: No, I say it as an eyewitness who used to go there frequently.

MR. COUNSELLOR SMIRNOV: Please tell the Tribunal under what circumstances you became the first deputy mayor of Smolensk during the period of the German occupation. Please speak slowly.

BAZILEVSKY: I was an administration official; and I did not have an opportunity of leaving the place in time, because I was busy in saving the particularly precious library of the Institute and the very valuable equipment. In the circumstances I could not try to escape before the evening of the 15th, but then I did not succeed in catching the train. I therefore decided to leave the city on 16 July in the morning, but during the night of 15 to 16 the city was unexpectedly occupied by German troops. All the bridges across the Dnieper were blown up, and I found myself in captivity.

After some time, on 20 July, a group of German soldiers came to the observatory of which I was the director. They took down that I was the director and that I was living there and that there was also a professor of physics, Efimov, living in the same building.

In the evening of 20 July two German officers came to me and brought me to the headquarters of the unit which had occupied Smolensk. After checking my *personalia* and after a short conversation, they suggested that I become mayor of the city. I refused, basing my refusal on the fact that I was a professor of astronomy and that, as I had no experience in such matters, I could not undertake this post. They then declared categorically and with threats, "We are going to force the Russian intelligentsia to work."

MR. COUNSELLOR SMIRNOV: Thus, if I understand you correctly, the Germans forced you by threats to become the deputy mayor of Smolensk?

BAZILEVSKY: That is not all. They told me also that in a few days I would be summoned to the Kommandantur.

On 25 July a man in civilian clothes appeared at my apartment, accompanied by a German policeman, and represented himself as a lawyer, Menschagin. He declared that he came by order of the military headquarters and that I should accompany him immediately to headquarters. ✓

THE PRESIDENT: You are spending a lot of time on how he came to be mayor of Smolensk.

MR. COUNSELLOR SMIRNOV: Will you please allow me to pass to other questions, Mr. President? Thank you for your observations.

[Turning to the witness.] Who was your immediate superior? Who was the mayor of Smolensk?

BAZILEVSKY: Menschagin.

MR. COUNSELLOR SMIRNOV: What were the relations between this man and the German administration and particularly with the German Kommandantur?

BAZILEVSKY: These relations were very good and became closer and closer every day.

MR. COUNSELLOR SMIRNOV: Is it correct to say that Menschagin was the trustee of the German administration and that they even gave him secret information?

BAZILEVSKY: Yes.

MR. COUNSELLOR SMIRNOV: Do you know that in the vicinity of Smolensk there were Polish prisoners of war?

BAZILEVSKY: Yes, I do very well.

MR. COUNSELLOR SMIRNOV: Do you know what they were doing?

THE PRESIDENT: I do not know what this is going to prove. You presumably do, but can you not come nearer to the point?

MR. COUNSELLOR SMIRNOV: He said that he knew there were Polish prisoners of war in Smolensk; and, with the permission of the Tribunal, I would like to ask the witness what these prisoners of war were doing.

THE PRESIDENT: Very well; go on.

MR. COUNSELLOR SMIRNOV: Please answer. What were the Polish prisoners of war doing in the vicinity of Smolensk, and at what time?

BAZILEVSKY: In the spring of 1941 and at the beginning of the summer they were working on the restoration of the roads, Moscow-Minsk and Smolensk-Vitebsk.

MR. COUNSELLOR SMIRNOV: What do you know about the further fate of the Polish prisoners of war?

BAZILEVSKY: Thanks to the position that I occupied, I learned very early about the fate of the Polish prisoners of war.

MR. COUNSELLOR SMIRNOV: Please tell the Tribunal what you know about it.

BAZILEVSKY: In the camp for Russian prisoners of war known as "Dulag 126" there prevailed such a severe regime that prisoners of war were dying by the hundreds every day; for this reason I tried to free all those from this camp for whose release a reason could be given. I learned that in this camp there was also a very well-known pedagogue named Zhiglinski. I asked Menschagin to make representations to the German Kommandantur of Smolensk, and in particular to Von Schwetz, and to plead for the release of Zhiglinski from this camp.

MR. COUNSELLOR SMIRNOV: Please do not go into detail and do not waste time, but tell the Tribunal about your conversation with Menschagin. What did he tell you?

BAZILEVSKY: Menschagin answered my request with, "What is the use? We can save one, but hundreds will die." However, I insisted; and Menschagin, after some hesitation, agreed to put this request to the German Kommandantur.

MR. COUNSELLOR SMIRNOV: Please be short and tell us what Menschagin told you when he came back from the German Kommandantur.

BAZILEVSKY: Two days later he told me that he was in a very difficult situation on account of my demand. Von Schwetz had refused the request by referring to an instruction from Berlin saying that a very severe regime should prevail with respect to prisoners of war.

MR. COUNSELLOR SMIRNOV: What did he tell you about Polish prisoners of war?

BAZILEVSKY: As to Polish prisoners of war, he told me that Russians would at least be allowed to die in the camps while there were proposals to exterminate the Poles.

MR. COUNSELLOR SMIRNOV: What else was said?

BAZILEVSKY: I replied, "What do you mean? What do you want to say? How do you understand this?" And Menschagin answered, "You should understand this in the very literal sense of these words." He asked me not to tell anybody about it, since it was a great secret.

MR. COUNSELLOR SMIRNOV: When did this conversation of yours take place with Menschagin? In what month, and on what day?

BAZILEVSKY: This conversation took place at the beginning of September. I cannot remember the exact date.

MR. COUNSELLOR SMIRNOV: But you remember it was the beginning of September?

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BAZILEVSKY: Yes.

MR. COUNSELLOR SMIRNOV: Did you ever come back again to the fate of Polish prisoners of war in your further conversations with Menschagin?

BAZILEVSKY: Yes.

MR. COUNSELLOR SMIRNOV: Can you tell us when?

BAZILEVSKY: Two weeks later—that is to say, at the end of September—I could not help asking him, "What was the fate of the Polish prisoners of war?" At first Menschagin hesitated, and then he told me haltingly, "They have already died. It is all over for them."

MR. COUNSELLOR SMIRNOV: Did he tell you where they were killed?

BAZILEVSKY: He told me that they had been shot in the vicinity of Smolensk, as Von Schwetz told him.

MR. COUNSELLOR SMIRNOV: Did he mention the exact place?

BAZILEVSKY: No, he did not mention the exact place.

MR. COUNSELLOR SMIRNOV: Tell me this. Did you, in turn, tell anybody about the extermination, by Hitlerites, of the Polish prisoners of war near Smolensk?

BAZILEVSKY: I talked about this to Professor Efimov, who was living in the same house with me. Besides him, a few days later I had a conversation about it with Dr. Nikolski, who was the medical officer of the city. However, I found out that Nikolski knew about this crime already from some other source.

MR. COUNSELLOR SMIRNOV: Did Menschagin tell you why these shootings took place?

BAZILEVSKY: Yes. When he told me that the prisoners of war had been killed, he emphasized once more the necessity of keeping it strictly secret in order to avoid disagreeable consequences. He started to explain to me the reasons for the German behavior with respect to the Polish prisoners of war. He pointed out that this was only one measure of the general system of treating Polish prisoners of war.

MR. COUNSELLOR SMIRNOV: Did you hear anything about the extermination of the Poles from the employees of the German Kommandantur?

BAZILEVSKY: Yes, 2 or 3 days later.

THE PRESIDENT: You are both going too fast, and you are not pausing enough. You are putting your questions whilst the answers are coming through. You must have longer pauses, and go slower.

removing and following

deliberate, to show honesty

force a fast information for usual absence (not put)

MR. COUNSELLOR SMIRNOV: Thank you, Mr. President.

[Turning to the witness.] Please continue, but slowly.

BAZILEVSKY: I do not know where I was.

MR. COUNSELLOR SMIRNOV: I asked you whether any of the employees of the German Kommandantur told you anything about the extermination of the Poles. no?

BAZILEVSKY: Two or three days later, when I visited the office of Menschagin, I met there an interpreter, the Sonderführer of the 7th Division of the German Kommandantur who was in charge of the Russian administration and who had a conversation with Menschagin concerning the Poles. He came from the Baltic region.

MR. COUNSELLOR SMIRNOV: Perhaps you can tell us briefly what he said.

BAZILEVSKY: When I entered the room he was saying, "The Poles are a useless people, and exterminated they may serve as fertilizer and for the enlargement of living space for the German nation."

THE PRESIDENT: You are doing exactly what I said just now. and again!
You are asking the questions before the translation comes through.

MR. COUNSELLOR SMIRNOV: Excuse me, Mr. President, I will try to speak more slowly.

[Turning to the witness.] Did you learn from Menschagin anything definite about the shooting of Polish prisoners of war?

BAZILEVSKY: When I entered the room I heard the conversation with Hirschfeld. I missed the beginning, but from the context of the conversation it was clear that they spoke about this event.

MR. COUNSELLOR SMIRNOV: Did Menschagin, when telling you about the shooting of Polish prisoners of war, refer to Von Schwetz?

BAZILEVSKY: Yes; I had the impression that he referred to Von Schwetz. But evidently—and this is my firm belief—he also spoke about it with private persons in the Kommandantur.

MR. COUNSELLOR SMIRNOV: When did Menschagin tell you that Polish prisoners of war were killed near Smolensk?

BAZILEVSKY: It was at the end of September.

MR. COUNSELLOR SMIRNOV: I have no further questions to put to this witness, Mr. President.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

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MARSHAL: If it please the Tribunal, the Defendant Hess is absent.

THE PRESIDENT: Dr. Stahmer.

✓ DR. STAHMER: Witness, in your testimony, just before recess, you read out your testimony, if I observed correctly. Will you tell me whether that was so or not?

BAZILEVSKY: I was not reading anything. I have only a plan of the courtroom in my hand.

sh-oh!
DR. STAHMER: It looked to me as though you were reading out your answers. How can you explain the fact that the interpreter already had your answer in his hands?

BAZILEVSKY: I do not know how the interpreters could have had my answers beforehand. The testimony which I am giving was, however, known to the Commission beforehand—that is, my testimony during the preliminary examination.

DR. STAHMER: Do you know the little castle on the Dnieper, the little villa? Did you not understand me or hear me? Do you know the little castle on the Dnieper, the little villa on the Dnieper?

BAZILEVSKY: I do not know which villa you mean. There were quite a number of villas on the Dnieper.

DR. STAHMER: The house which was near the Katyn wood on the steep bank of the Dnieper River.

BAZILEVSKY: I still do not quite understand which house you mean. The banks of the Dnieper are long, and therefore your question is quite incomprehensible to me.

DR. STAHMER: Do you know where the graves of Katyn were found, in which 11,000 Polish officers were buried?

BAZILEVSKY: I was not there. I did not see the Katyn burial grounds.

DR. STAHMER: Had you never been in the Katyn wood?

BAZILEVSKY: As I already said, I was there not once but many times.

DR. STAHMER: Do you know where this mass burial site was located?

BAZILEVSKY: How can I know where the burial grounds were situated when I could not go there since the occupation?

DR. STAHMER: How do you know that the little wood was not fenced in?

BAZILEVSKY: Before the occupation of the Smolensk district by the German troops, the entire area, as I already stated, was not surrounded by any barrier; but according to hearsay I knew that

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after the occupation access to this wood was prohibited by the German local command.

DR. STAHMER: Therefore you have no knowledge of the fact that here in the Katyn wood a sanitarium or a convalescent home of the GPU was located?

BAZILEVSKY: I know very well; that was known to all the citizens of Smolensk.

DR. STAHMER: Then, of course, you also know exactly which house I referred to in my question?

BAZILEVSKY: I, myself, had never been in that house. In general, access to that house was only allowed to the families of the employees of the Ministry of the Interior. As to other persons, there was no need and no facility for them to go there.

DR. STAHMER: The house, therefore, was closed off?

BAZILEVSKY: No, the house was not forbidden to strangers; but why should people go there if they had no business there or were not in the sanitarium? The garden, of course, was open to the public.

DR. STAHMER: Were there not guards stationed there?

BAZILEVSKY: I have never seen any.

DR. STAHMER: Is this Russian witness who reported to you about the matter concerning the Polish officers, is this witness still alive?

BAZILEVSKY: Mr. Counsel, you probably mean Mayor Menschagin, if I understand you rightly?

DR. STAHMER: When you read your testimony off, it was not easy for me to follow. What was the mayor's name? Menschagin? Is he still alive?

BAZILEVSKY: Menschagin went away together with the German troops during their retreat, and I remained, and Menschagin's fate is unknown to me.

THE PRESIDENT: Dr. Stahmer, you are not entitled to say to the witness, "when you read your testimony off," just now, because he denied that he read his testimony off and there is no evidence that he has read it off. ✓

DR. STAHMER: Did this Russian witness tell you that the Polish officers had come from the camp at Kosielsk?

BAZILEVSKY: Do you mean the camp at Kosielsk? Yes?

DR. STAHMER: Yes.

BAZILEVSKY: The witness did not say that.

DR. STAHMER: Do you know that place and locality?

✓ BAZILEVSKY: Do you mean Kosielsk? I do, yes. In 1940, in the month of August—at the end of August—I spent my leave there with my wife.

DR. STAHLER: Do you know whether there were Polish officers at that place in a Russian prisoner-of-war camp?

✓ BAZILEVSKY: Yes, I know that.

DR. STAHLER: Until what time did these prisoners of war remain there?

BAZILEVSKY: I do not know that for sure but at the end of August 1940 they were there. I am quite sure about that.

DR. STAHLER: Do you know whether this camp, together with its inmates, fell into German hands?

BAZILEVSKY: Personally, that is, from my own observation, I do not know it; but according to rumors, it appears to have been the case. That is, of course, not my own testimony; I myself did not see it, but I heard about it only.

DR. STAHLER: Did you hear what happened to these prisoners?

BAZILEVSKY: Yes, I heard, of course, that they remained there and could not be evacuated.

DR. STAHLER: Did you hear what became of them?

BAZILEVSKY: I have already testified in my answers to the prosecutor that they were shot on the order of the German Command.

DR. STAHLER: And where did these shootings take place?

BAZILEVSKY: Mr. Defense Counsel, you have apparently not heard my answers. I already testified that Mayor Menschagin said that they were shot in the neighborhood of Smolensk, but where he did not tell me.

DR. STAHLER: How many prisoners were involved?

BAZILEVSKY: Do you mean to say, how many were mentioned in the conversation with Menschagin? I do not understand your question. Do you mean to say according to the reports of Menschagin?

DR. STAHLER: What was the figure given to you by Menschagin?

BAZILEVSKY: Menschagin did not tell me any number. I repeat that this conversation took place on the last days of September 1941.

DR. STAHLER: Can you give us the name of an eyewitness who was present at this shooting or anyone who saw this shooting?

BAZILEVSKY: I believe that these executions were carried out under such circumstances that I think it scarcely possible that any Russian witnesses could be present.

THE PRESIDENT: Witness, you should answer the question directly. You were asked, "Can you give the names of anybody who was there?" You can answer that "yes" or "no" and then you can add any explanations necessary.

BAZILEVSKY: I will follow your instructions, Mr. President.

THE PRESIDENT: Can you give the name of anybody who saw the executions?

BAZILEVSKY: No, I cannot name any eyewitness.

DR. STAHLER: What German unit is supposed to have carried out the shootings?

BAZILEVSKY: I cannot answer that exactly. It is logical to assume that it was the construction battalion which was stationed there; but of course I could not know the exact organization of the German troops.

a casual witness

DR. STAHLER: Did the Poles involved here come from the camp at Kosielsk?

BAZILEVSKY: In general, this was not mentioned in the conversations of that time, but I certainly do not know that; besides these might have been any other Polish prisoners of war who had not been at Kosielsk previously.

DR. STAHLER: Did you yourself see Polish officers?

BAZILEVSKY: I did not see them myself, but my students saw them, and they told me that they had seen them in 1941.

DR. STAHLER: And where did they see them?

BAZILEVSKY: On the road where they were doing repair work at the beginning of summer, 1941.

DR. STAHLER: In what general area or location?

BAZILEVSKY: In the district of the Moscow-Minsk highway, somewhat to the west of Smolensk.

DR. STAHLER: Can you testify whether the Russian Army Command had a report to the effect that Polish prisoners at the camp at Kosielsk had fallen into the hands of the Germans?

BAZILEVSKY: No, I have no knowledge of that.

DR. STAHLER: What is the name of the German official or employee with whom you talked at the Kommandantur?

BAZILEVSKY: Not in the Kommandantur, but in Menschagin's office. His name was Hirschfeld.

DR. STAHLER: What was his position?

BAZILEVSKY: He was Sonderführer of the 7th Detachment of the German Kommandantur in the town of Smolensk.

DR. STAHLER: I have no further questions, Mr. President—just another question or two, Mr. President.

[Turning to the witness.] Were you punished by the Russian Government on account of your collaboration with the German authorities?

BAZILEVSKY: No, I was not.

DR. STAHLER: Are you at liberty?

BAZILEVSKY: Not only am I at liberty; but, as I have already stated, I am still professor at two universities.

DR. STAHLER: Therefore, you are back in office.

BAZILEVSKY: Yes.

THE PRESIDENT: Colonel Smirnov, do you wish to re-examine?

MR. COUNSELLOR SMIRNOV: No, Mr. President, I have no further questions to put to the witness.

THE PRESIDENT: Witness, do you know whether the man, whose name I understand to be Menschagin, was told about these matters or whether he himself had any direct knowledge of them?

BAZILEVSKY: From Menschagin's own words, I understood quite definitely that he had heard those things himself at the Kommandantur, particularly from Von Schwetz, who was the commander from the beginning of the occupation.

THE PRESIDENT: The witness can retire.

MR. COUNSELLOR SMIRNOV: Mr. President, I beg the Tribunal to allow me to call as witness Marko Antonov Markov, a Bulgarian citizen, professor at the University of Sofia.

[The interpreter Valev and the witness Markov took the stand.]

THE PRESIDENT: Are you the interpreter?

LUDOMIR VALEV (Interpreter): Yes, Sir.

THE PRESIDENT: Will you give us your full name?

VALEV: Ludomir Valev.

THE PRESIDENT: Will you repeat this oath after me: I swear before God and the Law—that I will interpret truthfully and to the best of my skill—the evidence to be given by the witness.

[The interpreter repeated the oath.]

THE PRESIDENT: *[To the witness.]* Will you give us your full name, please?

DR. MARKO ANTONOV MARKOV (Witness): Dr. Marko Antonov Markov.

THE PRESIDENT: Will you repeat this oath after me: I swear—as a witness in this case—that I will speak only the truth—being

aware of my responsibility before God and the Law—and that I will withhold and add nothing.

[The witness repeated the oath.]

✓ THE PRESIDENT: You may sit down.

MR. DODD: Mr. President, before this witness is examined, I would like to call to the attention of the Tribunal the fact that Dr. Stahmer asked the preceding witness a question which I understood went: How did it happen that the interpreters had the questions and the answers to your questions if you didn't have them before you? Now that question implied that Dr. Stahmer had some information that the interpreters did have the answers to the questions, and I sent a note up to the interpreters, and I have the answer from the lieutenant in charge that no one there had any answers or questions, and I think it should be made clear on the record.

THE PRESIDENT: Yes, I think so, too.

DR. STAHMER: I was advised of this fact outside the courtroom. If it is not a fact, I wish to withdraw my statement. I was informed outside the courtroom from a trustworthy source. I do not recall the name of the person who told me, I shall have to ascertain it.

THE PRESIDENT: Such statements ought not be made by counsel until they have verified them.

MR. COUNSELLOR SMIRNOV: May I begin the examination of this witness, Mr. President?

THE PRESIDENT: The examination, yes.

MR. COUNSELLOR SMIRNOV: Witness, I beg you to tell us briefly, without taking up the time of the Tribunal with too many details, under what conditions you were included in the so-called International Medical Commission set up by the Germans in the month of April 1943 for the examination of the graves of Polish officers in the Katyn woods.

I beg you, when answering me, to pause between the question I put to you and your own answer.

MARKOV: This occurred at the end of April 1943. While working in the Medico-Legal Institute, where I am still working, I was called to the telephone by Dr. Guerow.

THE PRESIDENT: The witness must stop before the interpreter begins. Otherwise, the voices come over the microphone together. So the interpreter must wait until the witness has finished his answer before he repeats it.

Now, the witness has said—at least this is what I heard—that in April 1943 he was called on the telephone.

MARKOV: I was called to the telephone by Dr. Guerow, the secretary of Dr. Filoff who was then Prime Minister of Bulgaria. I was told that I was to take part, as representative of the Bulgarian Government, in the work of an international medical commission which had to examine the corpses of Polish officers discovered in the Katyn wood.

Not wishing to go, I answered that I had to replace the director of my Institute who was away in the country. Dr. Guerow told me that according to an instruction of the Minister of Foreign Affairs, who had sent the telegram, it was precisely in order to replace him that I would have to go there. Guerow told me to come to the Ministry. There I asked him if I could refuse to comply with this order. He answered that we were in a state of war and that the Government could send anybody wherever and whenever they deemed it necessary.

Guerow took me to the first secretary of the Minister of Foreign Affairs, Schuchmanov. Schuchmanov repeated this order and told me that we were to examine the corpses of thousands of Polish officers. I answered that to examine thousands of corpses would take several months, but Schuchmanov said that the Germans had already exhumed a great number of these corpses and that I would have to go, together with other members of the commission, in order to see what had already been done and in order to sign, as Bulgarian representative, the report of the proceedings which had already been drafted. After that, I was taken to the German Legation, to Counsellor Mormann, who arranged all the technical details of the trip. This was on Saturday; and on Monday morning, 26 April, I flew to Berlin. There I was met by an official of the Bulgarian Legation and I was lodged at the Hotel Adlon.

MR. COUNSELLOR SMIRNOV: Please answer the next question: Who took part in this so-called International Commission, and when did they leave for Katyn?

MARKOV: On the next day, 27 April, we stayed in Berlin and the other members of the commission arrived there too.

MR. COUNSELLOR SMIRNOV: Who were they?

MARKOV: They were the following, besides myself: Dr. Birkle, chief doctor of the Ministry of Justice and first assistant of the Institute of Forensic Medicine and Criminology at Bucharest; Dr. Miloslavich, professor of forensic medicine and criminology at Zagreb University, who was representative for Croatia; Professor Palmieri, who was professor for forensic medicine and criminology at Naples; Dr. Orsos, professor of forensic medicine and criminology at Budapest; Dr. Subik, professor of pathological anatomy at the University of Bratislava and chief of the State Department for Health for

Slovakia; Dr. Hajek, professor for forensic medicine and criminology at Prague, who represented the so-called Protectorate of Bohemia and Moravia; Professor Naville, professor of forensic medicine at the University of Geneva, representative for Switzerland; Dr. Speleers, professor for ophthalmology at Ghent University, who represented Belgium; Dr. De Burlett, professor of anatomy at the University of Groningen, representing Holland; Dr. Tramsen, vice chancellor of the Institute for forensic medicine at Copenhagen University, representing Denmark; Dr. Saxen, who was professor for pathological anatomy at Helsinki University, Finland.

During the investigations of the commission, a Dr. Costeduat was missing; he declared that he could attend only as a personal representative of President Laval. Professor Piga from Madrid also arrived, an elderly gentleman who did not take any part in the work of the commission. It was stated later that he was ill as a result of the long journey.

MR. COUNSELLOR SMIRNOV: Were all these persons flown to Katyn?

MARKOV: All these persons arrived at Katyn with the exception of Professor Piga.

MR. COUNSELLOR SMIRNOV: Who besides the members of the commission left for Katyn with you?

MARKOV: On the 28th we took off from Tempelhof Airdrome, Berlin, for Katyn. We took off in two airplanes which carried about 15 to 20 persons each.

MR. COUNSELLOR SMIRNOV: Maybe you can tell us briefly who was there?

MARKOV: Together with us was Director Dietz, who met us and accompanied us. He represented the Ministry of Public Health. There were also press representatives, and two representatives of the Ministry for Foreign Affairs.

MR. COUNSELLOR SMIRNOV: I beg you to stop with these details and to tell me when the commission arrived in Katyn?

MARKOV: The commission arrived in Smolensk on 28 April, in the evening.

MR. COUNSELLOR SMIRNOV: How many work days did the commission stay in Smolensk? I stress work days.

MARKOV: We stayed in Smolensk 2 days only, 29 and 30 April ✓ 1943, and on 1 May, in the morning, we left Smolensk.

MR. COUNSELLOR SMIRNOV: How many times did the members of the commission personally visit the mass graves in the Katyn wood?

MARKOV: We were twice in the Katyn wood, that is, in the forenoon of 29 and 30 April.

MR. COUNSELLOR SMIRNOV: I mean, how many hours did you spend each time at the mass graves?

MARKOV: I consider not more than 3 or 4 hours each time.

✓✓ MR. COUNSELLOR SMIRNOV: Were the members of the commission present at least once during the opening of one of the graves?

MARKOV: No new graves were opened in our presence. We were shown only several graves which had already been opened before we arrived.

MR. COUNSELLOR SMIRNOV: Therefore, you were shown already opened graves, near which the corpses were already laid out, is that right?

MARKOV: Quite right. Near these opened graves were exhumed corpses already laid out there.

MR. COUNSELLOR SMIRNOV: Were the necessary conditions for an objective and comprehensive scientific examination of the corpses given to the members of the commission?

MARKOV: The only part of our activity which could be characterized as a scientific, medico-legal examination were the autopsies carried out by certain members of the commission who were themselves medico-legal experts; but there were only seven or eight of us who could lay claim to that qualification, and as far as I recall only eight corpses were opened. Each of us operated on one corpse, except Professor Hajek, who dissected two corpses. Our further activity during these 2 days consisted of a hasty inspection under the guidance of Germans. It was like a tourists' walk during which we saw the open graves; and we were shown a peasant's house, a few kilometers distant from the Katyn wood, where in showcases papers and objects of various sorts were kept. We were told that these papers and objects had been found in the clothes of the corpses which had been exhumed.

MR. COUNSELLOR SMIRNOV: Were you actually present when these papers were taken from the corpses or were they shown to you when they were already under glass in display cabinets?

MARKOV: The documents which we saw in the glass cases had already been removed from the bodies before we arrived.

MR. COUNSELLOR SMIRNOV: Were you allowed to investigate these documents, to examine these documents, for instance, to see whether the papers were impregnated with any acids which had developed by the decay of the corpses, or to carry out any other kind of scientific examination?

MARKOV: We did not carry out any scientific examination of these papers. As I have already told you, these papers were exhibited in glass cases and we did not even touch them.

MR. COUNSELLOR SMIRNOV: But I would like you nevertheless to answer me briefly with "yes" or "no," a question which I have already put to you. Were the members of the commission given facilities for an objective examination?

MARKOV: In my opinion these working conditions can in no way be qualified as adequate for a complete and objective scientific examination. The only thing which bore the character of the scientific nature was the autopsy which I carried out.

MR. COUNSELLOR SMIRNOV: But did I rightly understand you, that from the 11,000 corpses which were discovered only 8 were dissected by members of the commission.

MARKOV: Quite right.

MR. COUNSELLOR SMIRNOV: Please answer the next question. In what condition were these corpses? I would like you to describe the state in which they were and also the state of the inner organs, the tissues, *et cetera*.

MARKOV: As to the condition of the corpses in the Katyn graves, I can only judge according to the state of the corpse which I myself dissected. The condition of this corpse was, as far as I could ascertain, the same as that of all the other corpses. The skin was still well preserved, was in part leathery, of a brown-red color and on some parts there were blue markings from the clothes. The nails and hair, mostly, had already fallen out. In the head of the corpse I dissected there was a small hole, a bullet wound in the back of the head. Only pulpy substance remained of the brain. The muscles were still so well preserved that one could even see the fibers of the sinews of heart muscles and valves. The inner organs were also mainly in a good state of preservation. But of course they were dried up, displaced, and of a dark color. The stomach showed traces of some sort of contents. A part of the fat had turned into wax. We were impressed by the fact that even when pulled with brute force, no limbs had detached themselves.

I dictated a report, on the spot, on the result of my investigation. A similar report was dictated by the other members of the commission who examined corpses. This report was published by the Germans, under Number 827, in the book which they published. ✓

MR. COUNSELLOR SMIRNOV: I would like you to answer the following question. Did the medico-legal investigations testify to the fact that the corpses had been in the graves already for 3 years?

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MARKOV: As to that question I could judge only from the corpse on which I myself had held a post mortem. The condition of this corpse, as I have already stated, was typical of the average condition of the Katyn corpses. These corpses were far removed from the stage of disintegration of the soft parts, since the fat was only beginning to turn into wax. In my opinion these corpses were buried for a shorter period of time than 3 years. I considered that the corpse which I dissected had been buried for not more than 1 year or 18 months.

MR. COUNSELLOR SMIRNOV: Therefore, applying the criteria of the facts which you ascertained to your experiences in Bulgaria—that is, in a country of a more southern climate than Smolensk and where decay, therefore, is more rapid—one must come to the conclusion that the corpses that were exhumed in the Katyn forest had been lying under the earth for not more than a year and a half? Did I understand you correctly?

MARKOV: Yes, quite right. I had the impression that they had been buried for not more than a year and a half.

THE PRESIDENT: The Tribunal will adjourn now.

[The Tribunal adjourned until 2 July 1946 at 1000 hours.]

ONE HUNDRED AND SIXTY-NINTH DAY

Tuesday, 2 July 1946

Morning Session

[The witness Markov resumed the stand.]

MR. COUNSELLOR SMIRNOV: Witness, when did you, together with the other members of the commission, perform the autopsies of these eight corpses? What date was it exactly?

MARKOV: That was on 30 April, early in the day.

MR. COUNSELLOR SMIRNOV: And, on the basis of your personal observations, you decided that the corpses were in the ground 1 year or 18 months at the most?

MARKOV: That is correct.

MR. COUNSELLOR SMIRNOV: Before putting the next question to you, I should like you to give me a brief answer to the following question: Is it correct that in the practice of Bulgarian medical jurisprudence the protocol about the autopsy contains two parts, a description and the deductions?

MARKOV: Yes. In our practice, as well as in the practice of other countries, so far as I know, it is done in the following way: First of all, we give a description and then the deduction.

MR. COUNSELLOR SMIRNOV: Was a deduction contained in the record you made regarding the autopsy?

MARKOV: My record of the autopsy contained only a description without any conclusion.

MR. COUNSELLOR SMIRNOV: Why?

MARKOV: Because from the papers which were given to us there I understood that they wanted us to say that the corpses had been in the ground for 3 years. This could be deduced from the papers which were shown to us in the little peasant hut about which I have already spoken.

MR. COUNSELLOR SMIRNOV: By the way, were these papers shown to you before the autopsy or afterward?

MARKOV: Yes, the papers were given us 1 day before the autopsy.

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MR. COUNSELLOR SMIRNOV: So you were...

THE PRESIDENT: Colonel Smirnov, you are interrupting the interpreter all the time. Before the interpreter has finished the answer, you have put another question. It is very difficult for us to hear the interpreter.

MR. COUNSELLOR SMIRNOV: Thank you for your indication, Mr. President.

MARKOV: Inasmuch as the objective deduction regarding the autopsy I performed was in contradiction with this version, I did not make any deductions.

MR. COUNSELLOR SMIRNOV: Consequently you did not make any deduction because the objective data of the autopsy testified to the fact that the corpses had been in the ground, not 3 years, but only 18 months?

THE PRESIDENT: Colonel Smirnov, you must remember that it is a double translation, and unless you pause more than you are pausing, your voice comes in upon the interpreter's and we cannot hear the interpreter.

MR. COUNSELLOR SMIRNOV: Very well, Mr. President.

MARKOV: Yes, that is quite correct.

MR. COUNSELLOR SMIRNOV: Was there unanimity among the members of the commission regarding the time the corpses had been in the graves?

MARKOV: Most of the members of the delegation who performed the autopsies in the Katyn wood made their deductions without answering the essential question regarding the time the corpses had been buried. Some of them, as for instance, Professor Hajek, spoke about immaterial things; as for instance, that one of the killed had had pleurisy. Some of the others, as for instance, Professor Birkle from Bucharest, cut off some hair from a corpse in order to determine the age of the corpse. In my opinion that was quite immaterial. Professor Palmieri, on the basis of the autopsy that he performed, said that the corpse had been in the ground over a year but he did not determine exactly how long.

The only one who gave a definite statement in regard to the time the corpses had been buried was Professor Miloslavich from Zagreb, and he said it was 3 years. However, when the German book regarding Katyn was published, I read the result of his impartial statement regarding the corpse on which he had performed the autopsy. I had the impression that the corpse on which he had performed the autopsy did not differ in its stage of decomposition from the other corpses. This led me to think that his statement that the corpses had

been in the ground for 3 years did not coincide with the facts of his description.

MR. COUNSELLOR SMIRNOV: I would like to ask you to reply to the following question. Were there many skulls found by the members of the commission with signs of so-called *pseudocallus*? By the way, inasmuch as this term is not known in the usual books on medical jurisprudence and in general criminalistic terminology, I should like you to give us an exact explanation of what Professor Orsos, of Budapest, means by the term *pseudocallus*.

THE PRESIDENT: Would you repeat that question?

MR. COUNSELLOR SMIRNOV: Were there many skulls with signs of so-called *pseudocallus* which were submitted to the members of the commission? Inasmuch as this term is not known in the usual books on medical jurisprudence, I should like you to give us a detailed explanation of what Professor Orsos means by the term *pseudocallus*.

THE PRESIDENT: What are you saying the skulls had? You asked if there were many skulls with something or other.

MR. COUNSELLOR SMIRNOV: I see this term for the first time, myself, Mr. President. It is *pseudocallus*. It seems to be a Latin term of some sort of corn which is formed on the outer surface of the cerebral substance.

THE PRESIDENT: Can you spell the word in Latin?

MR. COUNSELLOR SMIRNOV: Yes, Mr. President.

[The prosecutor submitted a paper to the President.]

THE PRESIDENT: What you have written here is p-s-e-r-d-o. Do you mean p-s-e-u-d-o, which means false?

MR. COUNSELLOR SMIRNOV: Yes, that is right, pseudo.

THE PRESIDENT: Now then, put your question again, and try to put it shortly.

MR. COUNSELLOR SMIRNOV: Yes.

[Turning to the witness.] Were there many skulls with signs of so-called *pseudocallus* shown to the members of the commission? Will you please give an exact explanation of this term of Professor Orsos'.

MARKOV: Professor Orsos spoke to us regarding *pseudocallus* at a general conference of the delegates. That took place on 30 April, in the afternoon, in the building where the field laboratory of Dr. Butz in Smolensk was located.

Professor Orsos described the term *pseudocallus* as meaning some sediment of indissoluble salt, of calcium, and other salts on the inside of the cranium. Professor Orsos stated that, according to his

observations in Hungary, this happened if the corpses have been in the ground for at least 3 years. When Professor Orsos stated this at the scientific conference, none of the delegates said anything either for or against it. I deduced from that that this term *pseudocallus* was as unknown to the other delegates as it was to me.

At the same conference Professor Orsos showed us such a *pseudocallus* on one of the skulls.

MR. COUNSELLOR SMIRNOV: I should like you to answer the following question: What number did the corpse have from which this skull with signs of *pseudocallus* was taken?

MARKOV: The corpse from which the skull was taken and which was noted in the book bore the Number 526. From this I deduced that this corpse was exhumed before our arrival at Katyn, inasmuch as all the other corpses on which we performed autopsies on 30 April had numbers which ran above 800. It was explained to us that as soon as a corpse was exhumed it immediately received a consecutive number.

MR. COUNSELLOR SMIRNOV: Tell me this, please. Did you notice any *pseudocallus* on the skulls of the corpses on which you and your colleagues performed autopsies?

MARKOV: On the skull of the corpse on which I performed an autopsy, there was some sort of pulpy substance in place of the brain, but I never noticed any sign of *pseudocallus*. The other delegates—after the explanation of Professor Orsos—likewise did not state that they had found any *pseudocallus* in the other skulls. Even Butz and his co-workers, who had examined the corpses before our arrival, did not mention any sign of *pseudocallus*.

Later on, in a book which was published by the Germans and which contained the report of Butz, I noticed that Butz referred to *pseudocallus* in order to give more weight to his statement that the corpses had been in the ground for 3 years.

MR. COUNSELLOR SMIRNOV: That is to say, that of the 11,000 corpses only one skull was submitted to you which had *pseudocallus*?

MARKOV: That is quite correct.

MR. COUNSELLOR SMIRNOV: I should like you to describe to the Tribunal in detail the state of the clothing which you found on the corpses.

MARKOV: In general the clothing was well preserved, but of course it was damp due to the decomposition of the corpses. When we pulled off the clothing to undress the corpses, or when we tried to take off the shoes, the clothing did not tear nor did the shoes fall apart at the seams. I even had the impression that this clothing could have been used again, after having been cleaned.

There were some papers found in the pockets of the clothing of the corpse on which I performed the autopsy, and these papers were also impregnated with the dampness of the corpse. Some of the Germans who were present when I was performing the autopsy asked me to describe those papers and their contents; but I refused to do it, thinking that this was not the duty of a doctor. In fact I had already noticed the previous day that with the help of the dates contained in those papers, they were trying to make us think that the corpses had remained in the ground for 3 years.

Therefore, I wanted to base my deductions only on the actual condition of the corpses. Some of the other delegates who performed autopsies also found some papers in the clothing of the corpses. The papers which had been found in the clothing of the corpse on which I performed the autopsy were put into a cover which bore the same number as the corpse, Number 827. Later on, in the book which was published by the Germans, I perceived that some of the delegates described the contents of the papers which were found on the corpses.

MR. COUNSELLOR SMIRNOV: I should like to ask you to reply to the following question. On what impartial medico-judicial data did the commission base the deduction that the corpses had remained in the earth not less than 3 years?

THE PRESIDENT: Will you put the question again? I did not understand the question.

MR. COUNSELLOR SMIRNOV: I asked on what impartial medico-judicial data were the deductions of the protocol of the International Medical Commission based, which stated that the corpses had remained in the ground not less than 3 years?

THE PRESIDENT: Has he said that that was the deduction he made—not less than 3 years?

THE TRIBUNAL (Mr. Biddle): He has not said that.

✓ THE PRESIDENT: He has not said that at all. He never said that he made the deduction that the corpses remained in the ground not less than 3 years.

MR. COUNSELLOR SMIRNOV: He did not make this deduction; but Professor Markov, together with the other members of the commission, signed a report of the International Commission.

THE PRESIDENT: I know; but that is why I ask you to repeat your question. The question that was translated to us was: On what grounds did you make your deduction that the corpses had remained in the ground not less than 3 years—which is the opposite of what he said.

Now will you put the question again?

MR. COUNSELLOR SMIRNOV: Very well.

[Turning to the witness.] I am not asking you about your personal minutes, Witness, but about the general record of the entire commission. I am asking you on what impartial medico-judicial data were the deductions of the entire commission based, that the corpses had remained in the earth not less than 3 years. On the record of the deductions your signature figures among those of the other members of the commission.

THE PRESIDENT: Wait a minute. Now, then, Colonel Smirnov, will you put the question again.

MR. COUNSELLOR SMIRNOV: Yes, Mr. President.

[Turning to the witness.] I was asking you on what impartial medico-judicial data were the deductions of the commission based—not the individual report of Dr. Markov, in which there are no deductions—but the deductions of the entire commission, that the corpses had remained not less than 3 years in the ground?

MARKOV: The collective protocol of the commission which was signed by all the delegates was very scant regarding the real medico-judicial data. Concerning the condition of the corpses, only one sentence in the report was stated, namely that the corpses were in various stages of decomposition, but there was no description of the real extent of decomposition.

Thus, in my opinion, this deduction was based on the papers found on the corpses and on testimony of the witnesses, but not on the actual medico-judicial data. As far as medical jurisprudence is concerned, they tried to support this deduction by the statement of Professor Orsos regarding the finding of *pseudocallus* in the skull of corpse Number 526.

But, according to my conviction, since this skull was the only one with signs of *pseudocallus*, it was wrong to arrive at a definite conclusion regarding the stage of decomposition of thousands of corpses which were contained in the Katyn graves. Besides, the observation of Professor Orsos regarding *pseudocallus* was made in Hungary; that is to say, under quite different soil and climatic conditions, and withal in individual graves and not in mass graves, as was the case in Katyn.

MR. COUNSELLOR SMIRNOV: You spoke about the testimony of witnesses. Did the members of the commission have the opportunity personally to interrogate those witnesses, especially the Russian witnesses?

MARKOV: We did not have the opportunity of having any contact with the indigenous population. On the contrary, immediately upon our arrival at the hotel in Smolensk, Butz told us that we were in a military zone, and that we did not have the right to

walk around in the city without being accompanied by a member of the German Army, or to speak with the inhabitants of the place, or to make photographs. In reality, during the time we were there, we did not have any contact with the local inhabitants.

On the first day of our arrival in the Katyn wood, that is to say, ✓ on 29 April, in the morning, several Russian civilians were brought under German escort to the graves. Immediately upon our arrival at Smolensk some of the depositions of the local witnesses were submitted to us. The depositions were typed. When these witnesses were brought to the Katyn wood, we were told that these witnesses were the ones who gave the testimonies which had been submitted to us. There was no regular interrogation of the witnesses which could have been recorded, or were recorded. Professor Orsos started the conversation with the witnesses and told us that he could speak Russian because he had been a prisoner of war in Russia during the first World War. He began to speak with a man, an elderly man whose name, so far as I can remember, was Kiselov. Then he spoke ✓ to a second witness, whose last name so far as I can remember was Andrejev. All the conversation lasted a few minutes only. As our Bulgarian language is rather similar to the Russian, I tried also to speak to some of the witnesses...

THE PRESIDENT: Don't you think that should be left to cross-examination? Can't these details be left to cross-examination?

MR. COUNSELLOR SMIRNOV: Yes, Mr. President.

I would ask you, Witness, to interrupt the reply to this question and to answer the following one: At the time you signed this general report of the commission, was it quite clear to you that the murders were perpetrated in Katyn not earlier than the last quarter of 1941, and that 1940, in any case, was excluded?

MARKOV: Yes, this was absolutely clear to me and that is why I did not make any deductions in the minutes which I made on my findings in the Katyn wood.

MR. COUNSELLOR SMIRNOV: Why did you sign then this general report, which was incorrect in your opinion?]

MARKOV: In order to make it quite clear under what conditions I signed this report, I should like to say a few words on how it was made up and how it was signed.

MR. COUNSELLOR SMIRNOV: Excuse me, I would like to put a question to you which defines more accurately this matter. Was this report actually signed on 30 April 1941 in the town of Smolensk or was it signed on another date and at another place?

MARKOV: It was not signed in Smolensk on 30 April but was signed on 1 May at noon, at the airport which was called Bela.

*a. Markov's
deposition*

MR. COUNSELLOR SMIRNOV: Will you please tell the Tribunal under what conditions it was signed.

MARKOV: The compilation of this record was to be done at the same conference which I already mentioned and which took place in the laboratory of Butz in the afternoon of 30 April. Present at this conference were all the delegates and all the Germans who had arrived with us from Berlin: Butz and his assistants, General Staff Physician Holm, the chief physician of the Smolensk sector, and also other German Army officials who were unknown to me. Butz stated that the Germans were only present as hosts, but actually the conference was presided over by General Staff Physician Holm and the work was performed under the direction of Butz. The secretary of the conference was the personal lady secretary of Butz who took down the report. However, I never saw these minutes. Butz and Orsos came with a prepared draft to this conference, a sort of protocol; but I never learned who ordered them to draw up such a protocol. This protocol was read by Butz and then a question was raised regarding the state and the age of the young pines which were in the clearings of the Katyn wood. Butz was of the opinion that in these clearings there were graves too.

MR. COUNSELLOR SMIRNOV: Excuse me for interrupting you. Did you have any evidence that any graves were actually found in these clearings?

MARKOV: No. During the time we were there, no new graves were opened. As some of the delegates said they were not competent to express their opinion regarding the age of these trees, General Holm gave an order to bring a German who was an expert on forestry. He showed us the cut of the trunk of a small tree and from the number of circles in this trunk, he deduced the trees were 5 years old.

MR. COUNSELLOR SMIRNOV: Excuse me; I interrupt you again. You, yourself—can you state here that this tree was actually cut down from the grave and not from any other place in the clearing?

MARKOV: I can say only that in the Katyn wood there were some clearings with small trees and that, while driving back to Smolensk, we took a little tree with us in the bus, but I do not know whether there were any graves where these trees were standing. As I have already stated, no graves were laid open in our presence.

MR. COUNSELLOR SMIRNOV: I would request you to continue your reply, but very briefly and not to detain the attention of the Tribunal with unnecessary details.

MARKOV: Some editorial notes were made in connection with this protocol, but I do not remember what they were. Then Orsos

and Butz were entrusted with the final drafting of the record. The signing of the record was intended to take place on the same night at a banquet which was organized in a German Army hospital. At this banquet Butz arrived with the minutes and he started reading them, but the actual signing did not take place for reasons which are still not clear to me. It was stated that this record would have to be rewritten, so the banquet lasted until 3 or 4 o'clock in the morning. Then Professor Palmieri told me that the Germans were not pleased with the contents of the protocol and that they, were carrying on telephone conversations with Berlin and that perhaps there would not even be a protocol at all.

Indeed, having spent the night in Smolensk without having signed the record, we took off from Smolensk on the morning of 1 May. I personally had the impression that no protocol at all would be issued and I was very pleased about that. On the way to Smolensk, as well as on our way back, some of the delegates asked to stop in Warsaw in order to see the city, but we were told that it was impossible because of military reasons.

MR. COUNSELLOR SMIRNOV: This has nothing to do with the subject. Please keep to the facts.

MARKOV: Around noon we arrived at the airport which was called Bela. The airport was apparently a military airfield because of the temporary military barracks I saw there. We had dinner there and immediately after dinner, notwithstanding the fact that we were not told that the signing of the minutes would take place on the way to Berlin, we were submitted copies of the protocol for signature. During the signing a number of military persons were present, as there were no other people except military personnel on this airfield. I was rather struck by the fact that on the one hand the records were already completed in Smolensk but were not submitted to us for signing there, and on the other hand that they did not wait till we arrived in Berlin a few hours later. They were submitted to us for signing at this isolated military airfield. This was the reason why I signed the report, in spite of the conviction I had acquired during the autopsy which I had performed at Smolensk.

MR. COUNSELLOR SMIRNOV: That is to say, the date and the locality which are shown in the protocol are incorrect? ✓

MARKOV: Yes, that is so.

MR. COUNSELLOR SMIRNOV: And you signed it because you felt yourself compelled to?

THE PRESIDENT: Colonel Smirnov, I don't think it is proper for you to put leading questions to him. He has stated the fact. It is useless to go on stating conclusions about it.

*It's about
time you
Honest!*

MR. COUNSELLOR SMIRNOV: Very well, Mr. President. I have no further questions to put to the witness.

THE PRESIDENT: Does anyone want to cross-examine him?

DR. STAHLER: Mr. President, I should like to ask a question concerning the legal proceedings first. Each side was to call three witnesses before the Court. This witness, as I understand it, has not only testified to facts but has also made statements which can be called an expert judgment. He has not only expressed himself as an expert witness, as we say in German law, but also as an expert. If the Court is to listen to these statements made by the witness as an expert, I should like to have the opportunity for the Defense also to call in an expert.

THE PRESIDENT: No, Dr. Stahlmer, the Tribunal will not hear more than three witnesses on either side. You could have called any expert you wanted or any member of the experts who made the German examination. It was your privilege to call any of them.

DR. STAHLER: Witness, how long have you been active in the field of medical jurisprudence?

MARKOV: I have been working in the field of medical jurisprudence since the beginning of 1927 in the faculty for medical jurisprudence of the University in Sofia, first as an assistant and now I am professor of medical jurisprudence. I am not a staff professor at the university. My position can be designated by the German word "Ausserordentlicher Professor" (university lecturer).

DR. STAHLER: Before your visit to Katyn did your government tell you that you were to participate in a political action without consideration of your scientific qualification?

MARKOV: I was not told so literally, but in the press the Katyn question was discussed as a political subject.

DR. STAHLER: Did you feel free in regard to your scientific "conscience" at that time?

MARKOV: At what time?

DR. STAHLER: At the time when you went to Katyn?

MARKOV: The question is not quite clear to me; I should like you to explain it.

DR. STAHLER: Did you consider the task you had to carry out there a political one or a scientific one?

MARKOV: I understood this task from the very first moment as a political one and therefore I tried to evade it.

DR. STAHLER: Did you realize the outstanding political importance of this task?

MARKOV: Yes; from everything I read in the press.

DR. STAHLER: In your examination yesterday you said that when you arrived at Katyn the graves had already been opened and certain corpses had been carefully laid out. Do you mean to say that these corpses were not taken from the graves at all?

MARKOV: No, I should not say that, inasmuch as it was obvious that corpses were taken out of these graves and besides I saw that some corpses were still in the graves.

DR. STAHLER: Then, in order to state this positively, you had no reason to think that the corpses inspected by the commission were not taken from these mass graves?

THE PRESIDENT: He did not know where they came from, did he?

MARKOV: Evidently from the graves which were open.

DR. STAHLER: You have already made statements to the effect that, as a result of the medico-judicial examination by this International Commission, a protocol, a record was taken down. You have furthermore stated that you signed this protocol.

Mr. President, this protocol is contained in its full text in the official data published by the German Government on this incident. I ask that this evidence, this so-called *White Book*, be admitted as evidence. I will submit it to the Court later.

THE PRESIDENT: We will adjourn now.

[A recess was taken.]

THE PRESIDENT: Dr. Stahmer, the Tribunal rules that you may cross-examine this witness upon the report, and the protocol will be admitted in evidence, if you offer it in evidence, under Article 19 of the Charter. That, of course, involves that we do not take judicial notice of the report under Article 21 of the Charter but that it is offered under Article 19 of the Charter and therefore it will either come through the earphones in cross-examination or such parts of the protocol as you wish to have translated.

DR. STAHLER: Witness, was the protocol or the record signed by you and the other experts compiled in the same way in which it is included in the German *White Book*?

MARKOV: Yes, the record of the protocol which is included in the German *White Book* is the same protocol which I compiled. A long time after my return to Sofia I was sent two copies of the protocol by Director Dietz. These two copies were typewritten, and I was requested to make necessary corrections and additions if I deemed it necessary, but I left it without corrections and it was printed without any comments on my part.

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MR. COUNSELLOR SMIRNOV: Just a moment Dr. Stahmer . . .

Mr. President, I believe that there is a slight confusion here. The witness is answering in regard to the individual protocol, whereas Dr. Stahmer is questioning him on the general record. Thus the witness does not answer the proper question.

DR. STAHMER: Mr. President, I would have cleared this matter up on my own account.

[Turning to the witness.] Do you mean your autopsy protocol?

MARKOV: I mean the protocol I compiled myself and not the general record.

DR. STAHMER: Now, what about this general protocol or record? When did you receive a copy of it?

MARKOV: I received a copy of the general record in Berlin where as many copies were signed as there were delegates present.

DR. STAHMER: Just a little while ago you stated that Russian witnesses had been taken before the commission in the wood of Katyn, but that, however, there had been no opportunity afforded the experts to talk with these witnesses concerning the question at hand.

Now, in this protocol, in this record, the following remark is found, and I quote:

"The commission interrogated several indigenous Russian witnesses personally. Among other things, these witnesses confirmed that in the months of March and April 1940 large shipments of Polish officers arrived almost daily at the railroad station Gnjesdova near Katyn. These trains were emptied, the inmates were taken in lorries to the wood of Katyn and never seen again. Furthermore, official notice was taken of the proofs and statements, and the documents containing the evidence were inspected."

MARKOV: As I already stated during the questioning, two witnesses were interrogated on the spot by Orsos. They actually said that they saw how Polish officers were brought to the station of Gnjesdova and that later they did not see them again.

THE PRESIDENT: Dr. Stahmer, the Tribunal thinks the witness ought to be given an opportunity of seeing the report when you put passages in it to him.

DR. STAHMER: Yes.

THE PRESIDENT: Haven't you got another copy of it?

DR. STAHMER: I am sorry, Mr. President, I have no second copy; no.

THE PRESIDENT: Can the witness read German?

MARKOV: No, but anyhow I can understand the contents of the record.

THE PRESIDENT: You mean you can read it?

MARKOV: Yes, I can also read it.

THE PRESIDENT: Can the witness read German, do you mean?

MARKOV: Yes, I can read German.

DR. STAHLER: Mr. President, may I make a suggestion?

THE PRESIDENT: Dr. Stahl, if you have only got one copy, I think you had better have it back. You can't have the book passing to and fro like that.

DR. STAHLER: I should like to make the suggestion that the cross-examination be interrupted and the other witness be called, and I will have this material typed in the meantime. That would be a solution. But there are only a few sentences...

THE PRESIDENT: You can read it. Take the book back.

DR. STAHLER: Mr. President, I propose to read only a few short sentences.

[Turning to the witness.] Yesterday you testified, Witness, that the experts restricted or limited themselves to making an autopsy on one corpse only. In this report the following is set down—I quote:

“The members of the commission personally performed an autopsy on nine corpses and numerous selected cases were submitted for post-mortem examination.”

Is that right?

MARKOV: That is right. Those of the members of the commission who were medical experts, with the exception of Professor Naville, performed each an autopsy on a corpse. Hajek made two autopsies.

DR. STAHLER: In this instance we are not interested in the autopsy, but in the post-mortem examination.

MARKOV: The corpses were examined but only superficially during an inspection which we carried out very hastily on the first day. No individual autopsy was carried out, but the corpses were merely looked at as they lay side by side.

DR. STAHLER: I should like to ask you now what is meant in medical science by the concept “post-mortem examination.”

MARKOV: We differentiate between an exterior inspection, when the corpse has to be undressed and minutely examined externally, and an internal inspection, when the inner organs of the

corpse are examined. This was not done with the hundreds of bodies at Katyn, as it was not physically possible. We were there only one forenoon. Therefore, I consider that there was no actual medico-judicial expert examination of these corpses in the real sense of the word.

DR. STAHLER: A little while ago you talked about the trees that were growing there on these graves, and you said that an expert explained the age of the trees by the rings counted on a trunk. In the protocol and the report the following is set down. I quote:

“According to the opinion of the members of the commission and the testimony of forest ranger Von Herff, who was called in as an expert on forestry, they were small pine trees of at least 5 years of age, badly developed because they had been standing in the shade of large trees and had been transplanted to this spot about 3 years ago.”

Now, I would like to ask you, is it correct that you undertook a local inspection and that you convinced yourself on the spot whether the statements made by the forestry expert were actually correct?

MARKOV: Our personal impression and my personal conviction in this question only refer to the fact that in the wood of Katyn there were clearings where small trees were growing and that the afore-mentioned expert showed us a cross section of a tree with its circles. But I do not consider myself competent and cannot give an opinion as to whether the deductions which are set forth in the record are correct or not. Precisely for that reason it was judged necessary to call in a forestry expert, for we doctors were not competent to decide this question. Therefore, these conclusions are merely the conclusions of a competent German expert.

DR. STAHLER: But after having had a first-hand view, did you doubt the truth of these statements?

MARKOV: After the German expert had expressed his opinion at the conference of the delegates, neither I nor the other delegates expressed any opinion as to whether his conclusions were correct or not. These conclusions are set down in the record in the form in which the expert expressed himself.

DR. STAHLER: According to your autopsy report the corpse of the Polish officer which you dissected was clothed and you described the clothing in detail. Was this winter or summer clothing that you found?

MARKOV: It was winter clothing including an overcoat and a woolen shawl around the neck.

DR. STAHLER: In the protocol it says further and I quote: "Furthermore, Polish cigarettes and matchboxes were found with the dead; in some cases tobacco containers and cigarette holders, and 'Kosielsk' was inscribed thereon."

The question is, did you see these objects?

MARKOV: We actually saw these tobacco boxes with the name "Kosielsk" engraved thereon. They were exhibited to us in the glass case which was shown to us in the peasant hut not far from the Katyn wood. I remember them because Butz drew our attention to them.

DR. STAHLER: In your autopsy report, Witness, there is the following remark, and I quote:

"In the clothing documents were found and they were put in ✓ the folder Number 827."

Now, I should like to ask you: How did you discover these documents? Did you personally take them out of the pockets?

MARKOV: These papers were in the pockets of the overcoat and of the jacket. As far as I can remember they were taken out by a German who was undressing the corpse in my presence.

DR. STAHLER: At that time were the documents already in the envelope?

MARKOV: They were not yet in the envelope, but after they had been taken out of the pockets they were put into an envelope which bore the number of the corpse. We were told that this was the usual method of procedure.

DR. STAHLER: What was the nature of the documents?

MARKOV: I did not examine them at all, as I have already said, and I refused to do so, but according to the size, I believe that they were certificates of identity. I could distinguish individual letters, but I do not know whether one could read the inscription, for I did not attempt to do so.

DR. STAHLER: In the protocol the following statement is made, and I quote:

"The documents found with the corpses (diaries, letters, and newspapers) were dated from the fall of 1939 until March and April 1940. The latest date which could be ascertained was the date of a Russian newspaper of 22 April 1940."

Now, I should like to ask you if this statement is correct and whether it is in accordance with the findings that you made?

MARKOV: Such letters and newspapers were indeed in the glass cases and were shown to us. Some such papers were found by members of the commission who were dissecting the bodies, and if I

remember rightly, they described the contents of these documents, but I did not do so.

✓ DR. STAHLER: In your examination just a little while ago you stated that only a few scientific details were contained in this protocol and that this was probably done intentionally. I should like to quote from this record as follows:

"Various degrees and types of decomposition were caused by the position of the bodies to one another in the grave. Aside from some mummification on the surface and around the edges of the mass of corpses, some damp maceration was found among the center corpses. The sticking together of the adjacent corpses and the soldering together of corpses through cadaverous acids and fluids which had thickened, and particularly the deformations that obtained from the pressure among the corpses, show that the corpses were buried there right from the beginning.

"Among the corpses, insects or remains of insects which might date back to the time of burial are entirely lacking, and from this it may be gathered that the shooting and the burial took place at a season which was cold and free from insects."

Now, I should like to ask you if these statements are correct and if they are in line with your findings.

MARKOV: I stated that little was said on the condition of the corpses, and indeed as can be judged by the quotation which I had in mind, only a general phraseology is used concerning the various degrees of decomposition of the corpses, but no concrete or detailed description of the condition of the corpses is made.

As to the insects and their larvae, the assertion of the general report that none were discovered is in flagrant contradiction to the conclusions of Professor Palmieri, which are recorded in his personal minutes concerning the corpse which he himself dissected. In this protocol, which is published in the same German *White Book*, it is said that there were traces of remains of insects and their larvae in the mouths of the corpses.

DR. STAHLER: Just a little while ago you spoke of the scientific examination of skulls undertaken by Professor Orsos. The record also refers to this matter, and I quote:

✓ "A large number of skulls were examined with respect to the changes they had undergone, which, according to the background and experience of Professor Orsos, would be of great value in fixing the date of death. In this connection, we are concerned with stratified encrustations on the surface of the mush found in the skull as a residue of the brain. These symptoms are not to be found among corpses which have

been in their graves for less than 3 years. Such a condition, among other things, was found in a very decided form in the skull of corpse Number 526, which was found near the surface of a large mass grave."

I should like to ask you now if it is correct that, according to the report of Professor Orsos, such a condition was discovered not only as is said here on the skull of one corpse, but among other corpses also.

MARKOV: I can answer this question quite categorically. We were shown only one skull, the one precisely mentioned in the record under the Number 526. I do not know that other skulls were examined, as the record seems to imply. I am of the opinion that Professor Orsos had no possibility of examining many corpses in the Katyn wood, for he came with us and left with us. That means he stayed in the Katyn wood just as long as I and all the other members of the commission did.

DR. STAHLER: Finally, I should like to quote the conclusion of the summarizing expert opinion, in which it is stated:

"From statements made by witnesses, from the letters and correspondence, diaries, newspapers, and so forth, found on the corpses, it may be seen that the shootings took place in the months of March and April 1940. The following are in complete agreement with the findings made with regard to the mass graves and the individual corpses of the Polish officers, as described in the report."

Is this statement actually correct?

THE PRESIDENT: I did not quite understand the statement. As I heard you read it, it was something like this: From the statements of witnesses, letters, and so forth...

DR. STAHLER: "...in complete agreement with the findings made with regard to the mass graves and the individual corpses of the Polish officers and described in the report." That is the end of the quotation.

THE PRESIDENT: It doesn't say that the following persons are in complete agreement, but that the following facts are in complete agreement. Is that right?

DR. STAHLER: No. My question is: "Is this statement approved by you? Do you agree with it?"

THE PRESIDENT: Yes, I know, but you read out certain words, which were these: "The following are in complete agreement." What I want to know is whether that means that the following persons are in complete agreement, or whether the following facts are in complete agreement.

DR. STAHLER: Special facts had been set down, and this is a summarizing expert opinion signed by all the members of the commission. Therefore, we have here a scientific explanation of the real facts.

THE PRESIDENT: Would you just listen to what I read out from what I took down? "From the statements of witnesses, letters, and other documents, it may be seen that the shooting took place in the months of March and April 1940. The following are in complete agreement." What I am asking you is this—

[Dr. Stahlmer attempted to interrupt.]

Just a moment, Dr. Stahlmer, listen to what I say. What I am asking you is: Does the statement mean that the following persons are in complete agreement, or that the following facts are in complete agreement?

DR. STAHLER: No, no. The following people testify that this fact, the fact that the shootings took place in the months of March and April 1940, agrees with the results of their investigations of the mass graves and of individual corpses. That is what is meant and that is the conclusion. What has been found here is in agreement with that which has been set down and determined scientifically. That is the meaning.

THE PRESIDENT: Go on.

DR. STAHLER: Is this final deduction in accord with your scientific conviction?

MARKOV: I have already indicated that this statement regarding the condition of the corpses is based on the date resulting from testimony by the witnesses and from the available documents, but it is in contradiction to the observations I made on the corpse which I dissected. That means I did not consider that the results of the autopsies corroborated the presumable date of death to be taken from the testimony or the documents. If I had been convinced that the condition of the corpses did indeed correspond to the date of decease mentioned by the Germans, I would have given such a statement in my individual protocol.

When I saw the signed protocol I became suspicious as to the last sentence of the record—the sentence which precedes the signatures. I always had doubts whether this sentence was contained in that draft of the protocol which we saw at the conference in Smolensk.

As far as I could understand, the draft of the protocol which had been elaborated in Smolensk only stated that we actually were shown papers and that we heard witnesses; and this was supposed to prove that the killings were carried out in March or April of 1940.

I was of the opinion that the fact that the conclusion was not based on medical opinion and not supported absolutely by medical reports and examination, was the reason why the signing of the protocol was postponed and why the record was not signed in Smolensk.

DR. STAHLER: Witness, at the beginning of my examination you stated that you were fully aware of the political significance of your task. Why, then, did you desist from protesting against this report which was not in accord with your scientific conviction?

MARKOV: I have already said that I signed the protocol as I was convinced that the circumstances at this isolated military airfield offered no other possibility, and therefore I could not make any objections.

DR. STAHLER: Why did you not take steps later on?

MARKOV: My conduct after the signing of the protocol corresponds fully to what I am stating here, I repeat. I was not convinced of the truth of the German version. I was invited many times to Berlin by Director Dietz. I was also invited to Sofia by the German Embassy. And in Bulgaria, the Bulgarian Foreign Office also invited me to make a public statement over the radio and to the press; and I was requested to say what conclusions we had come to during our investigation. However, I did not do so, and I always refused to do so. Because of the political situation in which we found ourselves at that moment, I could not make a public statement declaring the German version was wrong.

Concerning that matter there were quite sharp words exchanged between me and the German Embassy in Sofia. And when, a few months later, another Bulgarian representative was asked to be sent as a member of a similar commission for the investigation of the corpses in Vinnitza in the Ukraine, the German Ambassador Beckerly stated quite openly to the Bulgarian Foreign Office that the Germans did not wish me to be sent to Vinnitza.

That indicated that the Germans very well understood my behavior and my opinion on that matter. Concerning this question, Minister Plenipotentiary Saratov, of our Foreign Office, still has shorthand records about conversations which, if the Honored Tribunal considers it necessary, can be sent here from Bulgaria.

Therefore, all my refusals, after I had signed the protocol, to carry on any activity for the purpose of propaganda, fully correspond to what I said here, namely that the conclusions laid down in the collective protocol do not answer my personal conviction. And I will repeat that if I had been convinced that the corpses were buried for 3 years, I would have testified this after having dissected a corpse. But I have left my personal protocol incomplete

*and more
to be present
to be present
to be present!*

and this is a quite unusual thing in the case of medico-judicial examination.

DR. STAHLER: The protocol was not signed by you alone, but on the contrary it carries the signatures of 11 representatives of science, whose names you gave yesterday, some of them of world renown. Among these men we find a scientist of a neutral country, Professor Naville.

Did you take the opportunity to get in touch with one of these experts in the meantime with a view of reaching a rectification of the report?

MARKOV: I cannot say on what considerations the other delegates signed the protocol. But they also signed it under the same circumstances as I did. However, when I read the individual protocols, I notice that they also refrained from stating the precise date of the killing of the man whose corpse they had dissected. There was one exception only, as I have already said. That was Professor Niloslavich, who was the only one who asserted that the corpse which he had dissected was that of a man buried for at least 3 years. After the signing of the protocol, I did not have any contact with any of the persons who had signed the collective protocol.

DR. STAHLER: Witness, you gave two versions, one in the protocol which we have just discussed, and another here before the Court. Which version is the correct one?

MARKOV: I do not understand which two versions you are speaking about. Will you please explain it?

DR. STAHLER: In the first version, in the protocol, it is set forth that according to the conclusion which had been made, the shooting must have taken place 3 years ago. Today you testified that the findings were not correct, and between the shooting and the time of your investigations there could only be a space of perhaps 18 months.

MARKOV: I stated that the conclusions of the collective protocol do not correspond with my personal conviction.

DR. STAHLER: "Did not correspond" or "do not correspond with your conviction"?

MARKOV: It did not and it does not correspond with my opinion then and now.

DR. STAHLER: I have no further questions.

MR. COUNSELLOR SMIRNOV: Mr. President, I have no further questions to put to this witness.

THE PRESIDENT: Witness, were any of the bodies which were examined by the members of this delegation exhumed from the ground in your presence?

MARKOV: The corpses which we dissected were selected among the top layers of the graves which had been already exhumed. They were taken out of the graves and given to us for dissection.

THE PRESIDENT: Was there anything to indicate, in your opinion, that the corpses had not been buried in those graves?

MARKOV: As far as traces are concerned, and as far as the layers of corpses were preserved, they were stuck to each other; so that if they had been transferred, ~~I do not believe that this could have been done recently.~~ This could not have been done immediately before our arrival.

3 years!
would you say they had not been!

THE PRESIDENT: You mean that you think the corpses had been buried in those graves?

MARKOV: I cannot say whether they were put into those graves immediately after death had come, as I have no data to confirm this, but they did not look as if they had just been put there.

THE PRESIDENT: Is it possible, in your opinion as an expert, to fix the date of March or April or such a short period as that, 3 years before the examination which you have made?

MARKOV: I believe that if one relies exclusively on medical data, that is to say, on the state and condition of the corpses, it is impossible, when it is a question of years, to determine the date with such precision and say accurately whether they were killed in March or in April. Therefore, apparently the months of March and April were not based on the medical data, for that would be impossible, but on the testimony of the witnesses and on the documents which were shown us.

your guy is having a tough time lying like a school to death.

THE PRESIDENT: When you got back to Sofia, you said that the protocol was sent to you for your observations and for your corrections and that you made none. Why was that?

MARKOV: We are concerned with the individual protocol which I compiled. I did not supplement it by making any conclusion, I did not add any conclusion because it was sent to me by the Germans and because in general at that time the political situation in our country was such that I could not declare publicly that the German version was not a true one.

THE PRESIDENT: Do you mean that your personal protocol alone was sent to you at Sofia?

MARKOV: Yes, only my personal protocol was sent to Sofia. As to the collective protocol, I brought that back myself to Sofia and handed it over to our Foreign Minister.

THE PRESIDENT: Is your personal protocol, in the words that you drew it up, incorporated in the whole protocol and signed by all the delegates?

MARKOV: In my personal protocol there is only a description of the corpse and of the clothing of the corpse which I dissected.

THE PRESIDENT: That is not the question I asked.

MARKOV: In the general protocol a rough description only is made, concerning the clothing and the degree of decomposition.

THE PRESIDENT: Well, do you mean that your personal protocol...

MARKOV: I consider that the personal protocols are more accurate regarding the condition of the corpses, because they were compiled during the dissection and were dictated on the spot to the stenographers.

THE PRESIDENT: Just listen to the question, please. Is your personal protocol, in the words in which you drew it up, incorporated in the collective protocol in the same words?

MARKOV: My own protocol is not included in the general record, but it is included in the *White Book* which the Germans published together with the general record.

THE PRESIDENT: It is there, then, in the report, is it? It is in the *White Book*?

MARKOV: Yes, quite right. It is included in this book.

THE PRESIDENT: The witness can retire. Yes, Colonel Smirnov, do you have another witness?

MR. COUNSELLOR SMIRNOV: Yes, Mr. President. I beg you to allow me to call as a witness, Professor of Medical Jurisprudence Prosorovski.

[The witness Prosorovski took the stand.]

THE PRESIDENT: Will you state your full name, please.

VICTOR IL'ICH PROSOROVSKI (Witness): Prosorovski, Victor Il'ich.

THE PRESIDENT: Will you repeat this oath after me:

I, citizen of the U.S.S.R.—called as a witness in this case—solemnly promise and swear before the High Tribunal—to say all that I know about this case—and to add and withhold nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

MR. COUNSELLOR SMIRNOV: Witness, just before questioning you, I beg you to adhere to the following order. After my question, please pause in order to allow the interpreters to make the translation, and speak as slowly as possible.

Will you give the Tribunal very briefly some information about your scientific activity, and your past work as a medico-judicial doctor.

PROSOROVSKI: I am a doctor by profession; professor of medical jurisprudence and a doctor of medical science. I am the Chief Medical Expert of the Ministry of Public Health of the Soviet Union. I am the Director of the Scientific Research Institute for Medical Jurisprudence at the Ministry of Public Health of the U.S.S.R.; my business is mainly of a scientific nature; I am President of the Medico-Judicial Commission of the Scientific Medical Council of the Ministry of Public Health of the U.S.S.R.

MR. COUNSELLOR SMIRNOV: How long did you practice as a medico-judicial expert?

PROSOROVSKI: I practiced for 17 years in that sphere.

MR. COUNSELLOR SMIRNOV: What kind of participation was yours in the investigation of the mass crimes of the Hitlerites against the Polish officers in Katyn?

PROSOROVSKI: The President of the Special Commission for investigation and ascertaining of the circumstances of the shootings by the German Fascist aggressors of Polish officers, Academician Nicolai Ilych Burdenko, offered me in the beginning of January 1944 the chairmanship of the Medico-Judicial Commission of experts. Apart from this organizational activity, I participated personally in the exhumations and examination of these corpses.

will kill, will - Prof. your best friend for years it all!

THE PRESIDENT: Colonel Smirnov, perhaps that would be a good time to break off.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

THE MARSHAL: May it please the Tribunal, the Defendants Hess, Fritzsche, and Von Ribbentrop are absent.

MR. COUNSELLOR SMIRNOV: May I continue the examination of this witness, Mr. President?

THE PRESIDENT: Yes.

MR. COUNSELLOR SMIRNOV: Please tell me, how far from the town of Smolensk were the burial grounds where the corpses were discovered?

PROSOROVSKI: A commission of medico-legal experts, together with members of the special commission, Academician Burdenko, Academician Potemkin, Academician Tolstoy, and other members of this commission, betook themselves on 14 January 1944 to the burial grounds of the Polish officers in the so-called Katyn wood. This spot is located about 15 kilometers from the town of Smolensk. These burial grounds were situated on a slope at a distance of about 200 meters from the Vitebsk high road. One of these graves was about 60 meters long and 60 meters wide; the other one, situated a small distance from this first grave, was about 7 meters long and 6 meters wide.

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emerged from a
winter memo!*

MR. COUNSELLOR SMIRNOV: How many corpses were exhumed by the commission you headed?

PROSOROVSKI: In the Katyn wood the commission of medical experts exhumed and examined, from various graves and from various depths, altogether 925 corpses.

MR. COUNSELLOR SMIRNOV: How was the work of exhumation done and how many assistants were employed by you on this work?

PROSOROVSKI: Specialists and medico-legal experts participated in the work of this commission. In September and October 1943 they had exhumed and examined the corpses of the victims shot by the Germans...

MR. COUNSELLOR SMIRNOV: Where was the examination of the corpses performed?

PROSOROVSKI: They examined them in the town and the neighborhood of Smolensk. Among the members of this commission were Professor Prosorovski; Professor Smolianinov; the eldest and most learned collaborator of the Medico-Legal Research Institute, Dr. Semenovski; Professor of Pathological Anatomy Voropaev; Professor of Legal Chemistry Schwaikova, who was invited for consultations on chemico-legal subjects. To assist this commission, they

called also medico-legal experts from the forces. Among them were the medical student Nikolski, Dr. Soubbotin...

MR. COUNSELLOR SMIRNOV: I doubt whether the Tribunal is interested in all these names. I ask you to answer the following question: What method of examination was chosen by you? What I mean is, did you strip the corpses of their clothes and were you satisfied with the customary post mortem examination or was every single one of these 925 corpses thoroughly examined?

*why not -
they are all
Russian*

PROSOROVSKI: After exhumation of the corpses, they were thoroughly searched, particularly their clothing. Then an exterior examination was carried out and then they were subjected to a complete medico-legal dissection of all three parts of the body; that is to say, the skull, the chest, and the abdomen, as well as all the inner organs of these corpses.

MR. COUNSELLOR SMIRNOV: Please tell me whether the corpses exhumed from these burial grounds bore traces of a previous medical examination?

PROSOROVSKI: Out of the 925 corpses which we examined, only three had already been dissected; and that was a partial examination of the skulls only. On all the others no traces of previous medical examination could be ascertained. They were clothed; and the jackets, trousers, and shirts were buttoned, the belts were strapped, and the knots of ties had not been undone. Neither on the head nor on the body were there any traces of cuts or other traces of medico-legal examination. Therefore this excludes the possibility of their having been subjected to any previous medico-legal examination.

MR. COUNSELLOR SMIRNOV: During the medico-legal examination which was carried out by your commission, did you open the skulls?

PROSOROVSKI: Of course. At the examination of quite a number of corpses the skull was opened and the contents of the skull were examined.

MR. COUNSELLOR SMIRNOV: Are you acquainted with the expression "pseudocallus"?

PROSOROVSKI: I heard of it when I received a book in 1945 in the Institute of Medico-Legal Science. Before that not a single medical legal expert observed any similar phenomena in the Soviet Union.

MR. COUNSELLOR SMIRNOV: Among the 925 skulls which you examined, were there many cases of pseudocallus?

PROSOROVSKI: Not one of the medico-legal experts who were examining these 925 corpses observed lime deposits on the inner side of the cranium or on any other part of the skull.

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MR. COUNSELLOR SMIRNOV: Therefore, there was no sign of pseudocallus on any of the skulls.

PROSOROVSKI: No.

MR. COUNSELLOR SMIRNOV: Was the clothing also examined?

PROSOROVSKI: As already stated, the clothing was thoroughly examined. Upon the request of the Special Commission, and in the presence of its members and of the Metropolitan Nikolai, Academician Burdenko, and others, the medico-legal experts examined the clothing, the pockets of the trousers, of the coats, and of the overcoats. As a rule, the pockets were either turned, torn open, or cut open, and this testified to the fact that they had already been searched. The clothing itself, the overcoats, the jackets, and the trousers as well as the shirts, were moist with corpse liquids. This clothing could not be torn asunder, in spite of violent effort.

MR. COUNSELLOR SMIRNOV: Therefore, the tissue of the clothing was solid?

PROSOROVSKI: Yes, the tissue was very solid, and of course, it was besmeared with earth.

MR. COUNSELLOR SMIRNOV: During the examination, did you look into the pockets of the clothing and did you find any documents in them?

PROSOROVSKI: As I said, most of the pockets were turned out or cut; but some of them remained intact. In these pockets, and also under the lining of the overcoats and of the trousers we discovered, for instance, notes, pamphlets, papers, closed and open letters and postcards, cigarette paper, cigarette holders, pipes, and so forth, and even valuables were found, such as ingots of gold and gold coins.

MR. COUNSELLOR SMIRNOV: These details are not very relevant, and therefore I beg you to refrain from giving them. I would like you to answer the following question: Did you discover in the clothing documents dated the end of 1940 and also dated 1941?

PROSOROVSKI: Yes. I discovered such documents, and my colleagues also found some. Professor Smolianinov, for instance, discovered on one of the corpses a letter written in Russian, and it was sent by Sophie Zigon, addressed to the Red Cross in Moscow, with the request to communicate to her the address of her husband, Thomas Zigon. The date of this letter was 12 September 1940. Besides the envelope bore the stamp of a post office in Warsaw of September 1940, and also the stamp of the Moscow post office, dated 28 September 1940.

Another document of the same sort was discovered. It was a postcard sent from Tarnopol, with the post office cancellation: "Tarnopol, 12 September 1940."

Then we discovered receipts with dates, one in particular with the name—if I am not mistaken—of Orashkevitch, certifying to the receipt of money with the date of 6 April 1941, and another receipt in his name, also referring to a money deposit, was dated 5 May 1941.

Then, I myself discovered a letter with the date 20 June 1941, with the name of Irene Tutchinski, as well as other documents of the same sort.

MR. COUNSELLOR SMIRNOV: During the medico-legal examination of the corpses, were any bullets or cartridge cases discovered? Please tell us what was the mark on these cartridge cases? Were they of Soviet make or of foreign make; and if they were foreign make, which one, and what was the caliber?

PROSOROVSKI: The cause of death of the Polish officers was bullet wounds in the nape of the neck. In the tissue of the brain or in the bone of the skull we discovered bullets which were more or less deformed. As to cartridge cases, we did indeed discover, during the exhumation, cartridge cases of German origin, for on their bases we found the mark G-e-c-o, Geco.

MR. COUNSELLOR SMIRNOV: One minute, Witness.

I will now read an original German document and I beg the permission of the Tribunal to submit a series of documents which have been offered us by our American colleagues, Document Number 402-PS, Exhibit USSR-507. It concerns German correspondence and telegrams on Katyn, and these telegrams are sent by an official of the Government General, Heinrich, to the Government of the Government General.

I submit the original document to the Court. I am only going to read one document, a very short one, in connection with the cartridge cases discovered in the mass graves. The telegram is addressed to the Government of the Government General, care of First Administrative Counsellor Weirauch in Kraków. It is marked:

"Urgent, to be delivered at once, secret.

"Part of the Polish Red Cross returned yesterday from Katyn. The employees of the Polish Red Cross have brought with them the cartridge cases which were used in shooting the victims of Katyn. It appears that these are German munitions. The caliber is 7.65. They are from the firm Geco. Letter follows." signed—"Heinrich."

[Turning to the witness.] Were the cartridge cases and cartridges which were discovered by you of the same caliber and did they bear the mark of the same firm?

PROSOROVSKI: As I have already stated, the bullets discovered in the bullet wounds were 7.65 caliber. The cases discovered during the exhumation did indeed bear the trademark of the firm Geco.

MR. COUNSELLOR SMIRNOV: I now ask you to describe in detail the condition of the body tissues and of the inner organs of the corpses exhumed from the graves of Katyn.

PROSOROVSKI: The skin and the inner organs of the corpses were well preserved. The muscles of the body and of the limbs had kept their structure. The muscles of the heart had also kept their characteristic structure. The substance of the brain was, in some cases, putrified; but in most cases, it had kept its structural characteristics quite definitely, showing a clear distinction between the gray and white matters. Changes in the inner organs were mainly a sagging and shrinking. The hair from the head could be easily pulled out.

MR. COUNSELLOR SMIRNOV: From the examination of the corpses, to what conclusion did you come as to the date of death and date of burial?

PROSOROVSKI: On the basis of the experience I have gained and on the experiences of Smolianinov, Semenovski, and other members of the commission . . .

MR. COUNSELLOR SMIRNOV: One moment, Witness. I would like you to tell the Tribunal briefly what these experiences were and how many corpses were exhumed. Did you personally exhume them or were they exhumed in your presence?

PROSOROVSKI: In the course of the great War, I was often medico-legal expert during the exhumation and the examination of corpses of victims who were shot by the Germans. These executions occurred in the town of Krasnodar and its neighborhood, in the town of Kharkov and its neighborhood, in the town of Smolensk and its neighborhood, in the so-called extermination camp of Maidanek, near Lublin, so that all told more than 5,000 corpses were exhumed and examined with my personal co-operation.

MR. COUNSELLOR SMIRNOV: Considering your experience and your objective observations, to what conclusions did you arrive as to the date of the death and the burial of the victims of Katyn?

PROSOROVSKI: What I have just said applies to me as well as to many of my colleagues who participated in this work. The commission came to the unanimous conclusion that the burial of the Polish officers in the Katyn graves was carried out about 2 years before, if you count from January, the month of January 1944—that is to say that the date was autumn 1941.

MR. COUNSELLOR SMIRNOV: Did the condition of the corpses allow the conclusion that they were buried in 1940, objectively speaking?

PROSOROVSKI: The medico-legal examination of the corpses buried in the Katyn wood, when compared with the modifications

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and changes which were noticed by us during former exhumations on many occasions and also material evidence, allowed us to come to the conclusion that the time of the burial could not have been previous to the autumn of 1941.

MR. COUNSELLOR SMIRNOV: Therefore, the year 1940 is out of question?

PROSOROVSKI: Yes, it is completely excluded. *du - new.*

MR. COUNSELLOR SMIRNOV: If I understood you rightly you were also medico-legal expert in the case of other shootings in the district of Smolensk?

PROSOROVSKI: In the district of Smolensk and its environs I have exhumed and examined together with my assistants another 1,173 corpses, besides those of Katyn. They were exhumed from 87 graves.

MR. COUNSELLOR SMIRNOV: How did the Germans camouflage the common graves of the victims which they had shot?

PROSOROVSKI: In the district of Smolensk, in Gadeonovka, the following method was used:

The top layer of earth on these graves was covered with turf, and in some cases, as in Gadeonovka, young trees were planted as well as bushes; all this with a view to camouflaging. Besides, in the so-called Engineers' Garden of the town of Smolensk, the graves were covered with bricks and paths were laid out.

MR. COUNSELLOR SMIRNOV: So you exhumed more than 5,000 corpses in various parts of the Soviet Union.

PROSOROVSKI: Yes.

MR. COUNSELLOR SMIRNOV: What were the causes of death of the victims in most cases?

PROSOROVSKI: In most cases the cause of death was a bullet wound in the head, or in the nape of the neck.

MR. COUNSELLOR SMIRNOV: Were the causes of death at Katyn similar to those met with in other parts of the Soviet Union? I am speaking of mass-shootings.

PROSOROVSKI: All shootings were carried out by one and the same method, namely, a shot in the nape of the neck, at point-blank range. The exit hole was usually on the forehead or in the face.

MR. COUNSELLOR SMIRNOV: I will read the last paragraph of your account on Katyn, mentioned in the report of the Extraordinary Soviet State Commission:

"The commission of the experts emphasizes the absolute uniformity of the method of shooting the Polish prisoners of

war with that used for the shootings of Soviet prisoners of war and Soviet civilians. Such shootings were carried out on a vast scale by the German Fascist authorities during the temporary occupation of territories of the U.S.S.R., for instance, in the towns of Smolensk, Orel, Kharkov, Krasnodar and Voronesh.

Do you corroborate this conclusion?

PROSOROVSKI: Yes, this is the typical method used by the Germans to exterminate peace-loving citizens.

MR. COUNSELLOR SMIRNOV: I have no further questions to put to this witness, Mr. President.

DR. STAHLER: Where is your permanent residence, Witness?

PROSOROVSKI: I was born in Moscow and have my domicile there.

DR. STAHLER: How long have you been in the Commissariat for Health?

PROSOROVSKI: I have been working in institutions for public health since 1931 and am at present in the Ministry of Public Health. Before that I was a candidate for the chair of forensic medicine at Moscow University.

DR. STAHLER: In this commission were there also foreign scientists?

PROSOROVSKI: In this commission there were no foreign medico-legal experts, but the exhumation and examination of these corpses could be attended by anybody who was interested. Foreign journalists, I believe 12 in number, came to the burial grounds and I showed them the corpses, the graves, the clothing, and so on—in short everything they were interested in.

DR. STAHLER: Were there any foreign scientists present?

PROSOROVSKI: I repeat again that no one was present apart from Soviet experts of the medico-legal commission.

DR. STAHLER: Can you give the names of the members of the press?

THE PRESIDENT: Dr. Stahlmer, he was giving a long list of names before and he was stopped by his counsel.

Why do you shake your head?

DR. STAHLER: I did not understand, Mr. President, the one list of names. He gave a list of names of the members of the commission. My question is that: The witness has just said that members of the foreign press were present and that the results of the investigation were presented to them. I am now asking for the names of these members of the foreign press.

THE PRESIDENT: Well, go on.

DR. STAHLER: Will you please give me the names of the members of the press, or at least the names of those who were present and to whom you presented the results of the examination?

PROSOROVSKI: Unhappily I cannot give you those names now here; but I believe that if it is necessary, I would be able to find them. I shall ascertain the names of all those foreign correspondents who were present at the exhumation of the corpses.

DR. STAHLER: The statement about the number of corpses exhumed and examined by you seems to have changed somewhat according to my notes, but I may have misunderstood. Once you mentioned 5,000 and another time 925. Which figure is the correct one?

PROSOROVSKI: You did not hear properly. I said that 925 corpses had been exhumed in the Katyn wood, but in general I personally exhumed or was present at the exhumation of over 5,000 in many towns of the Soviet Union after the liberation of the territories from the Germans.

DR. STAHLER: Were you actually present at the exhumation?

PROSOROVSKI: Yes.

DR. STAHLER: How long did you work at these exhumations?

PROSOROVSKI: As I told you, on 14 January a group of medico-legal experts left for the site of the burial grounds together with the members of a special commission.

THE PRESIDENT: Can you not just say how long it took—the whole exhumation? In other words, to shorten it, can you not say how long it took?

PROSOROVSKI: Very well. The exhumation and part of the examination of the corpses lasted from 16 to 23 January 1944.

DR. STAHLER: Did you find only Polish officers?

PROSOROVSKI: All the corpses, with the exception of two which were found in civilian clothing, were in Polish uniforms and were therefore members of the Polish Army.

DR. STAHLER: Did you try to determine from what camp these Polish officers came originally?

PROSOROVSKI: That was not one of my duties. I was concerned only with the medico-legal examination of the corpses.

DR. STAHLER: You did not learn in any other way from what camp they came?

PROSOROVSKI: In the receipts which were found, dated 1941, it was stated that the money was received in camp 10-N. It can

therefore be assumed that the camp number was obviously of particular importance.

DR. STAHLER: Did you know of the Kosielsk Camp?

PROSOROVSKI: Only from hearsay. I have not been there.

DR. STAHLER: Do you know that Polish officers were kept prisoners there?

PROSOROVSKI: I can say only what I heard. I heard that Polish officers were there, but I have not seen them myself nor have I been anywhere near there.

DR. STAHLER: Did you learn anything about the fate of these officers?

PROSOROVSKI: Since I did not make the investigations, I cannot say anything about the fate of these officers. About the fate of the officers, whose corpses were discovered in the graves of Katyn, I have already spoken.

DR. STAHLER: How many officers did you find altogether in the burial grounds at Katyn?

PROSOROVSKI: We did not separate the corpses according to their rank; but, in all, there were 925 corpses exhumed and examined.

DR. STAHLER: Was that the majority?

PROSOROVSKI: The coats and tunics of many corpses bore shoulder straps with insignia indicating officers' rank. But even to-day I could not distinguish the insignia of rank of the Polish officers.

DR. STAHLER: What happened to the documents which were found on the Polish prisoners?

PROSOROVSKI: By order of the special commission the searching of the clothing was done by the medico-legal experts. When these experts discovered documents they looked them through, examined them, and handed them over to the members of the special commission, either to Academician Burdenko or Academician Tolstoy, Potemkin, or any other members of the commission. Obviously these documents are in the archives of the Extraordinary State Commission.

DR. STAHLER: Are you of the opinion that from the medical findings regarding the corpses the time when they were killed can be determined with certainty?

PROSOROVSKI: In determining the date on which these corpses had presumably been buried, we were guided by the experience which we had gathered in numerous previous exhumations and also found support by material evidence discovered by the medico-legal

experts." Thus we were able to establish beyond doubt that the Polish officers were buried in the fall of 1941.

DR. STAHLER: I asked whether from the medical findings you could determine this definitely and whether you did so.

PROSOROVSKI: I can again confirm what I have already said. Since we had great experience in mass exhumations, we came to that conclusion, in corroboration of which we also had much material evidence, which enabled us to determine the autumn of 1941 as the time of the burial of the Polish officers.

DR. STAHLER: I have no more questions to put to this witness. Mr. President, an explanation regarding the document which was just submitted; I have here only a copy signed by Heinrich; I have not seen the original.

THE PRESIDENT: I imagine the original is there.

DR. STAHLER: Thank you, Mr. President.

THE PRESIDENT: Yes, Colonel Smirnov, do you want to re-examine?

MR. COUNSELLOR SMIRNOV: Mr. President, I have no further questions to put to this witness; but with the permission of the Tribunal, I would like to make a brief statement.

We were allowed to choose from among the 120 witnesses whom we interrogated in the case of Katyn, only three. If the Tribunal is interested in hearing any other witnesses named in the reports of the Extraordinary State Commission, we have, in the majority of cases, adequate affidavits which we can submit at the Tribunal's request. Moreover, any one of these persons can be called to this Court if the Tribunal so desires.

That is all I have to say upon this matter.

THE PRESIDENT: Dr. Stahlmer?

DR. STAHLER: I have no objection to the further presentation of evidence as long as it is on an equal basis; that is, if I, too, have the opportunity to offer further evidence. I am also in a position to call further witnesses and experts for the Court.

THE PRESIDENT: The Tribunal has already made its order; it does not propose to hear further evidence.

DR. STAHLER: Thank you.

THE PRESIDENT: The witness can retire.

The Tribunal wishes to hear Dr. Bergold with reference to finishing the case of the Defendant Bormann, and the Tribunal also understands that counsel for the Defendant Von Neurath has some documents which he wishes to present.

Dr. Von Lüdinghausen, have you some documents for Von Neurath?

DR. VON LÜDINGHAUSEN: Yes.

THE PRESIDENT: Will you present them now?

DR. VON LÜDINGHAUSEN: Mr. President, I have here two types of documents. One type includes the documents which I have already offered in presenting my evidence, and to which I have called the attention of the Court. They are all in the document books which have been submitted to the Court, and I believe it will be sufficient to hand these documents to the General Secretary.

THE PRESIDENT: Dr. Lüdinghausen, you have already offered them in evidence and they all have numbers, have they not?

DR. VON LÜDINGHAUSEN: Yes.

THE PRESIDENT: Very well.

DR. VON LÜDINGHAUSEN: Then I have a number of documents, probably 12 or 15, which have also been included in my document books, in translation. However, I have not yet mentioned these documents in my presentation recently, and have not yet asked the Court to take judicial notice of them. If I may refer to them briefly, they are as follows:

A letter from Von Neurath to Hitler of 19 June 1933.

A copy of the minutes of the withdrawal of the Inter-Allied Military Commission in 1926.

A speech . . .

THE PRESIDENT: Will you kindly give them the exhibit numbers which they are to have as you offer them in evidence?

DR. VON LÜDINGHAUSEN: Yes.

THE PRESIDENT: The first one is a letter to Hitler of 19 June 1933. What number will that letter have?

DR. VON LÜDINGHAUSEN: That is Number 12.

Number 32, minutes on the withdrawal of the Inter-Allied Military Commission.

Number 50, a speech of Prime Minister MacDonald of 16 March 1933.

Number 51, an article of Von Neurath on the League of Nations, in the periodical *Der Völkerbund* of 11 May 1933.

Number 52, Hitler's speech of 17 May 1933, the so-called "Peace Speech."

Number 53, a statement of the German Ambassador Nadolny, in Geneva, of 19 May 1933.

Number 54, a statement of the American representative, Norman Davies, at the Disarmament Conference, of 22 May 1933.

Number 55, a statement of the German Ambassador Nadolny, at the Disarmament Conference of 27 May 1935.

Number 81, a speech by the then Minister Beneš of 2 July 1934.

Number 82, an excerpt from the speech of Marshal Pétain of 22 July 1934.

Number 83, the communiqué of the Reich Government of 26 July 1934.

Number 85, the communiqué of the Reich Government of 10 September 1934.

Number 86, a speech of Herr Von Neurath of 17 September 1934.

Number 88, excerpts from the speech of Marshal Smuts of 12 November 1934.

Number 119, a statement of the British Minister in the House of Commons of 20 July 1936.

Those are the documents which I had not yet named, but which are already contained in my document books. Mr. President, may I take this opportunity to submit the following application, namely: The Court...

THE PRESIDENT: Those documents have all been translated, have they not, Dr. Lüdinghausen?

DR. VON LÜDINGHAUSEN: Yes, they are all included, in translation, in the document books which have been submitted.

Mr. President, may I now make an application to the Court? It is to the effect that the Court should permit me to call again the Defendant Von Neurath to the witness stand, for the following reason. As may be recalled, in the course of cross-examination Sir David Maxwell-Fyfe presented Document 3859-PS to the defendant, which document was a photostatic copy of a letter from the defendant, dated 31 August 1940, to the Chief of the Reich Chancellery, Lammers, with two enclosures. In this letter the defendant asked Lammers to submit the two enclosures to Hitler and to arrange, if possible, a personal conference or an interview on the question of alleged Germanization mentioned therein. The two enclosures of this letter to Lammers are reports and suggestions on the future form of the Protectorate and concern the assimilation or possible Germanization of the Czech people.

The Court will recall that the presentation of this rather extensive document—it has 30 or 40 pages in this photostatic form if not more—surprised the defendant, and at that moment he could not recall the matter clearly enough to give positive and exhaustive information about these documents immediately. Nevertheless, in cross-examination, after a very brief look at these reports, he expressed doubts as to whether these reports, as presented here in photostatic form, were actually identical with the reports which

were enclosed, according to his instructions, in the letter to Lammers to be submitted to Hitler. A careful examination of these photostatic copies was not possible in the course of cross-examination; and, of course, I myself, since I did not know the documents, was not able to comment upon them. Since Herr Von Neurath was obviously overtired and exhausted after the cross-examination it was not possible for me to examine the question and discuss it with him on the same day; that was possible only on the following day.

THE PRESIDENT: Yes, Dr. Von Lüdinghausen, the defendant may be recalled for the purpose of being questioned about these two documents; but, of course, it is an exceptional license which is allowed on this occasion, because the object of re-examination is to enable counsel to elucidate such matters as this.

DR. VON LÜDINGHAUSEN: Yes.

THE PRESIDENT: You may call him.

[The Defendant Von Neurath resumed the stand.]

You are still under oath, of course.

DR. VON LÜDINGHAUSEN: Herr Von Neurath, do you recall the reason for your letter to Dr. Lammers of 31 August 1940 and your request for him to arrange a conference, an interview with Hitler?

VON NEURATH: Yes. As I said during my examination, in the course of the summer of 1940 I learned that various Reich and Party agencies, among others particularly the Gauleiter of the neighboring Gaue and Himmler, had sent more or less radical reports and suggestions to Hitler. I knew that Himmler, particularly, made quite extreme suggestions regarding a partition of the Protectorate area and complete annihilation of the Czech folkdom and people. These agencies were urging Hitler to put these plans into effect as quickly as possible.

Since, as I have already emphasized, I was opposed to such plans and, on the contrary, wanted to preserve the Czech people and folkdom and protect them against the intentions of Himmler and his companions to destroy them, I decided to make an attempt to induce Hitler not to carry out any Germanization plans but to forbid them and to send a categorical order to this effect to the Party and its agencies.

DR. VON LÜDINGHAUSEN: Do you recall how these two reports came about, which were to be included in your letter to Lammers?

VON NEURATH: As far as I can recall, things developed as follows: Either I myself dictated a report or one of my officials drew it up according to my instructions; I believe the latter was the case. But I recall definitely that this report was much briefer than the

one submitted here in photostatic copy. I remember, furthermore, that the conclusions drawn in it were similar but much sharper and that the whole problem had to be considered very carefully.

DR. VON LÜDINGHAUSEN: Now, tell us how and why the second report of Frank came to be made.

VON NEURATH: From the various discussions which I had with Frank, I knew that he, too, was opposed to this partition of the Protectorate territory and the evacuation of the Czech population as proposed by Himmler and that he shared my opinions, at least to that extent. Therefore I considered it expedient, since Hitler had assigned Frank to me as State Secretary because he knew the Czech country and people very well, to point out to Hitler that this man, too, was opposed to Himmler's plans and advised Hitler against accepting them.

DR. VON LÜDINGHAUSEN: But for what reason did you especially emphasize in your letter to Lammers that you shared the opinions expressed in Frank's report?

VON NEURATH: I considered it right to do this because Frank was a member of the SS and a subordinate and confidant of Himmler. On the other hand, I knew already at that time that Hitler was prejudiced against me, because of my attitude toward the Czech people, which he considered much too mild and lenient; and I was, therefore, convinced that together with Frank I would be more likely to be successful in influencing Hitler to my way of thinking than if I went to him alone. That was the reason why I suggested that Frank should participate in the report. For the same reason I did not write directly to Hitler, as I did usually, but to Lammers. According to previous experience, I had to assume that if I had written directly to Hitler, who on top of it was not in Berlin at the time, he would either not read the report at all or would refer it to Himmler.

DR. VON LÜDINGHAUSEN: How was this letter to Lammers and its enclosures handled in your office?

VON NEURATH: I had the draft of the report of Frank submitted to me. Then I dictated my letter to Lammers, and I sent it with my report and Frank's draft back to Frank's office for a final review of the Frank report and for the dispatch of the letter to Lammers together with both versions. I did not see the letter to Lammers and the two reports again before they were sent out nor did I see them, by the way, in Berlin at the conference with Hitler.

DR. VON LÜDINGHAUSEN: The last question. How did you reach the conviction that the photostatic copies, submitted here, of the two reports could not be identical with the reports which were enclosed in the letter to Lammers, according to your instructions?

VON NEURATH: As for the first report which I prepared, I have already stated that according to my recollection it was much shorter than the one submitted here in photostatic copy. Furthermore, this photostatic copy does not bear my signature, not even my initials. But it is out of the question that the final copy of this report, which was enclosed at my office in the letter to Lammers, would not have been signed or at least initialed by me; and the certificate of correctness, which, remarkably enough, is contained in this report and which was prepared by an SS Obersturmbannführer, is not signed. The photostatic copy which is said to have been enclosed in the letter to Lammers does not even bear my initials. The most noticeable thing, however, is the certificate of correctness on the photostatic copy. This can have a meaning only if the document enclosed in the letter to Lammers, in spite of not bearing my signature, was enclosed in the letter nevertheless. But since the final copy which my office sent to State Secretary Frank's office with the letter to Lammers was certainly signed by me, this certificate proves that it was not the report signed by me which was enclosed in the letter sent to Lammers but another one drafted by Frank or by officials in his office. As for Frank's own report, the text of the photostatic copy here, to my recollection, is not identical with the text of the report which I approved and which I then sent on together with my report to Lammers . . .

THE PRESIDENT: Dr. Von Lüdinghausen, we have heard the explanation more than once, I think, that the enclosure which was in the letter was not the same as the one which he drew up. It does not get any more convincing by getting told over again.

DR. VON LÜDINGHAUSEN: I only wanted to express it again. But if the Tribunal believes that that explanation has been made previously, I may dispense with it.

VON NEURATH: Mr. President, may I be permitted to make another statement as to how I imagine—of course, I can only imagine—these things took place? I am firmly convinced that if the two photostatic copies submitted here were actually enclosed in the letter to Lammers, they were prepared in Frank's office, and enclosed without my knowledge. Another possibility would be, of course, that Czech . . .

THE PRESIDENT: We are quite as able to imagine possibilities as you are.

The fact is that the letter was signed in his name, was it not? The letter itself was signed?

DR. VON LÜDINGHAUSEN: Yes.

THE PRESIDENT: And he refers expressly to the enclosure?

DR. VON LÜDINGHAUSEN: Yes.

THE PRESIDENT: Very well; we understand it.

DR. VON LÜDINGHAUSEN: Yes. I wanted it to be made clear to the Court. For, as I have said, I could not thoroughly examine the remarkable characteristics of these two reports, the outer form and the text at the moment of cross-examination. I have no further questions, Mr. President.

THE PRESIDENT: Then the defendant can return to the dock. Do you want to ask any questions, Sir David?

SIR DAVID MAXWELL-FYFE: My Lord, I do not think so. If the Court would just allow me, I should like to look at the document while the Court is recessed and see whether there is any point that I might like to question on.

THE PRESIDENT: We will recess now.

[A recess was taken.]

SIR DAVID MAXWELL-FYFE: I have considered the matter; and I think it is really in the stage of argument and not cross-examination; but, My Lord, I should like Your Lordship just to observe, as the matter has been raised, that there is a certificate, given by Captain Hochwald on behalf of General Ecer, which states that the exhibit which was put in is a photostat taken from the original of a document found in the archives of the Reich Protector's office in Prague, so that that theory appears, from the certificate and the exhibit, that the copy-letter to Dr. Lammers and the two memoranda were preserved and found in the office of the Reich Protector. I do not want to say anything further in the matter.

THE PRESIDENT: Let the defendant come back to the witness box. Oh—no he need not come back. Dr. Bergold. Dr. Bergold?

FLOTTENRICHTER KRANZBÜHLER: Mr. President, since Dr. Bergold is absent at present, I should like to ask whether I may submit the three documents in my case which are still outstanding.

THE PRESIDENT: Very well, Dr. Kranzbühler.

FLOTTENRICHTER KRANZBÜHLER: I am offering as Exhibit Dönitz-100, the affidavit subscribed by the chief of the American Navy, Admiral Nimitz, as to American U-boat war against the Japanese Navy. The Tribunal already knows what I wish to prove with this. I need not read anything now because in the final presentation of my argument I shall have to come back to this point.

THE PRESIDENT: The Tribunal would like to have the document read, Dr. Kranzbühler.

FLOTTENRICHTER KRANZBÜHLER: I have the original text in English, Mr. President, and I shall therefore have to read in English:

"At the request of the International Military Tribunal, the following interrogatories were on this date, 11 May 1940, put to Fleet Admiral Chester W. Nimitz..."

THE PRESIDENT: You must have given the wrong date—1946, is it not?

FLOTTENRICHTER KRANZBÜHLER: 11 May 1946.

THE PRESIDENT: Yes, go on.

FLOTTENRICHTER KRANZBÜHLER: "... put to Fleet Admiral Chester W. Nimitz, U.S. Navy, by Lieutenant Commander Joseph L. Broderick, United States Naval Reserve, of the International Law Section, Office of the Judge Advocate General, Navy Department, Washington, D. C., who recorded verbatim the testimony of the witness, Admiral Nimitz was duly sworn by Lieutenant Commander Broderick and interrogated as follows:

"Q: 'What is your name, rank, and present station?'

"A: 'Chester W. Nimitz, Fleet Admiral, United States Navy, Chief of Naval Operations of the United States Navy.'

"1. Q: 'What positions in the U.S. Navy did you hold from December 1941 until May 1945?'

"A: 'Commander-in-Chief, U.S. Pacific Fleet.'

"2. Q: 'Did the U.S.A. in her sea warfare against Japan announce certain waters to be areas of operation, blockade, danger, restriction, warning, or the like?'

"A: 'Yes. For the purpose of command of operations against Japan the Pacific Ocean areas were declared a theater of operations.'

"3. Q: 'If yes, was it customary in such areas for submarines to attack merchantmen without warning, with the exception of her own and those of her Allies?'

"A: 'Yes, with the exception of hospital ships and other vessels under "safe conduct" voyages for humanitarian purposes.'

"4. Q: 'Were you under orders to do so?'

"A: 'The Chief of Naval Operations on 7 December 1941 ordered unrestricted submarine warfare against Japan.'

"5. Q: 'Was it customary for the submarines to attack Japanese merchantmen without warning—outside of announced operation or similar areas since the outbreak of the war?'

"A: 'The reply to this interrogatory involves matters outside the limits of my command during the war; therefore I make no reply thereto.'

"6. Q: 'Were you under orders to do so?'

"A: 'The reply to this interrogatory involves matters outside the limits of my command during the war; therefore I make no reply thereto.'

"7. Q: 'If the practice of attacking without warning did not exist since the outbreak of the war, did it exist from a later date on? From what date on?'

"A: 'The practice existed from 7 December 1941 in the declared zone of operations.'

"8. Q: 'Did this practice correspond to issued orders?'

"A: 'Yes.'

"9. Q: 'Did it become known to the U.S. naval authorities that Japanese merchantmen were under orders to report any sighted U.S. submarine to the Japanese Armed Forces by radio? If yes, when did it become known?'

"A: 'During the course of the war, it became known to the U.S. naval authorities that Japanese merchantmen in fact reported by radio to Japanese Armed Forces any information regarding sighting of U.S. submarines.'

"10. Q: 'Did the U.S. submarines thereupon receive the order to attack without warning Japanese merchantmen, if this order did not exist already before? If yes, when?'

"A: 'The order existed from 7 December 1941.'

"11. Q: 'Did it become known to the U.S. naval authorities that the Japanese merchantmen were under orders to attack any U.S. submarine in any way suitable according to the situation; for instance, by ramming, gunfire, or by depth charges? If yes, when did it become known?'

"A: 'Japanese merchantmen were usually armed and always attacked by any available means when feasible.'

"12. Q: 'Did the U.S. submarines thereupon receive the order of attacking without warning Japanese merchantmen, if this order did not already exist before. If yes, when?'

"A: 'The order existed from 7 December 1941.'

"13. Q: 'Were, by order or on general principles, the U.S. submarines prohibited from carrying out rescue measures toward passengers and crews of ships sunk without warning in those cases where by doing so the safety of their own boat was endangered?'

"A: 'On general principles, the U.S. submarines did not rescue enemy survivors if undue additional hazard to the submarine resulted or the submarine would thereby be prevented from accomplishing its further mission. U.S. submarines were limited in rescue measures by small passenger-carrying facilities combined with the known desperate and suicidal character of the enemy. Therefore, it was unsafe to pick up many survivors. Frequently survivors were given rubber boats and/or provisions. Almost invariably survivors did not come aboard the submarine voluntarily, and it was necessary to take them prisoner by force.'

"14. Q: 'If such an order or principle did not exist, did the U.S. submarine actually carry out rescue measures in the above-mentioned cases?'

"A: 'In numerous cases enemy survivors were rescued by U.S. submarines.'

"15. Q: 'In answering the above question, does the expression "merchantmen" mean any other kind of ships than those which were not warships?'

"A: 'No. By "merchantmen" I mean all types of ships which were not combatant ships. Used in this sense, it includes fishing boats, *et cetera*.'

"16. Q: 'If yes, what kind of ships?'

"A: 'The last answer covers this question.'

"17. Q: 'Has any order of the U.S. naval authorities mentioned in the above questionnaire concerning the tactics of U.S. submarines toward Japanese merchantmen been based on the grounds of reprisal? If yes, what orders?'

"A: 'The unrestricted submarine and air warfare ordered on 7 December 1941 resulted from the recognition of Japanese tactics revealed on that date. No further orders to U.S. submarines concerning tactics toward Japanese merchantmen throughout the war were based on reprisal, although specific instances of Japanese submarines committing atrocities toward U.S. merchant marine survivors became known and would have justified such a course.'

"18. Q: 'Has this order or have these orders of the Japanese Government been announced as reprisals?'

"A: 'The question is not clear. Therefore I make no reply thereto.'

"19. Q: 'On the basis of what Japanese tactics was reprisal considered justified?'

"A: 'The unrestricted submarine and air warfare ordered by the Chief of Naval Operations on 7 December 1941 was

justified by the Japanese attacks on that date on U.S. bases and on both armed and unarmed ships and nationals without warning or declaration of war.'

"The above record of testimony has been examined by me on this date and is in all respects accurate and true."—signed—"Chester W. Nimitz, Fleet Admiral, U.S. Navy."

This document bears the number Dönitz-100.

As my next document I submit an expert opinion given by the former naval judge, Jäckel, on the jurisdiction of the naval courts for the protection of the native population against encroachments by marines. This document has been admitted by the Tribunal and is available in translation and therefore I do not need to read it.

THE PRESIDENT: Will you give us the number?

FLOTTENRICHTER KRANZBÜHLER: Dönitz-49, Mr. President.

Then, Mr. President, some weeks back I made application to admit extracts from the records of a war crimes court at Oslo. These had been used by the Prosecution on the occasion of the cross-examination of Grossadmiral Dönitz. At that time they were not numbered. From these records I selected some extracts which prove that torpedo boat Number 345, whose crew were shot by reason of the Commando Order, was a boat which was charged with sabotage acts. Due to this fact the High Command of the Navy and also Admiral Dönitz were not informed about the treatment meted out to these prisoners, and this question was settled directly by means of discussions between Gauleiter Terboven and the Führer's headquarters. I ask that the High Tribunal admit this document as evidence, since this document was used by the Prosecution. It would receive the Number Dönitz-107.

COLONEL H. J. PHILLIMORE (Junior Counsel for the United Kingdom): My Lord, I do not know if the Tribunal has before it the answer which the Prosecution have put into this application.

THE PRESIDENT: Yes, we have just looked at it now.

COL. PHILLIMORE: Broadly speaking, it comes to this, that we are quite prepared to put in the whole proceedings, but we should object to extracts being put in; that is, amongst the affidavits and the evidence of some of the witnesses, material to support the points for which counsel for Defendant Dönitz contends. There is, on the other hand, a body of evidence the other way on all those points. That is why, My Lord...

THE PRESIDENT: Would it not save translation if you put in the passages in the document upon which you rely?

COL. PHILLIMORE: If that would be more convenient, My Lord, we can do that.

THE PRESIDENT: I do not know how long the document is. It may be very long indeed.

COL. PHILLIMORE: The whole proceedings are very long. The trial lasted for 4 days.

THE PRESIDENT: Then it would be appropriate that you should pick out the parts on which you rely and Dr. Kranzbühler can put in...

COL. PHILLIMORE: My Lord, it is put in the answer that the document against this defendant, which was proved in the defendant's case, was an affidavit by the Judge Advocate, who set out the effect of the evidence accepted by the court.

THE PRESIDENT: The Tribunal follows that, but it thinks that it is desirable that you should put in the passages upon which you as well as the defense counsel rely.

FLOTTENRICHTER KRANZBÜHLER: May I submit this document, Mr. President?

THE PRESIDENT: What is the number again, please?

FLOTTENRICHTER KRANZBÜHLER: Number Dönitz-107, Mr. President.

THE PRESIDENT: And it contains extracts from these proceedings, does it?

FLOTTENRICHTER KRANZBÜHLER: Yes, extracts.

THE PRESIDENT: The Prosecution will put in their extracts and we will consider them both.

FLOTTENRICHTER KRANZBÜHLER: Mr. President, then I have another question dealing with the documents of the case which we have just dealt with, the case of Katyn.

The witness, Professor Markov, mentioned the expert opinion given by the Italian expert, Professor Palmieri, which is in the German *White Book*. I should also like to submit this opinion as evidence, for the reason that there is no mention of insects being found on the corpses as Professor Markov asserted, but rather, "larvae." To me the difference appears to be that insects fly about during the summer whereas larvae conceal themselves during the winter months. Mr. President, may I submit this document?

MR. COUNSELLOR SMIRNOV: Mr. President, I should like to make just one factual remark. In Professor Palmieri's report it was indicated that the "larvae" were discovered in the throats of of the corpses. I cannot imagine that "insects" were ever found in the throat of a corpse. That is why I do not think that the presentation of the document by defendant's counsel serves a purpose.

THE PRESIDENT: Dr. Kranzbühler, you are specifying a particular document referred to in the *White Book*, is that right?

FLOTTENRICHTER KRANZBÜHLER: Yes, Mr. President.

THE PRESIDENT: And you mean the whole of the document?

FLOTTENRICHTER KRANZBÜHLER: That document is about one page, Mr. President.

THE PRESIDENT: Then you may put it in, subject to its being translated.

FLOTTENRICHTER KRANZBÜHLER: Very well, Mr. President.

MR. COUNSELLOR SMIRNOV: Mr. President, we are talking about a document which is an account on the dissection of a corpse performed by Professor Palmieri. It is no report but merely an account of an autopsy carried out by Professor Palmieri himself.

THE PRESIDENT: Is it referred to in the conclusions or not?

FLOTTENRICHTER KRANZBÜHLER: It is put in the general record to the same extent as the record of Professor Markov. It is the findings on the autopsy which Professor Palmieri performed.

THE PRESIDENT: Very well.

FLOTTENRICHTER KRANZBÜHLER: Mr. President, I have still another document in the case of Katyn, which I received from Polish sources just a few days ago. This is a document which was written in English and appeared in London in 1946. The title is, *Report on the Massacre of Polish Officers in the Katyn Wood*. In this document Polish sources are used, and I should like to offer this document to the Tribunal as evidence.

However, before I present certain lines of evidence, I would like to ask that the High Tribunal examine this document, for there may be doubts whether it can be used as evidence.

THE PRESIDENT: Dr. Kranzbühler, this document is printed for private circulation only. It has no printer's name on it, and it is entirely anonymous.

FLOTTENRICHTER KRANZBÜHLER: Yes, Mr. President, these were the doubts which I entertained. I submitted this document as I assumed that in view of the importance of this case, the Tribunal would nevertheless want to take official notice of the contents.

THE PRESIDENT: No, the Tribunal thinks it would be improper to look at a document of this nature.

GEN. RUDENKO: Mr. President, I should just like to make one remark, as in fact the Tribunal has already indicated its decision. The statement of the defendant's counsel that this document was

received from the Polish Delegation astounds me to say the least. I should like to know from what Polish Delegation he received this document, because the Polish Delegation represented here could not possibly produce such a Fascist propaganda document as this.

THE PRESIDENT: I think General Rudenko misunderstood what Dr. Kranzbühler said.

DR. SAUTER: Mr. President, four interrogatories were granted to me on behalf of the Defendant Funk. When I presented my case, I could not yet submit these affidavits because they had not been translated. In the meantime, I have received these translations; and they have been submitted to the Tribunal. I ask to be permitted to present them briefly to the Tribunal at this point.

One of them, in Document Book Walter Funk, Supplement Number 2, will be numbered Exhibit Number Funk-16. This is the very comprehensive interrogation of the witness Landfried who held the position of state secretary in the Ministry of the Defendant Funk. This witness—I do not believe I need to read this record in detail—in answer to the first question, deals with the economic policy of the Defendant Funk in the occupied countries. He describes it in exactly the same way as it was presented by Funk. In answer to the second question, he deals similarly with the directions given by the Defendant Funk to the military commanders and to the Reich Commissioners of the occupied countries.

Under Question 4, the witness deals with the question of the plundering of the occupied territories. He confirms the fact that the Defendant Funk always opposed such plundering, that he fought the black markets, that he opposed devaluation of the currency, that he tried to maintain currency in the occupied territory on the original level.

In reply to Question 5, the witness describes in detail how the Defendant Funk tried to prevent financial overburdening of the occupied countries, especially to lower the costs of occupation as far as possible.

Then in the other questions, in Part 2, particularly in reply to Question 11, the witness discusses the activities of the Defendant Funk in the Ministry of Economics, with regard to German preparations in the event of a war.

Then, in reply to Question 12, the witness examines the position of the Plenipotentiary General for Economy and he concludes that in practice it was the position of a figurehead only. However, I do not wish to read these detailed statements and take up too much of the time of the Tribunal, for in the main these are only repetitions of statements that have already been made.

In the last two questions, Numbers 14 and 15, the witness Landfried, who, as I have already said, was for years the defendant's deputy, describes the defendant's attitude toward the policy of terror and his fundamental attitude in regard to the use of foreign workers and similar matters. I ask that the Tribunal take judicial notice of this very detailed testimony and that these brief statements will suffice.

The next interrogatory comes from the witness Emil Puhl. This is the same witness who was interrogated in this courtroom about other questions, namely the question of gold teeth, *et cetera*. This is the interrogatory and the answers of the witness Emil Puhl, Document Book Funk, Supplement Number 3, Exhibit Funk-17.

THE PRESIDENT: Dr. Sauter, has this interrogatory been granted?

DR. SAUTER: Yes, Mr. President.

THE PRESIDENT: He gave his evidence. We do not generally allow interrogatories to witnesses who have given their evidence.

DR. SAUTER: Mr. President, the matter was like this: As far back as December I had applied for this interrogatory and repeatedly asked for it, but it did not arrive. And only after 2 days of cross-examining, was this witness Emil Puhl suddenly questioned by the Prosecution on entirely different subjects, that is the matter of gold deposits made by the SS, rather of gold teeth. This interrogation by the Prosecution did not refer to the interrogatory, which I believe was granted by you in February.

THE PRESIDENT: Dr. Sauter, what I mean is this: Supposing the Tribunal is asked to grant an interrogatory and it grants the interrogatory, and then the witness is subsequently called to give evidence. When he is called to give evidence, he ought to be questioned upon all the matters which are relevant to the Trial. The Tribunal does not want to have to read his evidence in one place and then his interrogatory in some other place.

Is there any objection, Mr. Dodd, to accepting it in this case?

MR. DODD: No, I have no objection, Mr. President. That is the situation. It was granted before Puhl was called. He was called here for cross-examination and I do not recall off-hand whether or not counsel inquired concerning these matters that are contained therein. We have no objections. It may be some annoyance to the Tribunal, which we regret.

DR. SAUTER: Mr. President, the witness Puhl, during his examination in the French camp, also had the questions of the cross-examination submitted to him which the Prosecution asked for and they were answered by him. Thus he was interrogated not only about the points which I raised, but also about the

questions put in the cross-examination by the Prosecution. Therefore, I take the liberty of submitting this document, which is an interrogatory of Emil Puhl, Document Book Number 3, Supplement Number 3, and to which is assigned Exhibit Number Funk-17.

This witness Puhl, who was the vice president of the Reichsbank, in this interrogatory deals solely with matters entirely different from the subjects dealt with here in his examination, namely, the preparations which the Reichsbank President, Dr. Funk, made in the event of war; that is Question Number 1, concerning the handling of the clearing debts, and Question Number 2, about the higher valuation of the Danish currency . . .

THE PRESIDENT: The Tribunal thinks you need not read the interrogatory but the Tribunal will allow it to go in in this case.

DR. SAUTER: Thank you, Mr. President. I wanted only to sketch the contents of this testimony briefly.

Then I submit additional testimony, given by a witness, which has been granted by the Tribunal. It is the testimony given by the witness Heinz Kallus, to be found in Document Book Walter Funk, Supplement 4, and is assigned Exhibit Number Funk-18. I also submit this testimony to the General Secretary and I should like to ask, in order to save time, that the Tribunal take judicial notice of its contents.

As my fourth and last document there is an affidavit subscribed by Mr. Messersmith, a supplement to a previous statement which has already been submitted to the Tribunal. This is very brief, in fact it is but one sentence and it may be found in the Document Book Walter Funk, Supplement Number 5, with Exhibit Number Funk-19. I also submit this document. And now I have arrived at the conclusion of my report, Mr. President. Thank you very much.

DR. THOMA: Mr. President, I should like to submit to the Tribunal the testimony of the witness Dr. Beil. Up to now I had received this testimony only in English. I have fetched it again from the Translation Division so that I could submit it as Exhibit Number Rosenberg-50. In this connection I have another request. This interrogatory contains important questions dealing with the attitude adopted by the East Ministry in the matter of allocation of labor and it is of such importance that I ask the permission of the Tribunal to have it read. Since I am not entirely conversant with the English language, I should like to ask to have an interpreter read this interrogatory.

THE PRESIDENT: Dr. Thoma, has this document been offered in evidence before: It was granted by the Tribunal, was it not, this interrogatory?

DR. THOMA: Yes, it has already been granted by the Tribunal.

THE PRESIDENT: Is it necessary to read it? Can you not submit it in evidence and the Tribunal will consider it?

DR. THOMA: I leave that, of course, to the Tribunal to decide. I wanted to point out only that this is very important and decisive testimony in regard to the question of manpower allocation in the East Ministry. However, I shall leave that to the judgment of the Tribunal.

THE PRESIDENT: Can you not summarize it?

DR. THOMA: Mr. President, I have received only an English translation, and I do not wish to attempt to do anything with it. But I believe there are only 2 pages—the interpreter will read that in no time at all.

THE PRESIDENT: Let the interpreter read it then.

INTERPRETER: Exhibit Number Rosenberg-50:

"Copy. Completed interrogatory of Ministerialrat Dr. Beil, on behalf of Rosenberg.

"The witness, having been duly sworn, states:

"Q: 'Were you the permanent official (Sachbearbeiter) in the East Ministry (Ost Ministerium) in charge of the questions of labor and social policy?'

"A: 'Yes, I was one of 10 permanent officials; we originally started with 52, but as the East Front receded the staff was finally reduced to 10. I was in charge of the administration side of the labor and social policy. The head of the department was Landesbauernführer Peukert.'

"Q: 'Was the East Ministry in favor of voluntary recruiting of workers in the East?'

"A: 'Yes, of voluntary recruiting only, my instructions being that it should only be carried out on this basis.'

"Q: 'Are any results known?'

"A: 'Yes, but the results were not as great as anticipated, only some 300,000 to 400,000 volunteered and most of these were from the Ukraine, Lithuania, and Estonia.'

"Q: 'Were there any negotiations about decreasing the quotas ordered by the Plenipotentiary General for Allocation of Labor (GBA)?'

"A: 'Yes, negotiations for decreasing the quotas took place but broke down owing to Sauckel demanding something like a million workers to be transferred to the interior.'

"Q: 'Who was responsible for the care and control of the East Workers (Ostarbeiter) in the Reich?'

"A: 'The German Labor Front (Arbeitsfront) and the Reich Food Estate (Reichsnährstand) were responsible for the care of the East Workers, the former for workers in munitions and heavy industry and the latter for agricultural workers.'

"Q: 'What was the point of view of the Department ASO . . . ?'"

DR. THOMA: ASO, if I may interrupt, is the Labor, Social, and Political Department of the East Ministry.

INTERPRETER: [continuing.]

"Q: 'What was the point of view of the Department ASO concerning the treatment of the East Workers in the Reich?'"

"A: 'The view of my Department ASO was that the voluntary recruiting of workers on a free movement basis, thus taking them out of the barbed-wire-enclosed factories, would be the best method of treatment; we also advocated the removal of the arm badges, worn originally on the arm and later over the left breast, which carried the word "East" so as to distinguish them from workers from the West, who never at any time wore badges. The wording being later changed to "Greater Russia," "White Russia," and "Ukraine," the people from the Baltic States did not wear the arm badge. Certain Russians, small groups of Cossacks, Tartars, and one or two others were not compelled to wear the arm band, as they were anti-Bolshevistic and pro-German; and a certain proportion of these were eventually called up into the German Army. Some 7,000 youths of Ruthenia were called up by ASO and these were apprenticed at Junkers Works.'

"Q: 'Is the Central Office (Zentralstelle) for the eastern people (Ostvölker) at the East Ministry known to you? How was this organized?'"

"A: 'Yes, it was considered to be a consulate for the East; members of the staff were partly Germans and partly local employees from the East, who were considered suitable for such employment. Some of the foreign employees were placed at the disposal of the country offices to look after the interests of their fellow countrymen working in the countries. At the Central Office were instituted offices for each of the eastern states, each office being controlled by a German, some of whom had originally come from these states. There was also a welfare branch which was run by persons from these eastern states, to look after the comfort, *et cetera*, of their individual countrymen; there was also a religious branch which was run by clergy from these countries, but this branch was not very successful as there was an insufficiency of priests.'

"Q: 'Now, with the help of the DAF, were the complaints followed up?'

"A: 'The interests of foreign workers were always looked after; missions were sent to the various concentrations of East Workers to find out how they were progressing and what kind of treatment they were receiving. These missions dealt with complaints submitted to them on their visits, but the Central Office had to deal also with written complaints received through the post.'

"Q: 'Is a printed circular to the authorities in the country known to you, that ordered a just treatment? Details? What was the story about the families who were evacuated by the Army Group Center and about the children 10-14 years old?'

"A: 'Yes, there was a circular issued, dealing with this question, and it gave details at great length for the just treatment of the East Workers. This circular was issued at the request of the Ministry of the East, through Sauckel. A second circular was issued by Rosenberg dealing with the just treatment of workers from the East only. I have no knowledge of this story, as this was dealt with entirely by the Army Group Center.'

"Q: 'Does the witness know the pamphlet issued by the East Ministry to the managers of enterprises concerning the nations of eastern Europe and the attitude towards them?'

THE PRESIDENT: Dr. Thoma, that affidavit does not seem to be short at all. It all seems to be cumulative. Every word of it is what we have heard before and heard not only once, but over and over again.

INTERPRETER: Dr. Thoma has just said that the last sentence is coming up.

DR. THOMA: There are two more short sentences.

INTERPRETER:

"A: 'There were two pamphlets issued; one issued by Sauckel, and the other issued in conjunction with DAF and Sauckel and the Ministry for the East.'

"Q: 'Has he one handy?'

"A: 'I have not got a copy of this pamphlet.'

"(Signed) Beil."

THE PRESIDENT: Dr. Thoma, the Tribunal rely on counsel, you know; and when you tell us that this is an important affidavit, we rely on what you tell us. In the opinion of the Tribunal, the reading of the affidavit was an absolute waste of the Tribunal's time.

DR. THOMA: I should like to put another request to the Tribunal. I have asked that I be granted an interrogatory for the Reichshauptstellenleiter Dr. Oepfert, of the office of the Delegate of the Führer for the supervision of the entire ideological and mental relation of the NSDAP under Rosenberg's office. This affidavit has not been granted to me, but I already have it on hand.

THE PRESIDENT: Has the Prosecution seen it?

DR. THOMA: No, Mr. President, I do not think so. I submitted an application to the General Secretary. Whether this request has already been transmitted to the Prosecution, I do not know.

THE PRESIDENT: Well, the only application that we have got, as far as I can see, is an interrogatory to Dr. Köppen in lieu of Dr. Stellbrecht. Is that the one that you are speaking about now?

DR. THOMA: No. Mr. President, I was granted permission to interrogate Dr. Köppen instead of Dr. Stellbrecht, and the interrogatory has already been sent off. This, however, is a new application regarding Dr. Oepfert and has not yet been decided upon.

THE PRESIDENT: You had better submit it to the Prosecution and see whether they have any comment to make on it, and we can take it up tomorrow.

DR. THOMA: Thank you very much, Mr. President.

DR. KUBUSCHOK: In the case of Papen there are six interrogatories which have not been disposed of. Three of them have been returned in the last few days and are in the stage of being translated. I asked, when I received my last interrogatory, to be allowed to submit all six at one time to the Tribunal.

Then, without my taking any steps to get it, I received an affidavit 3 days ago from a foreign journalist, Rademacher von Unna, from Milan, Italy. This affidavit is being translated at present. I submitted it to the British prosecutor, and he does not object. I ask to be allowed to submit this affidavit later with the remainder of my documents.

THE PRESIDENT: Yes, certainly you may submit it. We shall then pass an opinion upon it as to its admissibility.

DR. KUBUSCHOK: Thank you, Mr. President.

DR. ALFRED SEIDL (Counsel for Defendants Frank and Hess): Mr. President, I ask permission to submit the answers to the interrogatories from the witnesses which have not yet been submitted. As Exhibit Frank-19 I submit the answers to the interrogatory given by the witness Dr. Ernst Böppe. Böppe was State Secretary in the Government General, and he has answered 41 questions in all.

As Number Frank-20, I submit the answers to an interrogatory given by the witness Max Meidinger. Meidinger was chief of the

chancellery of the Government General. He has answered 43 questions. This interrogatory, as well as the first interrogatory by Böpple, as far as I could make out, has not been translated yet, although I handed these interrogatories in to be translated about 10 days ago. But attached to the interrogatory there is an English translation which was made during the interrogation.

As Number Frank-21 I submit the answers given by the witness Gassner, who answered 49 questions. Gassner was press chief in the Government General.

Number Frank-22 will be the interrogatory deposed by the witness Dr. Stepp, who in the end was president of the Court of Appeals (Oberlandesgericht). He deals mainly with the efforts made by the Defendant Frank in the years 1933 and 1934, in his capacity as Bavarian Minister of Justice, for the dissolution of the concentration camp at Dachau.

I should also like to take this opportunity, Mr. President, of pointing out an error of translation which does not refer to the documents of Frank but to a document which was submitted on behalf of the Defendant Hess. Although it was not used by the Prosecution with regard to the personal responsibility of Rudolf Hess, it is found in the document book, and the document concerned is Exhibit USA-696, Document 062-PS. That is a directive of 13 March 1940, the same directive which was mentioned last Saturday in the case of the Defendant Bormann, on which occasion the President himself read Figure 4 of this directive, which was submitted as an appendix to this directive of 13 March. There is a very serious error in translation, which completely distorts the sense of the directive and which, I must say, can have very dangerous consequences.

Under Figure 4 the words "unschädlich gemacht" (made harmless) were translated as "liquidated."

THE PRESIDENT: If there is an error in the translation, you had better apply to the General Secretary; and he will have the matter gone into by the Translation Division.

DR. SEIDL: Yes, Mr. President, but the matter does not seem to be as simple as that. The translator obviously had the feeling himself that his translation was not reproducing the sense quite accurately, because in parentheses he added "unschädlich gemacht." In my opinion this sentence must be translated as follows: "Likewise, enemy parachutists are immediately to be arrested or made harmless." The sense was obviously that the parachutists...

THE PRESIDENT: I dare say, Dr. Seidl, but we do not have the document before us and we do not all of us understand the German

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language. Therefore, it had better be referred to the Translation Division. It is no good referring it to us.

DR. SEIDL: Then I shall put a written application to the General Secretary, Mr. President.

THE PRESIDENT: Have the Prosecution any objection to these interrogatories which Dr. Seidl has been dealing with? Have the Prosecution had the opportunity of putting cross-interrogatories if they wanted to do so?

COL. PHILLIMORE: My Lord, I am told that we think so, with the possible exception of the last one. Perhaps I could look into it overnight.

THE PRESIDENT: Very well.

COL. PHILLIMORE: I will look into that point and let the Tribunal know.

My Lord, the Prosecution have a few documents to put in. I have eight, and I think my friend Mr. Dodd has three. I could do it very quickly, but it might be more convenient to do it tomorrow morning.

THE PRESIDENT: We will go into all these documents tomorrow morning. There will be some others on behalf of some of the other defendants. We will also hear the witnesses Kempka and Walkenhorst, I believe it is, whom Dr. Bergold wishes to call.

The Tribunal desires Dr. Bergold to be here tomorrow morning in order to be able to examine these witnesses.

The Tribunal will now adjourn.

[The Tribunal adjourned until 3 July 1946 at 1000 hours.]

ONE HUNDRED AND SEVENTIETH DAY

Wednesday, 3 July 1946

Morning Session

THE PRESIDENT: Has Dr. Bergold asked any of the defendants' counsel to represent him?

[There was no response.]

Has the Marshal been able to get in touch with Dr. Bergold?

MARSHAL: No, Sir.

DR. STAHMER: Mr. President, Dr. Bergold was advised yesterday that his presence would be required in the courtroom today. As far as I have heard—and I have only heard this—the General Secretary also got in touch with him regarding this matter. I am sorry I cannot tell you any more about it. As far as I know, he did not ask anyone to represent him in Court today.

THE PRESIDENT: Thank you, Dr. Stahmer.

DR. STAHMER: Mr. President, I shall look into this matter immediately, to see whether he has arrived or whether I can contact him.

THE PRESIDENT: Very good; and Dr. Stahmer, I think the best course would be for the Tribunal to consider the various applications with reference to interrogatories and documents, which I think you and other counsel wish to offer in evidence, and the Tribunal will then examine these witnesses if Dr. Bergold is not here by that time. The Tribunal, of course, expect him to be here if it is possible. Perhaps you will communicate with him, and the Marshal should also communicate with Dr. Bergold.

DR. STAHMER: Yes.

MARSHAL: Yes, Sir.

PROFESSOR DR. HERMANN JAHRREISS (Counsel for Defendant Jodl): Mr. President, I have learned that the son of Dr. Bergold returned yesterday unexpectedly and suddenly from a prisoner-of-war camp. Therefore, Dr. Bergold went to his home, a short distance from Nuremberg. I asked his secretary to go to Dr. Bergold's home and to bring him here and I assume he will be here within approximately half an hour.

THE PRESIDENT: Dr. Stahmer, you have some interrogatories, I think, which you want to offer in evidence, have you not?

DR. STAHLER: Yes, Sir. At the end of my presentation I still had some interrogatories which I had been permitted to present but which had not arrived.

First of all, I shall turn to the interrogatory of Kammhuber, who was a general in the Air Force. He submitted an organizational study for 1950, which was completed on 2 May 1938. He was questioned about the purpose and significance of this study and he stated—I will give a short summary—that a part of it, which came under the heading of “long term objective” was a tentative sketch based on theoretical assumptions. Then there was a second part which gave the deadline of 1942, and the interim solution for 1 October 1938. This was a positive proposal for the organization of the Luftwaffe.

This study was compiled by the author on his own initiative. The witness does not know whether it was actually submitted to Göring. He considers it improbable, but he does assume that he did suggest the positive proposal for the organization of the Luftwaffe to Göring.

That is the substance of this interrogatory which will be called Exhibit Number Göring-54.

I have another interrogatory which I should like to submit, which originates from General Kurt Student. This deals with the air attack on Rotterdam in May of 1940. It is an explanation . . .

THE PRESIDENT: Have you got copies of these affidavits, I mean these interrogatories? We have got this one you are now offering of Student, but we have not got the one of Kammhuber.

DR. STAHLER: Mr. President, I submitted this material to the Translation Division and I asked that the translations should be ready. I shall look into the matter and see what has become of it. At any rate, I did submit the originals to the Translation Division.

THE PRESIDENT: Yes; the General Secretary will look into it. And this one of Student, has that been applied for and granted? It is not on my list.

DR. STAHLER: Yes, Mr. President, it has been granted, and the Prosecution has submitted a counterinterrogatory to this one. I believe . . .

THE PRESIDENT: Very well.

DR. STAHLER: If I am not mistaken, this interrogatory of Student's was granted on 14 February, if I remember rightly.

Student deals with the air attack on Rotterdam in May 1940. He gives the necessary explanation as to how it came about that during

capitulation negotiations bombs were still being dropped on Rotterdam. Here, too, I believe, I can refer to this interrogatory. The facts were that capitulation negotiations were in progress when an air attack had been planned and the squadron which was being employed could not be advised in time by wireless. Then the ground troops gave signals, which were misunderstood by one group . . .

THE PRESIDENT: It appears that it covers the same ground that has already been covered in evidence; does it not?

DR. STAHLER: It has been dealt with in the examination; yes, that is correct, Mr. President.

THE PRESIDENT: Then it should not be read under any circumstances now.

DR. STAHLER: Then I shall submit this document . . .

THE PRESIDENT: Yes, offer it in evidence. But I mean, you need not read it in detail.

DR. STAHLER: Very well, Mr. President. This will be Exhibit Number Göring-53.

Then, Mr. President, I have another interrogatory by a general of the Air Force, Koller, which I should like to submit. This will be submitted as Exhibit Number Göring-55.

Mr. President, I ask the permission of the High Tribunal to read these questions, for there is a special significance connected with the testimony given by this witness in relation to the defendant in this proceeding:

"Question 1: Did the former Reich Marshal Göring at any time issue an order that enemy airmen who had been shot down should be handed over to the Police, the SD, or that they should be shot without a trial?

"Answer: As far as I know, no. In any case, I know of no such order issued by the Reich Marshal.

"Question 2: Did the former Reich Marshal Göring help to formulate an order on the strength of which the British flying officers who escaped from Stalag III at Sagan in March 1944 were shot by the Police or SD?

"Answer: General Korten told me that the Luftwaffe, the Air Force—meaning the Reich Marshal and he, Korten, himself—had no part in the issuing of this order.

"Question 3: Did the former Reich Marshal Göring learn of the fact contained in Question 2 only after the order given by Hitler had been carried out?

"Answer: General Korten told me that he and the Reich Marshal did not get to know of it until later.

"Question 4: On what day was this order issued by Hitler?

"Answer: I do not know.

"Question 5: On what day, or on what days, was this order carried out?

"Answer: I do not know.

"Question 6: Do you know whether the former Reich Marshal Göring very strongly condemned the shooting of these 50 British Air Force officers?

"Answer: General Korten told me that the Reich Marshal was very angry about this shooting.

"Question 7: Have you any knowledge as to whether the former Reich Marshal Göring and his deputy for the Air Force, the Chief of the General Staff, repeatedly remonstrated with Hitler about the measures which Hitler had ordered to be taken against the enemy terror fliers who had been shot down?

"Answer: According to statements which General Korten made to me in June of 1944, that is correct. I remember too that some time afterward it was reported to me that the Reich Marshal had complained to the Führer about the action taken by Party organizations and individuals among the population against so-called terror-fliers, for the reason that some of our own air crews had come to harm.

"In March of 1945 he flatly turned down the order given by the Führer that all enemy crews which had been shot down and which would be shot down in the future should be turned over to the SD.

"Replying to Questions 1 to 7, I should like to state in explanation and in supplement: During the period which is covered by the report I was Chief of the Luftwaffe Operations Staff. In February 1944 the Führer's headquarters transferred to Berchtesgaden the High Command of the Armed Forces, the Reich Marshal with his personal entourage and the Chief of the General Staff of the Air Force, General Korten, together with two or three ordnance officers. I had to stay with the High Command of the Luftwaffe, that is, with the whole working staff known as Robinson, in East Prussia, as it was expected that the Führer's headquarters would have to be moved back quickly. The whole signal apparatus and the apparatus for the issuing of orders for Luftwaffe supplies was to be under the control of Robinson.

"Due to the separation of the High Command of the Luftwaffe on the one hand and the Commander-in-Chief and Chief of General Staff on the other hand, a separation which was prolonged

from week to week, we in East Prussia did not have knowledge about many things which were being handled directly in Berchtesgaden. Often we received no knowledge at all of important Führer directives, or if we did, we received the information very late. It was not until the beginning of June—I believe it was the week after Whitsun—that I, together with some assistant officers, was transferred to Berchtesgaden. From February until that time, I think I had attended only one conference at Berchtesgaden.

“As to Questions 2 to 6, which deal with Sagan, it was from General Korten that I learned, and I believe Colonel Christian informed me almost at the same time, that the airmen who had escaped from Sagan had been shot by order of the Führer. I rather think I heard about it first from General Korten, who, if I remember rightly, told me about it during one of the rather long telephone conversations which we had every evening. Korten made it quite clear that he disapproved of this, for the reasons which I mentioned in reply to Questions 2, 3, and 6. The conversation must have taken place at the end of March or the beginning of April. However, I cannot give the exact date.

“In reply to Questions 1 and 7, concerning the terror-fliers, it was approximately the beginning of June 1944—at first I thought that it was in July, but I think now that it must have been June—when General Korten advised me that the Führer intended to order that terror-fliers be left to the fury of the people.

“We discussed this matter repeatedly and we all agreed in our opposition. We had always considered the direct attacks by low-flying enemy aircraft on the civilian population, on women and children, gatherings of civilians, civilian passenger trains, hospitals, school children who were out for a walk, our own crews who were parachuting to earth, and farmers who were tilling their fields, cruel and contrary to international law, but we did not consider the decree which the Führer intended to issue to be the proper way to solve this very difficult problem. Our reasons for this refusal were articles of war, international law, it was against fundamental soldierly principles, and it would lead to many misunderstandings inflicting harm not only to enemy fliers, but also to our own men and affecting the morale of our own crews . . .

THE PRESIDENT: Dr. Stahmer, is this not really going into argument and not dealing with facts? It really is not necessary for you to read all this witness' arguments about it. He is not really dealing with facts at all now and it is in detail . . .

DR. STAHLER: Mr. President, these are the facts which he discussed with General Korten, the facts which decided them to reject the Führer's order. These were the reasons which he and Korten discussed . . .

THE PRESIDENT: Some of what you have read no doubt is a matter of fact, but what you are now reading is a matter of argument.

DR. STAHLER: No, Mr. President.

THE PRESIDENT: Dr. Stahlmer, surely you can summarize the rest of this.

DR. STAHLER: Mr. President, this document is of great importance to the defendant because it deals with just those points with which he is accused and which distress him most and . . .

THE PRESIDENT: I heard you say it is of great importance and therefore you have been reading it and insofar as it is statement of fact, it seems to me that there is some excuse for reading it in detail. But when you come to matters of argument, it seems to me there is no excuse for reading it, because argument by a particular witness is not really relevant for the Tribunal's consideration at all. Summarize the argument, if you like. I mean, you have read the factual part. Summarize the rest which—maybe you can tell us, if you like, what the argument is.

DR. STAHLER: Very well, Mr. President. General Korten further stated that all the documents which are relevant to the question of terror-fliers and the shooting of the Royal Air Force officers have been submitted to him and after perusing them he arrived at the conclusion that the contents of these documents is proof of the fact that the High Command of the Armed Forces as well as the Reich Marshal opposed this action and did everything in their power to prevent the measure intended by Hitler from being put into effect. He particularly points out that in one of these letters there is a marginal note to the effect that it was not possible to get a reply from the Commander-in-Chief of the Air Force, and he concludes from that that the Reich Marshal personally opposed any final decision of this matter.

Then there is a further incident dealt with in:

"Question 8: Did the Führer, for the reason stated under Figure 5, on the occasion of a situation discussion and in the presence of all who attended it, excitedly accuse the German Luftwaffe of having made a mutual coward's agreement with the Allied Air Forces?

"Answer: During the first half of March 1945, Bormann showed the Führer a note taken from a correspondent's report

in the Allied press. The gist of this note was: The crew of an American fighter plane, which shortly before had been shot down over Germany, had been picked up by advancing American troops. The crew had testified that the enraged civilians had mishandled them, had threatened them with death, and in all probability they would have been lynched if it had not been for the German soldiers who had liberated them and protected them. Bormann pointed out to Hitler in a few words that this confirmed the fact that German soldiers, in instances such as this, were going against their own countrymen; and he concluded his remarks somewhat as follows: 'My Führer, that is the way your orders are being carried out.' Thereupon in the presence of all who attended the situation discussion the Führer made some very excited statements and among other things the Führer said to me, 'If my orders are not being carried out it is due to the cowardice of the Luftwaffe because the men in the Luftwaffe are cowards and they are afraid that something might happen to them, too, some day. The whole business is nothing but a cowards' agreement between the German Luftwaffe and the English and American airmen.' I reported this to the Reich Marshal.

"Whether Hitler made the same remark to the Reich Marshal personally, that I am not able to say; but I consider it quite probable, because when making reproaches of this kind, especially if they applied to the Luftwaffe, he often repeated himself and used the same expressions.

"Question 9: On what day did this discussion take place?"

"Answer: I cannot give the date."

Now we come to:

"Question 10: Did the Führer repeatedly order the former Reich Marshal to divulge the name of the officer of the Luftwaffe who, in May of 1944, protected an Allied airman who had been shot down in Munich from being lynched by the population? But despite repeated inquiries on the part of the Führer, the Reich Marshal gave no instructions to find out the name of this officer and to make it known to the Führer?"

I can summarize the answer. He says he cannot state this from his own experience; it had only been reported to him that an officer of the Luftwaffe and an Ortsgruppenleiter had interfered on behalf of this American crew; that the Ortsgruppenleiter, who was known, was shot on Hitler's order; that Hitler then demanded to have the name of the Luftwaffe officer given to him and that he had not been told the name. He said further that if the Reich Marshal had actually

wanted to find out the name of this Luftwaffe officer, he could easily have done so.

"Question 11: At the end of the war did the Luftwaffe ever receive orders to destroy Dachau Concentration Camp with bombs at the approach of the enemy? In particular, was an order to that effect given by the Gauleiter in Munich under the code word 'Wolke'? Could a Gauleiter give such instructions to the Luftwaffe?"

Here again I can summarize the answer. The witness says,

"I do not recall any order to that effect," and especially he does not know whether the Gauleiter in Munich gave such an order. The Gauleiter was not competent to give an order of this kind and he does not believe that a senior officer of the Luftwaffe would have been willing to carry out such an order.

"Question 12: What do you know about the attitude of the Reich Marshal and his Luftwaffe to enemy airmen who had been shot down?"

"Answer: Notwithstanding occasional expressions of displeasure, the attitude of the Reich Marshal was always correct and chivalrous, which was in line with the Air Force tradition which he learned in the first World War and to which he frequently referred.

"Of course, in his anxiety about the great difficulties of air defense and pressed by the Führer, perhaps on occasion he used harsh words. These words, however, were soon forgotten and I do not know of a single case where the Reich Marshal followed up these spontaneous utterances by incorrect or harsh measures or orders against members of foreign air forces. The conduct of the entire Luftwaffe was always correct and humane. To fight in a chivalrous manner was a matter of honor with the German airmen. To quote only a few examples of many: Although the enemy crews shot at German airmen who were parachuting to earth, and these practices were bitterly resented by our airmen and some..."

THE PRESIDENT: Well, Dr. Stahmer. Again, what you are now reading is all comment; it is not statement of facts, it is comment and argument.

DR. STAHLER: Now Mr. President, he is coming to an example in which he reports about those things.

THE PRESIDENT: Well, let us come to it.

DR. STAHLER: Yes. The sea rescue services of the Luftwaffe from the Bay of Helgoland through the English Channel as far as Brest, in the Bay of Biscay, in the Atlantic, and in the Mediterranean,

was put into use for the enemy in the same way as for the Germans. The rescue service fliers and the rescue service boats made untiring efforts and showed exemplary self-sacrifice in going to the rescue of friend and foe in distress. Even when . . .

THE PRESIDENT: But, Dr. Stahmer, these were not particular instances. These were not particular facts. They are just general statements which are really comments and argument about the chivalry of the German Air Force; that is all.

DR. STAHLER: Mr. President, by this he is trying to prove the chivalry of the German Air Force.

THE PRESIDENT: But he does not prove it by making a general statement.

DR. STAHLER: No. Later on he comes—he will go on to say how many they have rescued, how many of those were enemies and how many were their own people. I believe these facts, Mr. President, are important when judging the attitude of the Luftwaffe.

THE PRESIDENT: Dr. Stahmer, as I said just now, if you will get down to the facts, if you have got the numbers, well then, no doubt that will be a matter of fact.

DR. STAHLER: Of the thousands who were rescued from the sea by the German Luftwaffe Rescue Service the great majority belonged to the enemy—members of enemy air crews, crews of enemy ships. Without being able to give exact figures at the moment, I would estimate—according to my memory I would say that the proportion of enemy rescued was from 70 to 80 percent. And he continues:

“If, when we went out to rescue our own people or to make reconnaissance flights for them or were engaged on other work, we saw that crews, also enemy crews, were in distress off the enemy coast or beyond the range of our own rescue services, we immediately signaled to the enemy and called upon him to go to the rescue.”

Then there are several questions put by the Prosecution. The first question is: “What had Kaltenbrunner to do with . . .”

THE PRESIDENT: Dr. Stahmer, it is for the Prosecution to read their questions if they want to read them.

DR. STAHLER: I am not interested in these questions, Mr. President.

SIR DAVID MAXWELL-FYFE: The Prosecution do not want the questions read.

THE PRESIDENT: The Tribunal will read them. Do you mean you want to put them in—put them in evidence?

SIR DAVID MAXWELL-FYFE: We will put them in, but we do not want them read.

THE PRESIDENT: Right.

DR. STAHLER: I have already stated that this is Exhibit Göring-55.

Then I have one more interrogatory, Mr. President.

THE PRESIDENT: Dr. Stahlmer, you realize that the Tribunal proposes to read all the evidence and therefore these interrogatories will be read and considered even though they are not read now in open court. You have offered them in evidence, so the Tribunal will be grateful if you will cut short the reading of these affidavits and interrogatories as far as possible.

DR. STAHLER: I shall proceed accordingly, Mr. President. Now, we turn to the interrogatory of Hammerstein which I shall submit as Exhibit Number Göring-52. Mr. President, this interrogatory is not at my disposal in the original. I can only submit an attested copy. It has been submitted to the Prosecution; it has been translated but it cannot be found at the moment. But I assume I shall find the original very soon; I have advised Sir David of this. The British Prosecution has already had it and this document has been translated.

THE PRESIDENT: You mean the original has been mislaid or something.

DR. STAHLER: It has been mislaid, Mr. President, and I am unable to find it at the moment. Anyhow, it has been submitted.

SIR DAVID MAXWELL-FYFE: My Lord, there is no objection to this affidavit. I have a copy in front of me. It is general in its terms and, if I may say so, I thought it would serve its purpose admirably if Dr. Stahlmer put it in and the Tribunal consider it in due course.

THE PRESIDENT: Yes.

DR. STAHLER: The original will be submitted in the next few days. It is an interrogatory of the Judge Advocate of the Air Force, Dr. Von Hammerstein. For several years he was the Supreme Judge of the Air Force and in that capacity he reported once a month to the Defendant Göring. Thus he was in a position to judge the attitude of Göring as supreme legal authority and he now describes in detail how seriously the Defendant Göring took his duties as supreme legal authority.

He further describes how the Reich Marshal Göring reserved to himself the right to decide the more important matters; how he took great care in dealing with all matters, how he insisted that the soldiers under his command must maintain strict discipline. He

particularly saw to it that the soldiers under his command were punished most severely if they committed illegal acts against the civilian population and especially against the civilian population in the occupied countries.

Then he further describes how Reich Marshal Göring demanded severe punishment particularly when it was a question of violating the honor of women and how in the many decrees he always insisted that due respect to the honor of women was the first duty of a soldier; how in serious cases of rape, he always demanded the death penalty, no matter what the nationality of the woman was. In two cases, for instance, he rescinded the sentences because they were too lenient and he confirmed the sentence only after the death penalty had been pronounced.

THE PRESIDENT: Well, surely, what you have said, Dr. Stahmer, has given us the substance of the affidavit. You said that this man was the Judge, Advocate for the Air Force and that the law with reference to offenses in the Air Force was strictly carried out. I am sure that is all you want to say in summarizing it.

DR. STAHLER: Yes, Mr. President. What I wanted to bring out was that it did not matter what the nationality of the woman involved was. In one case against a Russian woman, he . . .

THE PRESIDENT: That is exactly what I have said, that the law was strictly carried out. It is only an illustration of how the law was strictly carried out.

DR. STAHLER: Very well, Mr. President, I have given the substance. I shall dispense with all further explanation and submit this document.

THE PRESIDENT: Dr. Stahmer, the Tribunal thinks that their time is being wasted, and unless Counsel for the Defense can do what the Tribunal desires them to do, which is to offer these affidavits and interrogatories in evidence, giving the shortest possible summary or description of the affidavits or interrogatories, the Tribunal will have to order that the interrogatories and affidavits shall be simply offered in evidence, and they will hear no comment whatever on them.

The time is approaching immediately when the defense counsel are going to make their speeches, and if there is anything in these affidavits or interrogatories of real importance, they will have the opportunity then of commenting upon it. And also, the Tribunal itself proposes to read not only the oral evidence, but the documentary evidence in this case.

DR. STAHLER: Then, Mr. President, I should like to submit this document under Exhibit Number Göring-52.

THE PRESIDENT: Now then, the counsel for the Defendant Von Ribbentrop, Dr. Horn, you have no affidavits or interrogatories to put in, have you, that have been approved by the Tribunal?

DR. HORN: Mr. President, I ask to be permitted to submit four affidavits to the Tribunal.

We are concerned here with the affidavit of Legation Counsellor Dr. Eberhardt von Thadden. Legation Counsellor Von Thadden was in the Information Office Number 14 of the Foreign Office, which was a branch which dealt with the Jewish problem and with the co-ordination of anti-Semitic propaganda in foreign countries with other German agencies. It was...

THE PRESIDENT: Dr. Horn, have you applied for these documents?

DR. HORN: I applied to the General Secretary in writing and I asked that these affidavits be accepted. This morning I received confirmation that these affidavits had been given to the Prosecution and to the Translation Division. Therefore, I beg to submit this document as Exhibit Number Ribbentrop-319.

A further affidavit which I am submitting, and I have applied to the General Secretary in writing for its acceptance, is the affidavit of Dr. Werner Best, the former Reich plenipotentiary.

SIR DAVID MAXWELL-FYFE: I am sorry, but I was telling Dr. Horn that we have not had copies of these yet; they have not reached us so far.

THE PRESIDENT: Well, I have before me a list of four affidavits, Thadden, Best, Ribbentrop and Schulze, and it is stated that they are not approved by the Tribunal. Therefore...

SIR DAVID MAXWELL-FYFE: My Lord, Dr. Horn mentioned them to me a day or two ago and asked me whether I should object to their being translated, and I said "no," that I should not object to their being translated. Of course, I have not had a chance to see them.

THE PRESIDENT: Would not the best course, as they have gone to the Translation Division, be for them to be offered in evidence now, as I understand Dr. Horn is intending to do, subject, of course, to any question which may arise as to their admissibility?

SIR DAVID MAXWELL-FYFE: Yes.

THE PRESIDENT: Very well, if you will just give us the numbers then.

DR. HORN: The affidavit signed by Best I should like to submit as Exhibit Ribbentrop-320. I should like to give a brief explanation of the reason for this affidavit.

In cross-examination, my client was confronted with Document 2375-PS. This document is an affidavit of a colonel of the Police, Dr. Rudolf Mildner. A passage from this affidavit which dealt with the handling of the Jewish question in Denmark was quoted to my client. I examined this document and have ascertained that two documents bear the Number 2375-PS. One document is a statement made by Dr. Mildner which was not made under oath. This statement which was not made under oath contained that passage which was put to my client in cross-examination. Under the same number there is an affidavit which has been sworn and is also by Dr. Mildner. The passage about the attitude of Ribbentrop to the Jewish question is not contained in this affidavit.

For this reason, I have got Dr. Best, who had been instructed by Ribbentrop to handle the Jewish question and, according to Dr. Mildner, did do so, to give this affidavit, Document Number Ribbentrop-320, which I am now submitting to the Tribunal.

THE PRESIDENT: Very well.

DR. HORN: Apart from that my client was confronted in cross-examination with a series of documents to which he could make only brief statements as they were lengthy documents, most of which he had not seen before. I should like to ask the Tribunal to permit me to submit a few brief explanations on behalf of my client in the form of an affidavit, which I shall call Exhibit Number Ribbentrop-321.

Then, I should like to be permitted to define my attitude on Document TC-75. TC-75 represents a note sent by Ribbentrop to Hitler. This was submitted by the Prosecution in a very abbreviated form. When I had this document given to me in the original for the first time, the photo copy tallied with the copy submitted by the Prosecution. When I had this same document given to me a second time, I received a photostatic copy of nine pages. In my final speech I should like to refer to this document. Therefore, in order to save the Tribunal's time I ask for permission to submit this complete Document TC-75.

I have no further applications, Mr. President.

THE PRESIDENT: Dr. Horn, you did not give a number to that last affidavit.

DR. HORN: TC-75 will become Exhibit Number Ribbentrop-322.

THE PRESIDENT: Very well.

DR. SIEMERS: Mr. President, with the permission of the Tribunal, I should like to deal with those points of my examination which have not yet been dealt with.

First of all we are concerned with the witness who has been allowed me by the Tribunal, Generaladmiral Böhm. The Tribunal will recall that I was permitted to examine this witness at the end of the presentation of evidence. In the meantime, after consultation with Mr. Elwyn Jones and Sir David, I have obtained an affidavit from Generaladmiral Böhm in Hamburg, so that I could perhaps dispense with calling him as a witness.

I submitted this affidavit to Sir David and to Mr. Elwyn Jones and Mr. Jones told me yesterday afternoon that Sir David agreed, and that he would dispense with the cross-examination, and at the same time I agreed not to insist on an examination, but to be satisfied with the submitting and the reading of the affidavit. I believe Sir David agrees.

I should like to submit this affidavit of Generaladmiral Böhm's as Exhibit Number Raeder-129. This was sworn to on 13 June this year in the presence of notary Dr. Sieveking at Hamburg.

THE PRESIDENT: It is not necessary to read it now, is it?

DR. SIEMERS: Mr. President, I should be very grateful if I might be permitted to read this affidavit, as it deals with a portion of evidence which is quite significant. The Tribunal will, I am sure, recall the fact...

THE PRESIDENT: But I have already told you, Dr. Siemers—you can certainly confine yourself to the really important part of it and summarize anything that is really not so important. We cannot have all these documents read out to us.

DR. SIEMERS: The Tribunal will agree with me that as far as my other documents are concerned, I read remarkably little. My reason for wanting to read a part of it was because the British Delegation, at the close of the cross-examination, submitted two very lengthy summaries, GB-464 and GB-465. These are summaries about the key documents of the 22d.

THE PRESIDENT: Dr. Siemers, surely you can tell us what the subject matter of the affidavit is. We will then know the general subject matter of it, and then I should have thought you could direct your attention to the particular matters which are of special importance here. It only takes up time if you are going to tell us what the Prosecution have done.

DR. SIEMERS: I beg your pardon, Mr. President, if I have been misunderstood. It was my intention to do that.

I shall not read from "I" of the affidavit. I shall only summarize it. It is a discussion between Raeder and Generaladmiral Böhm in the summer of 1939, on which occasion Böhm told Raeder that he was worried about the political developments. He then asked Raeder

whether he had called Hitler's attention to the great dangers and to the fact that the German Navy would not be in a position to carry on a war at sea:

"Grossadmiral Raeder replied to me"—and these are his words—"that he had put this up to Hitler more than once, and that he had concluded his exposition to Hitler with the fundamental sentence: 'In such a case the Navy could not do anything but die gloriously.'"

Number II of the affidavit of Generaladmiral Böhm:

"On 22 August 1939 Hitler made a speech to the top leaders of the Armed Forces at the Obersalzberg. I was present during the entire speech, which lasted 2 to 2½ hours. The speech was delivered in Hitler's office."

I am omitting the next few points and continue:

"The speech"—which was submitted to the Tribunal as Exhibit Number Raeder-27—"has been set down by me with great accuracy, and I can state under oath that the speech was delivered in the way in which I have set it down. In particular I can confirm that my account contains all the important ideas and words.

"The versions submitted by the Prosecution, Documents Number 798-PS and 1014-PS, have been submitted to me by Dr. Siemers. I have now compared my version with these two versions."

I am again skipping a paragraph.

"I declare under oath that some of the expressions used in these documents were not used by Hitler at all, while others were used by Hitler partly in another sense and partly in another form.

"As to Document 798-PS, the following numbers of the pages and lines agree with the version which I have just received, and which was submitted by Sir David Maxwell-Fyfe."

I should like to remind the Tribunal that this is the 10-page summary, GB-464. In this version you will find the sentence:

"'Afterward we shall discuss military details.'"

"Comment: This sentence was not used. Military details did not follow in 798-PS either.

"Page 1, Lines 7 to 10: 'I made this decision already in the spring, but I thought that first of all, in a few years' time, I should turn against the West, and only afterward against the East.'"

"Comment: The account as set down by me, on Page 1, Lines 5 to 8, is absolutely true. In any case Hitler never used the words that he would first of all turn against the West.

"Page 1, Lines 12 to 14: 'First of all I wanted to bring about satisfactory relations with Poland so that I could first of all fight against the West.'

"Comment: This sentence was never used, and what I have just said applies here, too. Hitler never voiced the intention that he wanted to fight against the West."

Now I shall omit the next point and on Lines 15 to 18 on Page 2 it says:

"'It is easy for us to make decisions. We have nothing to lose, only to gain. Our economic situation, due to our limited resources, is such that we can hold out only a few more years.'

"Comment: As to the attitude taken here—the version in my statement, Page 2, Lines 21 to 26, is absolutely correct. Above all the sentence, 'We have nothing . . .'"

THE PRESIDENT: Dr. Siemers, does it not come to this? There are two or three versions of this particular speech and this admiral is saying that his version is correct. That is all it comes to. I mean, he does not think the other versions are correct. Well, the Tribunal will no doubt have to compare the three versions and compare it with this affidavit. But what is the purpose or use of reading it to us at this stage I do not know.

DR. SIEMERS: Very well, Mr. President. Thank you very much. Then I ask that the Tribunal take judicial notice of the further statements, as set out therein. I should like to refer only to the fact that Generaladmiral Böhm expressly asserts and declares under oath that the sentence which has been quoted several times: "I am afraid that at the last moment some dirty dog will submit to me a plan for mediation"—was not uttered by Hitler.

Referring to Document 1014-PS, I should like to read a sentence which has been brought up by the Prosecution six or seven times:

"The destruction of Poland is in the foreground and the aim is the elimination of Polish vitality, not the reaching of a certain line."

In this connection Böhm says:

"There was never any talk of destroying Poland or of eliminating the vitality of the Polish people. What was discussed was the breaking of the military forces."

And I should like the Tribunal to take judicial notice of these very carefully set down statements for it seems to me that this is important in assessing the evidence value of the documents presented by the Prosecution.

Then under "III" Generaladmiral Böhm describes that period during which he was commanding admiral in Norway. I should like

the Tribunal to take judicial notice of this. This statement chiefly concerns the struggle carried on by Raeder and Böhm against Terboven, against the German civilian administration, and the attempts to make peace with Norway.

Mr. President, after many weeks the interrogatory of Albrecht has reached me in its final form. I sent it to the Translation Division several days ago and have not yet received the translation. This interrogatory has been approved and I put it in as Exhibit Number Raeder-128. I ask the Tribunal to take judicial notice of this interrogatory.

I should like to mention that Generaladmiral Albrecht was for many years one of Raeder's closest co-workers. He resigned in October 1939. He knows the attitude taken by Raeder and he knows the High Command of the Navy before 1933 and up to 1938. He, too, confirms the fact that Raeder constantly warned Hitler of complications, and that Hitler always stated, "I have matters under control and I will not let it come to war."

As regards all the other points, I ask, Mr. President, that the Tribunal take judicial notice of these.

Then I should like to refer to the following: One interrogatory by Generaladmiral Schulze has not yet come to hand. My efforts to obtain this interrogatory date back to March 1946. I have given his address. The witness is in retirement and lives in Hamburg-Blankenese. Unfortunately until now the interrogatory has not arrived in Hamburg. I should be very grateful to the Tribunal if it would give me permission to submit this interrogatory at a later date, as I myself have no means of expediting it. I do not know when it will come in, as in the meantime it has been sent to Washington for reasons I do not understand, but I certainly hope that it will be returned at some future date. Finally, Mr. President . . .

THE PRESIDENT: Excuse me. What do you mean by it having been sent to Washington? Did you say Washington?

DR. SIEMERS: I was informed by the General Secretary that this interrogatory had been sent to Washington in order to locate the witness there. But the witness resides in Hamburg-Blankenese. I am sorry that I have no means of using my influence even though I have been trying for 3 months.

THE PRESIDENT: Well, no doubt the General Secretary is making every effort to have the witness found. If he is found, then—what are the dates? You say that 3 months ago you submitted this interrogatory? Was it sent to Hamburg or where was it sent?

DR. SIEMERS: I have . . .

THE PRESIDENT: Surely, Dr. Siemers, you ought to know. You have been in touch all these 3 months with the General Secretary

and you are stating that he sent it to Washington. You ought to know. Have you given him any address in Hamburg? What is your complaint?

DR. SIEMERS: Mr. President, you have misunderstood. I was not complaining. I was just stating the facts in order to show why the interrogatory is not here, and I ask that when the interrogatory arrives I may be permitted to submit it then, though by that time the evidence...

THE PRESIDENT: I know you say that, but the Tribunal wants to know where the interrogatory was first sent and why it was sent to Washington, and why it was not sent to Hamburg and what you know about the fact—the alleged fact—that the person who was to make the interrogatory was at Hamburg?

DR. SIEMERS: Mr. President, I am from Hamburg myself and last November I talked with the witness, and I gave his address when I put in my first application to the General Secretary. Perhaps some misunderstanding arose with the other offices which transmitted the interrogatory. Perhaps they looked for a witness by the name of Schulze in some other place. The name of the General-admiral is Otto Schulze and it is quite possible that they looked up someone else with this rather common name.

The only answer I received was that the witness was being looked for, to which I replied that it was not necessary to look for the witness.

MR. DODD: I think the Tribunal might be interested in knowing that Dr. Siemers himself returned from Hamburg a few days ago, and I think he has been there two or three times since he asked for this interrogatory. Now, if he knows where this witness is, all he had to do while he was up there was to go to a Military Government officer, submit his questions, get them answered, and bring them back; and I think it is a little bit unfair to blame the General Secretary under these circumstances.

DR. SIEMERS: I regret very much that Mr. Dodd considers it necessary to reproach me with unfairness. I was told that an interrogatory could not be given to the witness by me. The interrogatory for Admiral Albrecht I brought back with me from Hamburg at the request of the General Secretary because the formula of the oath had been omitted. In a case of this kind I consider it quite natural that I should co-operate with the General Secretary. However, I have submitted this interrogatory and I cannot understand how Mr. Dodd could blame me if I have not brought the interrogatory back with me.

THE PRESIDENT: Well, this seems to me a waste of time. We had better get a report from the General Secretary.

DR. SIEMERS: Mr. President, I believe that I still have not been understood. I am not accusing anyone. I am just asking for permission to submit my interrogatory subsequently.

THE PRESIDENT: Well. We will consider that. We will not make any decision until we have heard a report from the General Secretary upon the circumstances.

DR. SIEMERS: Mr. President, then I should like to point out that two of my applications were granted, which were not carried out completely. One was the application concerning the files of the British Admiralty containing the Allies' plans regarding Scandinavia and Finland. Purely as a matter of form I should like to say that the answer from the Foreign Office, which is known to the Tribunal, is available, and the Tribunal had approved the submission of these files, but the request was turned down by the Foreign Office. As this matter has not been dealt with before I should like it to be made absolutely clear.

THE PRESIDENT: The Tribunal, I think, has the communication from the Foreign Office.

DR. SIEMERS: But I did not submit it, Mr. President. Therefore, I did not know under what number, what exhibit number it can be found in the files of the Tribunal. Would it be possible, Mr. President...

THE PRESIDENT: You can give it a number, certainly. Give it whatever number you think right. What is the number you want?

DR. SIEMERS: May I submit this document as Exhibit Number Raeder-130 either this afternoon or at the latest tomorrow morning?

THE PRESIDENT: Yes.

DR. SIEMERS: Then, Mr. President, I made the request that the first edition of Hitler's book *Mein Kampf* be placed at my disposal. In this case as well, I should like to point out that according to information received the General Secretary has made every effort, for which I am grateful, but he has not been successful in providing me with this first edition.

I should like to remind you of the fact that the edition used by the Prosecution is from the year 1933 and therefore it cannot be used as a basis for the argument put by the Prosecution concerning the period before 1933.

THE PRESIDENT: That is a matter of argument.

DR. SIEMERS: Yes indeed.

During my absence four documents were submitted by Sir David Maxwell-Fyfe. As far as I was able to ascertain, these documents, which all come from Admiral Assmann, were submitted with the remark that Admiral Assmann belonged to the Staff of Grossadmiral

Raeder. This fact was also mentioned several times in preceding records.

For the sake of order, I should like to clear up this error. Assmann was in the historical section and he was in no way concerned with the staff of Raeder. In this connection . . .

THE PRESIDENT: Have you got any evidence of the facts you are stating, or do the Prosecution accept them?

SIR DAVID MAXWELL-FYFE: We accept, I am sure. My Lord, we have had it in evidence and we accept the fact that he was in the Naval Historical Section of the German Admiralty. My Lord, when I said "staff" I was speaking generally. I did not mean the Operations Staff.

THE PRESIDENT: Then we need not waste further time about that.

DR. SIEMERS: I should like to refer to one point, Mr. President, concerning these four documents: D-879, D-881, D-892, and D-854. I hope that in this matter as well Sir David will agree with me. All the English translations bear the heading "Diary" . . .

SIR DAVID MAXWELL-FYFE: My Lord, it is simply a point of how the compilation of Admiral Assmann should be described. I am quite prepared that it should be described as it is in the original.

THE PRESIDENT: Well . . .

SIR DAVID MAXWELL-FYFE: Dr. Siemers objected to its being described as a "diary" and said that it should have been described as an index. My Lord, I do not mind what it is described as.

THE PRESIDENT: What does it matter? Let us call it an index then. Is that all your points?

DR. SIEMERS: Mr. President, this is important insofar as here in this courtroom many "Tagebücher" have been submitted under the designation of a "diary," and these were really entries made at the time.

THE PRESIDENT: Sir David says that he will withdraw the word "diary" and you may call it anything else you like. Really, it is only a waste of our time to make this sort of technical point. Sir David agrees with you, and he is prepared to withdraw the word "diary."

DR. SIEMERS: Yes.

THE PRESIDENT: Very well then, let us not say anything more about it.

DR. SIEMERS: I quite agree, Mr. President.

Mr. President, I do not wish to take up the time of the Tribunal with all the other and very numerous errors in translation. My final speech will show how important this point was in connection

with the Assmann document. As suggested by the Tribunal I have brought the other errors in translation to the notice of the General Secretary only.

THE PRESIDENT: If there are any errors in translation, that matter can be taken up through the General Secretary with the Translation Division.

Dr. Siemers, it is very improper for counsel in your position to make statements of that sort for which you have no proof at all. You know perfectly well that when there have been any alleged mistranslations, the matter has always been referred through the General Secretary to the Translation Division and then they have been corrected; and for you to get up at this stage of the Trial and say that there are many mistranslations, without any proof of it at all, simply upon your own word, is a most improper thing for counsel to do, and that is the view of the Tribunal.

DR. SIEMERS: Mr. President, I beg to apologize, but I think I probably did not express myself correctly. I am not making an accusation, but with so many documents it is not surprising that these errors did occur. I myself make mistakes. I am sorry if my remarks should have been misunderstood.

THE PRESIDENT: Everybody makes mistakes, and everybody is capable of having different opinions as to translations, but you and every other member of the defendants' counsel know that those mistakes, if they are mistakes, will be corrected, if it is possible, and they know the way that it can be done, and, therefore, as I said before, it is very improper for you to get up and allege that there are a lot of mistranslations. I do not want to hear anything more about it.

The Tribunal will adjourn.

[A recess was taken.]

THE PRESIDENT: Dr. Nelte, have you any documents that you wish to offer in evidence?

DR. NELTE: Mr. President, with a letter dated 1 July 1946, I put in three affidavits, after having submitted them previously to the Prosecution. Those three documents will become Documents Keitel-23, Keitel-24, and Keitel-25. I beg the Tribunal to receive them, since the Prosecution, as Sir David has told me, does not object to their being offered in evidence.

THE PRESIDENT: And they are at present being translated, or have they been translated?

DR. NELTE: They are in the process of being translated. I have merely submitted the originals to the Tribunal.

THE PRESIDENT: Very well then, we will receive them in evidence and consider them.

DR. NELTE: Thank you.

THE PRESIDENT: Dr. Kauffmann?

DR. KURT KAUFFMANN (Counsel for Defendant Kaltenbrunner): Mr. President, I have a few interrogatories which have been granted to me by the Tribunal. I have the originals here with me; they have been numbered, and I should like to submit them. The Translation Division has informed me that the translations are not yet at the disposal of the Tribunal, but I assume they will be in the hands of the Tribunal in the next few days.

THE PRESIDENT: Yes.

DR. KAUFFMANN: I should like to state, in a few short sentences, what the contents of the documents are, if the Tribunal wishes me to do so.

There are three documents which refer to the same subject: The testimony given by the President of the Red Cross at Geneva, Professor Burckhardt; the testimony given by Dr. Bachmann, who was the delegate of the Red Cross; and then there is Dr. Meyer's testimony, and he too was an official representative of the Red Cross.

In these documents these witnesses deal with the discussions during March and April 1945 which they had with the Defendant Kaltenbrunner. They also show that agreements were reached on the strength of these discussions which made it possible for thousands of French, Belgian, and Dutch women and children to be returned to their home countries. Prisoners of war were also released under these agreements and internees from concentration camps were allowed to return. Another result was that Kaltenbrunner gave permission to visit the Jewish camp at Theresienstadt and took pains that other camps received medical supplies, food, *et cetera*.

All that is contained in detail in these three documents.

THE PRESIDENT: What numbers are you giving them?

DR. KAUFFMANN: The Professor Burckhardt document will be Number Kaltenbrunner-3; Dr. Meyer and Dr. Bachmann, Numbers Kaltenbrunner-4 and 5.

THE PRESIDENT: Yes.

DR. KAUFFMANN: A further document is the interrogatory supplied by the former Gauleiter in Upper Austria, Eigruber. That is Exhibit Number Kaltenbrunner-6. Here again I should like to draw attention to one point. Among other things, this witness states that the concentration camp at Mauthausen was not set up by Kaltenbrunner, as has been alleged by the Prosecution and that he was

not responsible for the life there or the presence of the internees at the camp. That is stated here in detail and I do not propose to read it.

The next document is the interrogatory of Freiherr von Eberstein, which is Number Kaltenbrunner-7. Again, I shall not read from it, but perhaps I may say, in just one sentence, that this witness is testifying that he knows that the concentration camp at Dachau and the two auxiliary camps belonging to Dachau were not, as has been alleged by the Prosecution, to be exterminated during the last months or weeks of the war, but that such a plan had been contemplated exclusively by the Gauleiter of Munich, Giessler.

Then there is a further interrogatory, which is the testimony of the witness Wanneck. That will be Exhibit Kaltenbrunner-8. I should like to draw the attention of the Tribunal particularly to this document. It is a lengthy document, and I shall not read from it. However, I believe I can say that this man was particularly well acquainted with the defendant and the whole of his official activities in the course of many years. This witness held for years a leading position in the Foreign Intelligence Service. He knows Kaltenbrunner's attitude regarding the executive and he confirms the fact that Kaltenbrunner agreed with Himmler at the time, that he, Himmler, would retain the executive powers while Kaltenbrunner would work mostly in the sector of the Intelligence Service as a whole.

Finally, Mr. President, there are two documents which have not yet been discussed. Therefore, first of all, the Tribunal would have to decide as to the relevancy of the documents, and as to whether I shall be entitled to submit the documents. They are two short letters which I have received.

One is a letter from the mayor of the town of Dachau, dated 4 April 1946. The Tribunal may possibly remember that during the taking of evidence by the Prosecution it was frequently mentioned that the population in the vicinity had knowledge of the abuses. This man, who has now been instated by the American authorities, confirms his own experiences. In my opinion they do not bear out the thesis of the Prosecution.

Immediately connected with this is the second letter, which is from the well-known Pastor Niemöller, and which is dated 17 April 1946. Niemöller had spent some time in Dachau.

MR. DODD: Mr. President, would it not be best if we were heard on the first affidavit before the Niemöller affidavit is taken up?

We have objected to this affidavit by the mayor of Dachau for the reason that it is simply a letter. We have had no opportunity to file any cross-questions or to ask any questions of the man at all.

These letters come in here. If we are going to submit all the letters that come in—we have bales of them, actually.

We do not like to object on purely technical grounds, if there is anything here that would really be helpful to the Tribunal. On the other hand, we do not feel that we should deny ourselves the opportunity to make clear the entire story by cross-questions of some kind.

THE PRESIDENT: That is with reference to Schwalber?

MR. DODD: Yes, Sir.

DR. KAUFFMANN: I did not quite understand what you said, Mr. President.

THE PRESIDENT: What Mr. Dodd said was that they objected to this document from Schwalber because they have not had any opportunity to put any questions to him, either by way of having him called as a witness or by a cross-interrogatory. Therefore, they object to the introduction of the document in its present form.

DR. KAUFFMANN: Yes, I understand. I know this is somewhat problematical, but the Tribunal will be able to assess the evidence value of the letters according to their own opinion. Perhaps I may submit these two short documents to the Tribunal. So far as I know, the Prosecution is acquainted with these two documents, because they have been in the Translation Division, and some time ago a representative of the Prosecution told me that very probably objections would be raised. That was why, at the beginning, I told the Tribunal it would first have to decide as to the relevancy of the documents.

THE PRESIDENT: Well, Dr. Kauffmann, the best way will be for the Tribunal to read the document and to consider it. We will do that.

DR. KAUFFMANN: Very well, Mr. President. Thank you.

MR. DODD: I should also like to indicate to the Tribunal that we take the same position with respect to the Niemöller letter.

THE PRESIDENT: You consider them both, then? You are objecting also to the Niemöller letter?

MR. DODD: Yes, on the same grounds.

THE PRESIDENT: Yes, very well.

DR. OTTO PANNENBECKER (Counsel for Defendant Frick): Mr. President, the reply to the Messersmith interrogatory has not yet been submitted. The reply has been received in the meantime, and has been translated, too. I believe, however, that the Tribunal has probably not yet received it.

THE PRESIDENT: Can you offer it in evidence and give it a number?

DR. PANNENBECKER: Yes, Sir; I was going to. But I did not expect that it would come up today, and I have not the number which I shall give to the exhibit. May I be permitted to furnish the number later? Yes—I have it here, Mr. President, and I shall now submit it as Exhibit Number Frick-14. This is the reply to an interrogatory. The replies are in the same form as those which Mr. Messersmith gave in the interrogatories concerning other defendants. I shall refer to this interrogatory in detail during my final speech. Therefore I need not read it now.

Then there is still one reply outstanding in an interrogatory of Konrad, and I beg to be permitted to submit it as soon as I receive it.

THE PRESIDENT: That has been granted, has it? And it is now before the witness?

DR. PANNENBECKER: Yes.

THE PRESIDENT: Very well.

DR. PANNENBECKER: Thank you.

THE PRESIDENT: Dr. Servatius.

DR. ROBERT SERVATIUS (Counsel for Defendant Sauckel): Mr. President, several interrogatories have still to be submitted. First of all, I submit Exhibit Number Sauckel-15 to the Tribunal. That is a Darré interrogatory.

THE PRESIDENT: Whose interrogatory was that? Whose interrogatory?

DR. SERVATIUS: Darré, the Minister for Food and Agriculture. This interrogatory deals with matters which have in part already come up at this Trial. I should like to draw your attention to a few points. There is the question of what was Sauckel's general attitude, particularly toward Himmler's views; and the witness stresses the fact there was considerable controversy between Himmler and Sauckel in this respect. He mentions one particular instance which he himself witnessed. He speaks about a factory in Thuringia which was directly under Sauckel's control and says that the workers there were so free that they hired themselves out to farmers during the day, which was rather too much of a good thing. He then talked about a clash between Sauckel and Himmler in the presence of the Führer about the question of treatment, and he says that Himmler stated, "I am subordinate to the Führer only, and for my official business I am under the Reich Marshal; and I do not have to justify myself to you."

Then there is an interrogatory from Minister of Labor Seldte, which has been allowed by the Tribunal and which I shall submit as Exhibit Number Sauckel-16. I should like to bring out just a few points. The witness talks about Sauckel's functions and the

functions of Dr. Ley, and he says that Sauckel carried out the functions of the state while Ley looked after the social welfare and social supervision.

Then he goes on to talk about inspections and control, and he says that the offices for accident insurance, health, and factory inspection were in existence before and had continued to function under the responsibility of the Ministry of Labor.

Then comes the interrogatory of Dr. Voss, which I submit as Exhibit Number Sauckel-17. I shall submit the original later. I am afraid I cannot find it at the moment. This doctor was medical officer in a camp, and he speaks of the conditions in the camps, particularly after air attacks, and about the activities and care of the Labor Front. He not only deals with the camps in which he was working but he knows a great deal generally about conditions in other camps.

His statement is in contradiction to the testimony given by Dr. Jäger. In the same way the following document, which I shall submit as Exhibit Number Sauckel-18 and which comes from Dr. Ludwig Scharmann, although dealing with another sector, contains similar statements, too, which are also in direct contrast to the testimony given by Dr. Jäger.

That completes the interrogatories which have been granted me. Now I have still another number of documents for which I have applied, but on which a decision has not yet been given. I do not know whether I should now submit them to the Tribunal. They are mostly concerned with laws and decrees and I would like to submit them in addition to what I have already submitted.

THE PRESIDENT: Yes, Dr. Servatius, the Tribunal would like you to submit them now, because the Tribunal wishes to deal with the evidence on behalf of the Defense finally, now and today.

DR. SERVATIUS: There is a decree by Sauckel dealing with the return of sick foreign workers to their homes. It shows that workers who had fallen sick were sent back and that Red Cross employees had to accompany them. The actual decree is in the official collection of laws and decrees which has already been submitted. I shall ascertain my exhibit number presently. It will be Number Sauckel-99 in the supplementary document book.

Then there is Document Number Sauckel-100, which comes from the *Reichsarbeitsblatt*, 1943, which has already been offered in evidence, too. This deals with the investigation of sanitary measures in camps, and it concerns the accusations which have been made with reference to these accommodation problems.

Then there is Document Number Sauckel-101 which is a memorandum for French prisoners of war on leave regarding their

improved status under the so-called "transformation." I shall submit it and give the exhibit a number. For the moment it is Document Number Sauckel-101.

Then come Documents 102 and 103. Both are laws contained in the official *Reichsgesetzblatt*. They are "German Instructions Regarding Compulsory Labor Service." It is the Emergency Services Order which I submit as Document Number Sauckel-102. Then there is the Compulsory Labor Decree which will be Document Number Sauckel-103, in the supplement.

Then I find that Document 4006-PS contains a number of important regulations, but I am told that the Prosecution is going to read them, and therefore I assume that I need not do so.

Then I have received an affidavit from Count Spreti, who, from the beginning of the Eastern campaign, was active as a recruiting officer in the East. It deals with conditions, and it states particularly that Sauckel's activity had brought about a basic change in the general attitude. It is short and I consider that it is of particular importance, because up to now no recruiting officer has been heard on the subject.

Then I was proposing to submit Document Number Sauckel-109, which will be a list...

COL. PHILLIMORE: My Lord, with regard to that affidavit I am told, the Prosecution having not seen it at all, that that should be accepted with the same reservations as have been made in the previous cases.

THE PRESIDENT: Yes, certainly. Was that affidavit you spoke of by Count von Spreti, S-p-r-e-t-i?

DR. SERVATIUS: Yes.

COL. PHILLIMORE: Yes, My Lord.

DR. SERVATIUS: Then I was going to submit a list of all of Sauckel's decrees as Document Number Sauckel-109 which will give an idea of the great care he took of all kinds of matters. This list will give the titles only.

THE PRESIDENT: Very well, you did not give a number to the affidavit of Count von Spreti.

DR. SERVATIUS: It will be given Number Sauckel-108 in my document book and then I shall give it an exhibit number later when I submit the numbers for the other documents.

Then as Document Number Sauckel-110, 111, and 112...

THE PRESIDENT: Dr. Servatius, are you not giving us exhibit numbers now?

DR. SERVATIUS: I cannot do so at the moment because I have not got the originals with me and part of these are official records which have been submitted already.

THE PRESIDENT: But you see in the case of the Defendant Sauckel, as in the case of every other defendant, the exhibits put in on his behalf, the exhibits offered in evidence on his behalf should have a consecutive series of numbers and that is a consecutive series which is settled by the counsel himself who offers the documents in evidence. It does not depend upon whether he has the original before him.

DR. SERVATIUS: In that case I can give them exhibit numbers. Document Number-108 will be Exhibit Number Sauckel-18.

THE PRESIDENT: Which is that?

DR. SERVATIUS: Exhibit Number 18.

THE PRESIDENT: Perhaps the most convenient way would be if you would carefully go through your exhibits and give the list to the General Secretary, giving the exact exhibit number of each document.

DR. SERVATIUS: Very well.

Then Documents Number 110, 111, and 112, contained in the supplement, are three laws which deal with the position of the Reich Defense Commissioner who was mentioned in connection with the allocation of labor. The Reich Defense Commissioner is, of course, the Gauleiter who was mentioned during the case of Speer in connection with the armament industry. These are merely the basic laws, so as to have them at hand.

After the case of Speer had been heard, I received an affidavit from the witnesses Hildebrandt and Stothfang, who had been examined here in Court. It deals with the question of how far Sauckel had to obey Speer's instructions and what the relations were between the two offices. The Prosecution have not yet defined their attitude and I think perhaps it would be best if...

MR. DODD: We will be glad to have this affidavit submitted, Mr. President. We have no objection whatever to it. As a matter of fact, if it was not submitted by Dr. Servatius, we intended to offer it ourselves.

THE PRESIDENT: Very well. Of course the Tribunal thinks it is irregular, really, that a witness who has been called and has given evidence, has been cross-examined—has been re-examined and cross-examined by any other counsel for the defense who want to—that he should be entitled to give any other evidence, but if you are both agreed that it is convenient in this case, as a special circumstance, we will admit it.

MR. DODD: I think—Mr. President, I, of course, recognize at once the Court's observation about submitting affidavits of witnesses who have been before the Tribunal. What happened here was that some rather material matters were not gone into when he was here, and I think the Tribunal will find them quite helpful in clearing up the situation about Sauckel and Speer with respect to their relative and individual responsibilities for this slave labor program. Other than that, I, of course, would not urge it at all. I think the Court will find it helpful.

DR. HANS FLÄCHSNER (Counsel for Defendant Speer): Mr. President, I would not make a formal objection against the admission of such an affidavit if I were not convinced, in this particular case, that with the admission of such an affidavit a series of questions will be opened up which will, in turn, necessitate further arguments. I saw the wording of this affidavit only this morning and I am convinced that at least further investigation of its contents will be necessary. I believe, therefore, that if this Trial is to be shortened, in the case before us as well, one ought not to depart from the general rule that affidavits from witnesses who have already appeared before the Tribunal should not be permitted. In this particular case, where there are references to the publication with which the affidavit deals, the case could be made quite clear if these publications were submitted and, therefore, the affidavit is not at all necessary.

THE PRESIDENT: Do you wish to say anything in answer to that objection?

DR. SERVATIUS: Mr. President, this affidavit is, in fact, a supplementation of the instructions contained in Document 4006, which the Prosecution is proposing to submit; but I did not know that this was proposed. What we are actually concerned with here is a question which was opened up by Speer's examination, namely, the significance of Speer's Ministry as compared to Sauckel's office: Who, of the two, was the more powerful? Who could give orders? Who had to obey? I think the documents will make that clear.

THE PRESIDENT: Yes, but you and the Prosecution had the opportunity of cross-examining Speer when he was in the witness box and you could then have elucidated anything you wanted to elucidate at that time.

DR. SERVATIUS: Yes, only the circumstances were not known to me at that moment.

MR. DODD: Mr. President, I do not wish to press this at all, and if the Tribunal has any doubt about it at all I will withdraw my position. I thought it might be helpful, but it really is not important and if there is any question I think it is better we let it go.

THE PRESIDENT: Well, the Tribunal think it is irregular to introduce new evidence by affidavits from a person who has already been called as a witness, and in view of the objection on behalf of the Defendant Speer, they cannot accept the evidence.

DR. SERVATIUS: In that case, I will withdraw it. That completes my statement of evidence. The only thing that is still outstanding is the witness Letsch's interrogatory, which has been granted, and the interrogatory of the witness Bichenbach. I have no hope of still receiving them.

THE PRESIDENT: Dr. Steinbauer?

DR. GUSTAV STEINBAUER (Counsel for Defendant Seyss-Inquart): Mr. President, I have four documents which I beg to submit and which I have received through the General Secretary. The Tribunal has allowed them and the Prosecution know of them. Unfortunately, however, the translations have not yet been completed.

The first document contains questions and answers from Director Dirk Hannema, director of the Bovymans Museum in Rotterdam, about the alleged plundering of art treasures. I shall give this document the Number Seyss-Inquart-108. I shall submit the English text and the Dutch original.

The next document is an edition of the newspaper *Nieuwe Rotterdamsche Courant*, dated 17 May 1942, of which I have the original and a German translation. It contains a warning regarding the shooting of hostages. This document I shall submit in the original under Document Number Seyss-Inquart-109.

The following document is also an edition of the same newspaper; it is dated 10 August 1942, and it also contains an announcement regarding the shooting of hostages. In connection with this document I should like to draw your attention to the fact that this announcement was the result of an order from the Military Commander in Holland, General Christiansen, and that the Senior SS and Police Leader, Rauter, signed it. I shall give it Document Number Seyss-Inquart-110.

The next document I received only yesterday from the General Secretariat, and it is a copy of the interrogatory of General of the Cavalry Von Kleffel. From 27 March 1945 until 8 April 1945, he was Deputy Commander-in-Chief of the 25th Army in Holland. He confirms that Reich Commissioner Seyss-Inquart, in a letter to the Führer, had requested that the fighting should cease, in order to save the country from being heavily damaged and also to prevent a famine. This document is Number Seyss-Inquart-111 in my document book. This document had been allowed by the Tribunal. I beg, therefore, that it be received in evidence.

Today the General Secretary's office sent me two affidavits. One comes from the former commander of the Defense District of Scheveningen. His name is Erwin Tschoppe. He is submitting an affidavit dealing with the attitude and conduct of the defendant with respect to the evacuation of the coastal area. Because of the short time at my disposal, I have not yet been able to hand this document and the following one to the Prosecution, but I have already informed the Prosecution that these two documents exist. The second document is also . . .

THE PRESIDENT: Dr. Steinbauer, these documents, I apprehend, have not been shown to the Prosecution?

DR. STEINBAUER: No.

THE PRESIDENT: Wait a minute; they have not been approved by the Tribunal and one question that arises is: Are they very long? Because I find that the Translation Division is being overloaded with very long documents.

DR. STEINBAUER: No, it is a short document, but it appears to me to be important, because it shows how the defendant acted during that difficult situation and how he took care of the Dutch population.

THE PRESIDENT: If it is short and if you will submit it to the Prosecution, then it can be translated and admitted subject to any objection.

DR. STEINBAUER: Yes, Sir. The same applies to the following document which I also received today. It is an affidavit of Adalbert Joppich. He was President of the German Supreme Court in the Netherlands, and he makes a very brief statement about the position and the attitude of the defendant with regard to legal questions affecting the Dutch civilian population. I beg that this document should also be admitted in evidence and that I may use the same procedure of submitting a copy of the translation to the Prosecution.

THE PRESIDENT: What number did you give?

DR. STEINBAUER: The Tschoppe document will be Document Number Seyss-Inquart-112 and the Adalbert Joppich document will be Document Number Seyss-Inquart-113. Documents allowed by the Tribunal and still outstanding are affidavits by Bolle, Dr. Reuter, Völkers, and Lindhorst-Homan. The General Secretariat and I are trying to obtain these affidavits. So far it has only been possible to ascertain Bolle's address. Finally, I request that two applications which I have made in writing should be granted; one concerns the obtaining of the defendant's NSDAP membership card which was impounded when he was arrested, and which must be among his personal documents in the custody of the Tribunal. A few

months ago I made a request to that effect, but both sides apparently lost sight of the matter.

THE PRESIDENT: Of course, you do not mean that it is in the custody of the Tribunal; you may mean that it is in the custody of the military authorities.

DR. STEINBAUER: Yes. I meant the prison administration.

THE PRESIDENT: Well, no doubt, they can reproduce it. What was the other document?

DR. STEINBAUER: Well, Mr. President, then in the cross-examination...

COL. PHILLIMORE: My Lord, I do not want to take up Your Lordship's time, but that membership card, that could have been applied for months ago. It is on the same footing as these documents which counsel has been putting in. We have not seen them. I do not know what this card is going to prove, but it is going to be a great deal of trouble to get it here, just as these documents are giving a great deal of work to the Translation Division.

THE PRESIDENT: What is the importance of the membership card? Presumably he knows when he became a member. What relevance does the card have to this?

DR. STEINBAUER: It is of importance because according to the war crime law which has now been published in Austria, all members having a membership number above 6,500,000 will not be regarded as so-called "old fighters" or illegals. Seyss-Inquart has stated in the witness box...

THE PRESIDENT: That has nothing to do with the Tribunal. It may be relevant in some other proceeding and before some other court but not before this Court.

DR. STEINBAUER: Only insofar as the Prosecution had alleged that he had been a member of the NSDAP since 1931. But, of course, I am not trying to make difficulties. I only thought that the membership card might be among the belongings which were taken away from the prisoner and that one could have a look at it.

THE PRESIDENT: Yes. But did he deny that he was a member since 1931?

DR. STEINBAUER: Yes, oh, yes. He states that he did not become a member until 13 March 1938—formally.

THE PRESIDENT: Oh, yes, formally; I remember, yes. But he had been a member of the Austrian Nazi Party very much longer, if I remember rightly.

MR. DODD: We will agree here and now, Mr. President, that that card would show that he became a member, as far as the card

is concerned, on that date. I am sure that is what it will show and if it will help the doctor, we will be glad to agree to that.

THE PRESIDENT: Very well.

DR. STEINBAUER: The last document for which I am applying is the following: During cross-examination a document was submitted in which an 18 year-old female police clerk named Hildegard Kunze confirms that my client caused Dutch Jews to be sterilized. Seyss-Inquart maintains that he has never written to the Police directly, but that in three personal letters addressed directly to Himmler, he did object to the treatment of Jews, and that in one of his letters he mentioned sterilization. This, presumably, was the reason why the witness mentioned it and probably she gained knowledge of these facts because Himmler sent the original or copy of the letters to the Main Security Office. In connection with this important matter my client has requested me to make an attempt to have these letters which he wrote to Himmler produced in order to disprove the incriminating statement made by the witness Hildegard Kunze. I do not conceal the fact that it will probably be difficult to find these letters among the very many documents of the Main Security Office.

THE PRESIDENT: Have you made your application in writing about this?

DR. STEINBAUER: Yes, I have made a written application.

THE PRESIDENT: Giving the dates when the letters were written?

DR. STEINBAUER: Yes, everything I could ascertain regarding the dates and the addresses is contained in my application.

THE PRESIDENT: Well, the Tribunal will consider that, but you understand that the work involved in this sort of thing is very great indeed.

DR. STEINBAUER: Mr. President, far be it from me to underestimate the difficulties which are connected with my application. Apart from this, I have no further application to make.

THE PRESIDENT: We will adjourn now.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

THE PRESIDENT: The Tribunal will not sit in open session Saturday next, nor will it sit in open session on any Saturday in the future unless it gives notice that it is going to do so.

Yes, Dr. Thoma?

DR. THOMA: Mr. President, yesterday I mentioned an affidavit of Dr. Heinz Oepfert, Reichshauptstellenleiter. I have now received this affidavit, and I have also already conferred with Mr. Dodd about it.

I now beg the permission of the High Tribunal to submit this affidavit. Mr. Dodd has no objections to the submission of this affidavit.

May I read a very brief passage from this affidavit, Mr. President?

THE PRESIDENT: Can you tell us what the affidavit is about?

DR. THOMA: Yes, Mr. President. This Dr. Oepfert had the Office of Ideological Enlightenment in the office of the Führer's deputy for the supervision of the entire ideological and intellectual framing of the Party. Concerning this activity and this office he testified that it involved almost exclusively a reporting and registration of events in this sphere.

Any active interference in the church policy of the State or the Party would not have been possible even if they had wished it, for this office had no executive facilities of any kind. There were constantly very intense differences with the State and Party organizations which participated in this sphere of activity, that is, between the Propaganda Ministry and the Church and the SD and Party Chancellery. The suppression of certain ideological groups and sects as well as the measures taken against individual clergymen, as far as I know, were taken by the SD or the Gestapo without the knowledge or authority of this office.

I am asking the High Tribunal to take judicial notice of this document.

THE PRESIDENT: Very well.

DR. THOMA: Exhibit Number Rosenberg-51.

THE PRESIDENT: Dr. Fritz. On behalf of Fritzsche—is anyone representing Dr. Fritz?

DR. ALFRED SCHILF (Counsel for Defendant Fritzsche): Dr. Schilf for Dr. Fritz, who is absent, representing the Defendant Fritzsche.

Mr. President, Dr. Fritz applied in writing last Monday concerning two affidavits which are still outstanding, one an affidavit

by the journalist—the English journalist, Clifton Delmar—and the other an affidavit by His Excellency Feldscher, then Minister of the protective power in Berlin, now in Berne. Neither of these affidavits has arrived yet, and we are asking the High Tribunal if we may submit and be allowed these documents later.

I have no further comments. No other applications have been made.

THE PRESIDENT: Have you—I did not hear the name of the second one. Was it Feldscher?

DR. SCHILF: Excellency Feldscher, Minister of the protective power. He is now at Berne in Switzerland.

THE PRESIDENT: Have these affidavits been placed before the Prosecution?

DR. SCHILF: No, Mr. President, they are not yet available. They have not arrived yet.

THE PRESIDENT: I see. Are they affidavits or interrogatories?

DR. SCHILF: They are two interrogatories, Mr. President.

THE PRESIDENT: Interrogatories, I see. Well then, when the interrogatories come back answered, they can be shown to the Prosecution if they want to put in cross-interrogatories; and then they can be translated and submitted to the Tribunal.

Dr. Schilf, there was an application—I am not sure whether it was in writing or whether it was only oral—with reference to Schörner and Voss, and one other man, whose statements were used in cross-examination by the Prosecution. I think they were affidavits, I am not sure; and there was an oral application, I think, to cross-examine those persons. Do you want that to be done, or have you withdrawn that?

DR. SCHILF: Mr. President, that application has not been withdrawn, but it was put in only as an auxiliary application, to have effect only if the interrogation notes submitted by the Russian Prosecution—it seems to me that these interrogation notes cannot be considered as affidavits, but only interrogation records of a police character.

And Dr. Fritz made application to the effect that if these three documents were to be used as documents of evidence, we cannot waive the cross-examination. These three documents were used in the examination of the Defendant Fritzsche only in part, and only short passages were submitted to the defendant in his examination. Every detail there he has . . .

THE PRESIDENT: What you were saying is that in case the Prosecution do not want to use the whole of these documents, but

only the parts which were put to the Defendant Fritzsche in the course of cross-examination, then you do not need to have those persons, Voss and Schörner, called for cross-examination; but if the Prosecution wish to put in the whole document, then you want to cross-examine them. Is that right?

DR. SCHILF: Mr. President, that is correct.

THE PRESIDENT: Are you meaning that you are asking the Tribunal to strike out the passages in the Defendant Fritzsche's evidence which deal with these statements or are you merely meaning that if the Prosecution wish to use, not only the parts which they have put to the defendant in cross-examination but other parts of the document, that in that event you would like to cross-examine the deponents Voss and Schörner?

DR. SCHILF: Mr. President, we only want the cross-examination to take place in case the Court should regard the three interrogation records, as a whole, as documentary evidence.

THE PRESIDENT: Yes, then you do mean what I first of all put to you.

Well, perhaps the Prosecution, General Rudenko, would tell us whether he is wanting to put in the whole document or whether he has put enough of it in.

GEN. RUDENKO: Mr. President, as I have already stated to the Tribunal, when these written statements were submitted, the records of the interrogations were written down in agreement with the rules of procedure which is in existence in the Soviet Union. The Prosecution will only use those parts which were read here before the Tribunal and on which the Defendant Fritzsche was cross-examined.

THE PRESIDENT: Very well, then it is not necessary to have those witnesses brought here for cross-examination. Very well.

DR. SCHILF: Yes, indeed, Mr. President.

THE PRESIDENT: Then that brings the Tribunal to the end of the evidence for the Defense, with the exception of two witnesses who are to be—who are here and to be called on behalf of the Defendant Bormann.

DR. FLÄCHSNER: Mr. President, on behalf of the Defendant Speer may I submit in addition a document which has already been translated and is known to the Prosecution. This is the Führer protocol of 3 January 1943. This shall have the Document Number Speer-35. I had already listed it as Exhibit Number 35 in the index of the documents submitted by me which I gave the Court. Only at that time it had not yet been translated. I should like to submit it now.

THE PRESIDENT: Yes, certainly.

What I wanted to say was that that concludes the whole of the evidence on behalf of the defendants with the exception of interrogatories which have already been granted, the answers to which have not yet been received. Of course, those interrogatories, subject to their being admissible, will be admitted when the answers are received and that applies also to anything in the shape of an affidavit which has been allowed by the Tribunal; but otherwise the evidence for the defendants is now closed with the exception of Dr. Bergold.

DR. SERVATIUS: Mr. President, I have another question regarding the appearance for testimony of the witness Walkenhorst. In case he is not called as a witness, I have an affidavit at my disposal, which I have received; and I assume that I may submit this in case this witness is not examined here before the Court. It deals with a very brief question, namely, the telephone conversation which Sauckel had regarding the evacuation of the Buchenwald Concentration Camp. Walkenhorst happened to be the man at the other end of the wire. I have an affidavit on this one question.

Of course, if the witness is being questioned here in Court I shall ask him; but in case he is not examined I request that this be held open.

THE PRESIDENT: You are speaking of Walkenhorst?

DR. SERVATIUS: Yes, the witness Walkenhorst.

THE PRESIDENT: Well, he is just going to be examined now.

DR. SERVATIUS: I hope so, Mr. President.

THE PRESIDENT: But—I believe he is here.

I have before me a list of supplementary applications but I think that they have all been dealt with in the discussion which we have had during the last 2 days. And if there is any other matter which the defendants' counsel wish to raise they should raise it now.

Well then, I take it then, that as I said, the evidence for the Defense is now concluded, subject to the reception of documents which I may describe as outstanding, either interrogatories or affidavits.

DR. MARX: Mr. President, may I be permitted, please, to introduce three more documents with the permission of the Tribunal. They concern the following questions:

When considering what influence the paper published by Streicher exercised on the German population, it is of decisive importance to know how the circulation of this paper developed and to what circumstances the fact is to be attributed that, within a certain period of time, there was a marked increase in its circulation.

I set myself the task of determining from the mastheads of the weekly paper, *Der Stürmer*, how its circulation developed.

THE PRESIDENT: But—we have already dealt with this application. We have had the application before us and we have considered it and we have refused it.

DR. MARX: Yes, I beg your pardon, Mr. President; it concerns the following:

Quite by accident, when looking at various issues of this newspaper, I ascertained that in the year 1935 a marked jump in circulation took place and the Defense would like to prove that this increase is not to be traced to an increased demand by the German people but rather to the fact that high Party offices exercised their influence and, together with a new publishing management, brought about a threefold increase. Naturally, it is of essential significance whether a threefold increase results from a demand by the people or whether, as in this case, the German Labor Front intervened in the person of Dr. Ley, and a special publicity number was published, which was then circulated by Dr. Ley's efforts and by using the huge machinery of the German Labor Front.

That is something I want to prove and I am of the opinion that it is of importance to the Defense.

I have three documents along these lines, Mr. President; and with the permission of the Tribunal I shall read a directive, and I ask that I be allowed to introduce it as evidence. From this it appears that Dr. Ley as the leader of the German Labor Front, gave the order to all the offices of the German Labor Front to circulate this special edition and to see to it that it was widely circulated in the factories, and so forth. For, indeed, it is one of the essential points of the Indictment that the German people were influenced against the Jews by *Der Stürmer* and by the Defendant Streicher, and thereby later made ripe to support the measures in the East, even to the extent of mass extermination.

Therefore, I ask that this evidence be admitted and that it be declared relevant.

THE PRESIDENT: You said you have got three documents. The first one is a directive from Ley?

DR. MARX: Yes, Mr. President.

THE PRESIDENT: Yes. What are the other two?

DR. MARX: One is an excerpt from the newspaper *Der Stürmer* in May 1935, Number 18, which reads as follows:

"Bernhardt, who fled from Berlin to France, writes in the *Pariser Tageblatt* (Paris, 29 March 1935) under the heading, 'Stürmer Circulation Increases Threefold,' as follows:

"The support which the pornographer Streicher received from the highest offices of the Reich in circulating his *Stürmer* helped him to triple his circulation within less than a year..."

THE PRESIDENT: Wait. You have already told us that the circulation of the *Stürmer* went up threefold. It is not necessary to repeat it all again. We only want to know what the documents are. The first one is a directive of Ley. The second one is an issue of *Der Stürmer*. What is the third one?

DR. MARX: And the third—the third is a summary of the circulation from January 1935 until the middle of October 1935; and from this it appears that, within the period of 1 year, the circulation increased from 113,800 to 486,000. Anybody will probably...

THE PRESIDENT: Well, that is quite sufficient. We do not want to know any more about it.

DR. MARX: Very well, Mr. President. Then, may I be permitted...

COL. PHILLIMORE: My Lord, I—it is entirely in the hands of the Tribunal, but we should see no objection from the Prosecution's point of view to admitting these documents. The first would appear to directly link the Defendant Streicher with another of the conspirators. It would be a most important document.

THE PRESIDENT: Very well, Dr. Marx. Then the three documents will be admitted.

DR. MARX: I should like to submit the documents under Exhibit Numbers 19, 20, and 21.

THE PRESIDENT: Very well.

DR. MARX: I beg your pardon, Mr. President. May I make one more remark? Why the matter came about now and was so delayed is that I personally did not know anything about it before. It was only by accident that I learned this from *Der Stürmer's* masthead. It was previously unknown to me, and I considered it—considered it from my point of view as pertinent evidence. I ask to be excused for not submitting it before now.

DR. SAUTER: Mr. President, I naturally do not wish to submit any further evidence; but I should like to ask you to clarify a question, a question of law.

At this time interrogations are going on constantly in the commissions in order to gather evidence with regard to the organizations. Witnesses are being interrogated there whom we here do not know, and documents are being submitted which we have not yet seen. It will be several weeks before we know the results of this evidence about the organizations.

Now we defense attorneys, who are working here, are thinking of the following case: It could happen, for instance, that one of these defendants could be incriminated by some new testimony about the organizations, or that documents might be submitted which we, as Defense Counsel for these defendants, would absolutely have to take into consideration in our pleas, or to which we would have to offer evidence in rebuttal.

Now we are agreed that the evidence here should be concluded, but we would naturally like to reserve the right in such cases to learn the results of the hearings for the organizations.

THE PRESIDENT: I think you will find, when you look carefully at the order which the Tribunal made, that this matter was provided for and that, if there is any matter in the course of the hearing of the case against the organizations which in any way materially or directly affects any of the individual defendants, the Tribunal, of course, has discretion to hear counsel for that defendant upon the matter; and I think that is specifically dealt with in the order that we have made.

DR. SAUTER: This order is known to us, of course, Mr. President; but we just wanted to be clear on this point, that this order will still remain in force, even if the presentation of evidence here is concluded.

THE PRESIDENT: Certainly.

Do the Prosecution wish to make any application to the Tribunal?

COL. PHILLIMORE: I have eight documents to put in. My Lord, they are documents which it is intended to refer to in the final speech; and accordingly I would not propose to do more than just to indicate their nature to the Tribunal and put them in very quickly. I have a list of them which I will hand up first.

THE PRESIDENT: Are they documents which have not yet been offered in evidence? It may be convenient to see their nature.

COL. PHILLIMORE: Yes, My Lord; I am offering them in rebuttal.

THE PRESIDENT: You have a list here?

COL. PHILLIMORE: Yes, My Lord, the first document is . . .

THE PRESIDENT: Have they been communicated to the defendants' counsel?

COL. PHILLIMORE: No, My Lord; I have copies here.

The first document, 1519-PS, contains orders for the treatment of Soviet prisoners of war. My Lord, that is not strictly offered in rebuttal; but the Tribunal has had before it a document, EC-338, which was put in as Exhibit USSR-356. That document consisted of

a commentary by Admiral Canaris on these orders, and Your Lordship may remember the document. Defendant Keitel had made certain notes on it on which he was cross-examined, the reference in the shorthand notes being Pages 7219 to 7223 (Volume X, Pages 622-625). My Lord, it seems appropriate that the actual orders should be before the Court and not merely the commentary.

My Lord, that will be GB-525, and the Tribunal will see it consists of a covering letter from the Defendant Bormann to Gaulleiter and Kreisleiter covering the OKW letter signed by General Reinecke, the head of the Prisoners of War Organization; and then there follow the actual regulations.

THE PRESIDENT: Has not this been in before?

COL. PHILLIMORE: My Lord, I am told not. What was put in was the commentary on this document, which was by Admiral Canaris. It was included—this document was included in the Keitel document book, but it was not formally put in.

THE PRESIDENT: I see. You mean it will be GB...

COL. PHILLIMORE: 525, My Lord.

THE PRESIDENT: Yes.

COL. PHILLIMORE: My Lord, the second document, D-912, will be GB-526. This is a series of broadcasts from German stations between 6 September and 22 October 1939, monitored by the British Broadcasting Corporation and dealing with the *Athenia*.

My Lord, I offer that document in view of the Defendant Raeder's evidence. The Tribunal will remember that, according to him, the article on the 23 October in the *Völkischer Beobachter* came as a complete surprise. The reference in the shorthand notes is 9832, Page 9832 (Volume XIV, Page 80).

My Lord, it also arises out of the question, I think, put to the Tribunal—put by the Tribunal to the Defendant Fritzsche; and it confirms his evidence that broadcasts blaming Mr. Winston Churchill for being responsible for the sinking of the *Athenia* started at the early part of September and went right on through the month. Actually, these broadcasts, the Tribunal will see—the first on 6 September. I might read perhaps one sentence in the second line:

“The German press refutes the accusations of the British press that the German submarine had sunk the *Athenia*. Churchill, as one of his first actions, ordered the *Athenia* to be sunk in order to stir up anti-German feeling in the U.S.A.”

Well, then there are similar broadcasts from other stations on that day, again on the 7th, the 11th, the 25th. I have not got the one on the 27th, put in by General Rudenko; but there is one by the Defendant Fritzsche on 1 October, and so on, culminating with a

broadcast by Goebbels on the 22d, the day before the article appeared. My Lord, that will be GB-526.

The next document, 3881-PS, is an extract from the proceedings before the Peoples' Court on 7 and 8 August 1944, when seven defendants were tried for the attempt on Hitler's life. My Lord, I am only putting in a translated extract, but the photostat is in fact complete. I should have said that what is before the Tribunal is only a translation of certain extracts, but the exhibit contains the complete record of the proceedings. My Lord, I . . .

THE PRESIDENT: Unless we have it translated, we shall not be able to have it in evidence.

COL. PHILLIMORE: My Lord, we do not intend to refer to more than the translated extracts.

THE PRESIDENT: Very well.

COL. PHILLIMORE: I only said that for the benefit of Defense Counsel, who may wish to look elsewhere.

My Lord, I put that in in view of the Defendant Jodl's evidence that it was only because British generals obeyed orders that the German generals were now being tried. That is Page 11043 of the shorthand notes (Volume XV, Page 383). And the passages—the nature of the passages is that the president of the Peoples' Court is refusing to accept the defense of superior orders put forward by the defendants. My Lord, that will be GB-527.

My Lord, the next document is D-181, which I offer as Exhibit GB-528. It is a letter by a Gauleiter to Gauamtsleiter, Gauinspektor, and Kreisleiter on the subject of the law of hereditary health and sterilization on the ground of imbecility. It is an important document in connection with the Defendant Frick, and I put it in in view of the statements made on his behalf by his counsel at Page 8296 (Volume XII, Page 162) of the shorthand notes, My Lord, when he said in effect that Frick had no control over the political police and that Himmler's subordination to him was purely nominal.

My Lord, there are a number of references in the letter to the fact that the decree—and indeed its administration—was the responsibility of the Defendant Frick.

My Lord, the next document is of a similar nature, and I attribute it to the same page of the shorthand notes. It is Document M-151, and I offer it as Exhibit GB-529. It consists of three letters on the subject of the murder of mental patients in institutions. The first is dated the 6th of September and addressed by the supervisor of a sanatorium at Stetten to the Reich Minister of Justice. It sets out the feeling of insecurity in the neighborhood of the sanatorium administered by its inspector, in view of the number of deaths which are occurring.

The second, dated the 10th, is a letter from the Minister of Justice acknowledging the complaint and saying that it has been passed to the Defendant Frick.

And the third, of the same date, is the Minister's letter to his colleague passing the complaint to him.

My Lord, the next document is again on the same subject. It is Document M-152, and I offer it as Exhibit GB-530. It consists of four letters.

The first, dated the 19th of July 1940, is addressed to the Defendant Frick as Reich Minister of the Interior, by Bishop Wurm, the Provincial Bishop of the Württemberg Evangelical Provincial Church. My Lord, it again sets out the mass of complaints he is receiving and then goes on to deal with the wickedness of the practice which is apparently going on.

The second letter, dated the 23d of August, is a letter to the Minister of Justice referring to the letter sent to the Defendant Frick.

The third, of the 5th of September, is a letter to the Defendant Frick reminding him of the previous letter of the 19th of July to which no reply had been received.

And, on the 6th of September, the next letter is a parallel communication again to the Minister of Justice.

Finally, on the 11th of September, the last page of the document, there is a memorandum on the Minister of Justice's file indicating that an official of the Ministry had informed the Bishop's dean, presumably Dean Keppler, that the matter was entirely one for the Defendant Frick.

My Lord, the next document, D-455, which I offer as Exhibit GB-531, is a pamphlet prepared by the German Military Government authorities in Belgium. It comes from the files of the German War Office, the OKW, and it is entitled, *Belgium's Contributions to Germany's War Economy*, and is dated the 1st of March 1942.

My Lord, I offer it in view of the general evidence that German occupation was benevolent and that—the Tribunal has heard, again and again, the suggestion that they did a great deal of good to the countries they occupied. This document is a very graphic illustration of the falsity of that evidence out of the mouths of the Defense.

My Lord, if I might take the Tribunal very quickly through it, at Page 3 is a chart of the population figures in terms of employees, and it shows that more than half the working population was working for Germany. Of the 1,800,000 workers and employees in Belgium, 901,280 were employed with the German Armed Forces and in the German interests.

My Lord, at Page 4 is a comparison between Belgium, Holland, and France in terms of percentage of workers employed as slave labor.

My Lord, at Page 5 is a statement of the production figures for the Belgian contribution to Germany, in—I think it is the seventh line, it is summed up: “Output to the value of 1,200 million Reichsmark.”

Page 6—there is a comparison between the coal taken from Belgium and the same amount produced in the year in the Ruhr.

At Page 8 there is comparison of iron, with the total amount of iron used in the West Wall.

Page 9, cement; Page 10, textiles; Page 11, metals. There is a statement there which contains a sentence about the summing up of what had been taken out: “It was possible to achieve these results only by exhausting the last reserves of the country.”

At Page 12 there is a chart of how the metal collection has affected individuals. It is a comparison between Belgium, Holland, and France.

At Page 13 there is a statement about the contribution to traffic; and a chart on Page 14.

At Page 15 it appears that the contributions in money exceeded the total earning—earned income of the Belgian workers for the last year.

At Page 16 there are figures with regard to the quantity of gold taken for safekeeping in the Reichsbank.

Page 18 deals with shares, a comparison with the total share capital of I. G. Farben, the comparison being 700 million Reichsmark as against the share capital of I. G. Farben of 800 millions.

Then there is a statement with regard to rations, showing that Germany had imported food into Belgium but that, despite that, the rationing was the lowest of all western countries.

And finally, on the last page, there is an indication of the change in the Belgian rations by comparison between 1938 and under the benevolent rule of the German Military Government in 1941. My Lord, it speaks for itself.

My Lord, I—My Lord, the last document, D-524, is a similar pamphlet referring to France. It comes from the same source, and I offer it as Exhibit GB-532.

My Lord, owing to a breakdown in electric power, I have not been able to finish photostating the English copies, but I will hand them in, if I may, subsequently and for the moment I hand up German photostats.

My Lord, I offer it in view of the Defendant Sauckel's evidence, at Page 10617 of the shorthand notes (Volume XV; Page 52), where

he said that the total slave labor figure was not more than 5 millions. My Lord, at Pages 8 and 9 of this document, the Tribunal will see the slave labor position of Germany at the end of 1943, so that to this must be added slave labor drawn in during 1944. My Lord, it amounts to just under 7 millions, of which 1,462,000 were prisoners of war, so that the figure of slave labor at the date was slightly over 5 millions; that is, slave labor excluding prisoners of war was slightly over 5 millions, and to that, as I say, one must add the increase during 1944.

My Lord, on Page 8 are the figures and comparisons: Men, civilians, 3,631,000; prisoners of war, 1,462,000; women, 1,714,000. And then it is set out how that is divided by countries. And on Page 9 is merely an illustration in color.

My Lord, the rest of the pamphlet merely gives figures illustrative of what was taken from France, very similar to those in the case of Belgium. And I would not propose to take the Tribunal through it unless it is desired that I should do so.

My Lord, I think I gave that a number, Exhibit GB-532.

My Lord, that is all the documents that I have to offer. I understand my friend, Mr. Dodd, has some.

MR. JUSTICE ROBERT H. JACKSON (Chief of Counsel for the United States): May it please the Tribunal, at the time of the cross-examination of the Defendant Hermann Göring we confronted him with a document, numbered 3787-PS. It was received as Exhibit USA-782. It was the report of the second meeting of the Reich Defense Council. Göring acknowledged the authenticity of the minutes as presented to him in the German text. But the document at that time had not been translated, and consequently it was not possible to read into the record the many parts of that document which we considered important as bearing upon his credibility and testimony, and as bearing upon the denials of many other of the defendants that they knew of the planning of the war and that they knew—participated in it.

I would now like to read from the record part of this which we consider extremely important as rebuttal testimony received from several of the defendants.

On the face of it, it is a letter of transmittal dated the 10th day of July 1939, from the supreme command of the Armed Forces, on the subject, "Second Meeting of the Reich Defense Council."

One hundred copies were prepared, and our copy is the 84th. It is labeled "most secret" and merely transmits in the name of the chief of the supreme command of the Armed Forces the enclosed document to following parties, among others. I shall name only the ones to which we have attached some importance: To the Party, the

Führer's Deputy, the first copy; to the Chief of the Reich Chancellery; to Ministerpräsident, Field Marshal Göring, the Reich Minister and Commander-in-Chief of the Air Force; to the Foreign Office; to the Plenipotentiary General for Reich Administration are nine copies, including copies for the Minister of the Interior, the Minister of Justice, the Minister of Education, the Minister for Church Affairs, and the Reich Office for Planning; also to the Plenipotentiary General for Economy, including copies for the Minister of Economy, the Ministry of Food and Agriculture, the Ministry of Labor, the Chief Forester, and the Commissioner for Price Control; to the Minister of Finance; the Minister of Transport, Motor Transport, and Roads; and the Minister of Railways; the Post Minister; the Minister of Enlightenment and Propaganda; the Reichsbank Directorate; the General Inspector of German Roads; the Armed Forces, including nine copies for the OKH, five copies for the OKM, the Reich Minister for Air and Commander-in-Chief of the Air Force; the supreme command of the Armed Forces; a series of other copies being enclosed.

The enclosure is a report of the second meeting of the Reich Defense Council, held on a date to which we attach importance, the 6th day—the 23d day of June 1939.

“Place: Large conference room of the Reich Air Ministry.

“Commencement: 1110; termination: 1355.

“President: Ministerpräsident, General Field Marshal Göring.

“Persons present . . .”

I shall name only those to which we attach some importance, because the list is very long:

The Führer's Deputy; the Chief of the Reich Chancellery, Dr. Lammers; Reichsministerpräsident General Field Marshal Göring's staff, Secretary of State Körner, Secretary of State Neumann, Councillor Bergbohm, and several others; Plenipotentiary General for Reich Administration, Reichsminister Frick, Reichsführer SS Himmler and uniformed police, Daluge; Plenipotentiary General for the Economy, Reichsminister Funk; the Reichsminister of Finance Von Krosigk; Minister of Transport; General Inspector of German Roads, Dr. Todt; supreme command of the Armed Forces, Generaloberst Keitel, Warlimont, and Generalmajor Thomas; supreme command of the Army, by—from the General Staff, General of Artillery Halder; supreme command of the Navy, General Admiral—Grossadmiral Raeder; Reich Minister for Air Force, Milch and Bodenschatz, both of whom were witnesses here.

The contents, summarized, I will not read.

The minutes of the meeting:

“Ministerpräsident, General Field Marshal Göring emphasized in a preamble that according to the Führer's wishes the Reich

Defense Council was the determining body in the Reich for all questions of preparation for war. It is to discuss only the most important questions of Reich defense. They will be worked out by the Reich Defense Committee.

"Meetings of the Reich Defense Council are to be convened only for these decisions which are unavoidable. It is urged that the departmental chiefs themselves be present.

"Distribution of labor.

"I. The President announced the following directives to govern the distribution and employment of the population in wartime.

"1. The total strength of the Armed Forces is determined by the Führer. It includes only half of the number of those fit and liable for military service. Nevertheless, their disposition will involve difficulties for economy, the administration, and the whole of the civil sphere.

"2. When a schedule of manpower is made out, the basis on which the question is to be judged is how the remaining number, after those required for the Armed Forces have been withdrawn, can be most suitably employed.

"3. Of equal importance to the requirements of the Armed Forces are those of the armament industry. It, above all, must be organized in peacetime as regards material and personnel in such a way that its production does not decrease but increases immediately with the outbreak of war.

"4. The direction of labor to the vital war armament industry and to other civilian requirements is the main task of the Plenipotentiary General for Economy.

"a. War armament covers not only the works producing war materials, but also those producing synthetic rubber (Buna), armament production tools, hydrogenation works, coal mining, *et cetera*.

"b. (1) As a rule, no essential and irreplaceable specialists may be taken away from 'war decisive' factories, on whose production depends the course of the war, unless they can be replaced.

"Coal mining is the most urgent work. Every worker who is essential to coal mining is 'indispensable.'

"Note: Coal mining has even now become the key point of the whole armament industry, of communications, and of export. If the necessary labor is not made available for it now, the most important part of the export trade, the export of coal, will cease. The purchase of coal in Poland will stop. The correct distribution of labor is determinative. In order to be

able to man these key points with the right people, severe demands will shortly be submitted to the Führer which, even in the current mobilization year, will under certain circumstances lead to an exceptional war economy, for instance, to the immobilization of lorries and to the closing down of unessential factories owing to lack of coal.

"In addition, there is the supplying of Italy and other countries such as Scandinavia with coal (to maintain the German supplies of iron)."

I shall omit certain parts of the document which do not seem particularly important to our argument and pass to Item 2, Page 9 of the English translation:

"(2) A second category of workers liable for military service will be called up during the war after their replacements have been trained. A decisive role is played by the extensive preliminary training and retraining of workers.

"(3) Preparations must be made for replacing the mass of other workers liable for military service, even by drawing on an increased number of women. There are also disabled servicemen.

"(4) Compulsory work for women is of decisive importance in wartime. It is important to proceed to a great extent with the training of women in important war work, as replacements and to augment the number of male workers.

"(d) In order to avoid confusion when mobilization takes place, persons working in important war branches, that is, administration, communications, police, food, will not be removed at first. It is essential to establish the degrees of urgency and importance.

"In the interests of the auxiliary civilian service, provided by every European people to gain and maintain the lead in the decisive initial weeks of a war, efforts must in this way be made to insure by an efficient organization that every German in wartime not only possesses his mobilization orders but has also been thoroughly prepared for his wartime activity. The works must also be adapted to receive the replacements and additional workers."

I shall skip to the bottom of Page 10, Item 6:

"The Plenipotentiary General for Economy is given the task of settling what work is to be given to prisoners of war, to those in prison concentration camps and penitentiaries.

"According to a statement by the Reichsführer SS, greater use will be made of the concentration camps in wartime. The

20,000 inmates will be employed mainly in workshops inside the concentration camps.

"IV. Secretary of State Dr. Syrup, of the Reich Ministry of Labor, made a report on the allocation of labor in the event of mobilization and the schedule of manpower for the war."

This seems a little detailed; but it is, I think, very important, showing the totality of the mobilization planned months before the war started and indicating, as we shall argue, preparations for a war more extensive than the mere brush with Poland.

"The figures for the schedule of manpower, drawn up experimentally, could only be of a preparatory character and merely give certain guiding principles. The basis of a population of 79 millions was taken. Of these, 56.5 millions are between the ages of 14 and 65. It is also possible to draw upon men over the age of 65 and upon minors of between 13 and 14. The disabled and the infirm must be deducted from the 56.5 millions. Most prisoners are already employed in industry. The greatest deduction is that of 11 million mothers with children under 14. After deduction of these groups, there remains an employable population of 43.5 millions: 26.2 million men—after deducting 7 million members of the Armed Forces, 19.2; 17.3 million women—after deducting 250,000 nurses *et cetera*, 17.1 for the whole of Germany's economic and civil life. The President does not consider women over the age of 60 as employable.

"8. The number of workers at present employed and of employees (two-thirds of the wage workers) distributed over 20 large branches of industry amounts roughly to the following: 24 million men (excluding 2 million service men), 14 million women.

"9. No information was then available regarding the number which the Armed Forces will take from the individual branches of industry. Therefore an estimate was made of the numbers remaining in the individual branches of industry after 5 million servicemen had been called up.

"The President's demand that the exact number liable to military service be established, is being complied with. These inquiries are not secret apart from figures given and formations."

I shall skip the next paragraph, 10, as of no importance.

"11. Apart from the 13.8 million women at present employed, a further 3.5 million unemployed women, who are listed on the card index of the population, can be employed.

"2 million women would have to be redirected; that is, a transfer can be made to agriculture and to the metal and chemical industry, from the textile, clothing, and ceramic industries, from small trading, insurance and banking businesses, and from the number of women in domestic service.

"12. The lack of workers in agriculture, from which about 25 percent of the physically fit male workers will be withdrawn, must be made up by women (2 in the place of 1 man) and prisoners of war. No foreign workers can be counted on. The Armed Forces are requested to release to a great extent owners and specialists such as milkers, tractor drivers, 35 percent of whom are still liable for call-up.

"13. The President emphasized that factory managers, police, and the Armed Forces must make preparations for the employment of prisoners of war.

"14. In the agricultural sphere preparations must also be made to relieve bottlenecks by help from neighboring farms, systematic use of all machines and laying in stocks of spare parts.

"15. The President announced that in wartime hundreds of thousands of workers from nonwar industries in the Protectorate are to be employed under supervision in Germany, particularly in agriculture. They are to be housed in barracks. General Field Marshal Göring will obtain a decision from the Führer on this matter."

I shall omit 16.

If I may say as I offer this, it seems rather detailed as showing the extent of preparation already accomplished at the time, in June of 1939:

"17. a. The result of the procedure of establishing indispensable and guaranteed workers is at present as follows: Of 1,172,000 applications for indispensability, 727,000 have been approved and 233,000 rejected."

I shall pass to "c" near the bottom of the page:

"The orders to supplementary personnel to report for duty are ready and tied up in bundles at the labor offices."

The meeting proceeds to consider production premiums in connection with wages, and I pass to 21, a detail which I offer as indicating that a long war was in anticipation.

"When labor is being regrouped, it is important—and with specialists even essential—that the workers are retrained for their work in the new factory, in order to avoid setbacks in the initial months of the war. After a few months have passed

even the replacement of most of the specialists must be possible."

I pass to the Point V:

"The Plenipotentiary General for Economy, Reich Minister of Economy Funk, stated his opinion on the fluctuations of the schedule of manpower, from the viewpoint of the carrying on of industry.

"24. a. In accordance with the verbal agreements made with the OKW, the regulations regarding indispensable personnel have been laid down and the certificates of indispensability issued."

I shall pass to Point Number 25 on Page 15:

"In reply to the request by the speaker that when withdrawing workers for the naval dockyards, more consideration should be shown for the important sections of industry, particularly export and newspaper concerns, the President pointed out the necessity of carrying out the naval building program as ordered by the Führer in full."

I pass to the large heading VI:

"The Plenipotentiary General for Administration, Reich Minister of the Interior, Dr. Frick, dealt with the saving of labor in the public administration.

"27. The task is primarily a problem of organization. As can be seen from the surveys, which were submitted to those attending the conference, showing how the authorities, economic and social services are organized, there are approximately 50 different kinds of officials in the district administration, each quite independent of the other—an impossible state of affairs. Formerly there were in the State two main divisions, the state civil service and the Wehrmacht. After the seizure of power, the Party and the permanent organizations (Reichsnährstand, *et cetera*) were added to these, with all their machinery from top to bottom. In this way the number of public posts and officials was increased many times over. This makes public service more difficult.

"28. Since the war tasks have increased enormously."—The context makes it clear that that is the preceding war.—"The organizing of total war naturally requires much more labor, even in the public administration, than in 1914. But it is an impossibility that this system should have increased its numbers 20 to 40 fold in the lowest grade alone. For this reason, the Reich Ministry of the Interior is striving for uniformity of administration."

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A small conference—small commission was created. I offer Number 29 in connection with Göring's testimony that they ceased to function:

"Instead of further discussions before the whole assembly, the forming of a small commission which will make definite proposals is recommended. Extensive preparatory work has been undertaken."

And a note by the committee that the committee had been functioning.

Point 30:

"The President requested that the commission's proposals be submitted. It was an important section for the preparation for war."

I shall pass to the large subdivision C which relates to increasing the efficiency of the communications service, starting with the receipt of a report from the Army General Staff.

"31. Eighteen months ago the result of the examination of the plan for strategic concentration showed that the transport service could not meet all the demands made on it by the Armed Forces. The Minister of Transport confirmed this statement. The 1938 part of the Four Year Plan will presumably be completed in August 1939.

"32. Shortly after this program was drawn up demands were made on the Wehrmacht which had changed completely compared with the traditional use of the Wehrmacht at the beginning of a war. Troops had to be brought to the frontier, in the shortest possible time, in numbers which had until then been completely unforeseen. The Wehrmacht was able to fulfill these demands by means of organizational measures but transport could not.

"33. In the field of transportation Germany is at the moment not yet ready for war."

I offer the detail which follows, in contradiction of the statements repeatedly made by a number of witnesses that the movements of the Wehrmacht in the Rhineland, the Anschluss, and all the rest of it, even Czechoslovakia, were surprise movements.

"a. In the case of the three operations in 1938/1939 there was no question of an actual strategic concentration. The troops were transported a long time beforehand near to the area of strategic concentration by means of camouflaged measures.

"b. This stop-gap is of no use whatever when the time limit cannot be fixed or is not known a long time beforehand, but when an unexpected and almost immediate military decision

is required. According to the present situation transport is not in a position, despite all preparations, to bring up the troops."

"a" is unimportant for my purposes, "a" on Page 18. "b" and "c" represent steps to be taken to meet the deficiency. On Page 19 I shall not bother to read the statements on 38, showing the preparation of highways from east to west and from north to south.

I read Number 39, if I may:

"The President remarked that even in peacetime certain vital supply stores of industry and the Armed Forces are to be transferred to the war industrial centers to economize in transport later on."

I shall pass to Point Number 41 on Page 20:

"To sum up, the President affirmed that all essential points had been cleared up at this meeting."

The American branch of the Prosecution has some additional documents which Mr. Dodd will submit, if it is agreeable to the Tribunal.

THE PRESIDENT: We will adjourn now.

[A recess was taken.]

THE PRESIDENT: Mr. Dodd, you have got some other papers to put in?

MR. DODD: I would like to offer, Mr. President, Document 4006-PS, which is the bulletin of the Reich Minister for Armament and Ammunition; and it is a matter that the Tribunal, in our judgment, may take judicial notice of. It is an official publication, but it will be quite helpful in connection with the labor program as between Sauckel and Speer; and it is offered for that purpose, to clear up some of the doubts that may have arisen after the Speer and Sauckel testimony. I think there is no necessity to read it at all but simply to offer it. And it would become Exhibit USA-902.

And then I would like to offer Document 1452-PS. This is a report of a conference of the chiefs with the chief of the department of the Economic Armament Office, and I would just like to read a short excerpt from it. It is Document 1452-PS, dated the 24th of March 1942. It says:

"Conferences of the chiefs with the chief of the department. Report of the chief of the department on the conference on the 23d of March with Milch, Witzell, Leeb, in Minister Speer's office. The Führer looks upon Speer as his principal mouth-piece, his trusted adviser in all economic spheres. Speer is the

only one who has something to say today. He can interfere in any department. He already disregards all other departments."

The remainder of the document we do not wish to quote, I do not think it is necessary because the text is not changed any by what we have quoted from it. That becomes Exhibit USA-903.

Now, we also have here some photographs, Mr. President; and these are offered with respect to the Defendant Kaltenbrunner. They were turned over to us by our colleagues of the French Prosecution. And the first one is Document F-894, which becomes Exhibit USA-904. That is a picture showing Himmler congratulating someone, Kaltenbrunner immediately to his rear.

THE PRESIDENT: How are they identified?

MR. DODD: I will submit it—well, these are all captured documents, of course, but—you mean in the picture, Mr. President?

THE PRESIDENT: No, I mean by capture or any other way. Where do they come from?

MR. DODD: Well, I assume them to be all captured documents. Oh, I see now—there are affidavits attached to each one which explain their source. Here, this first one is a man by the name of François Boix, who says that he is a photographer and was interned at Mauthausen and so on; and he attests that this photograph was taken, and so forth. I think that is sufficient—I assume it is—to identify the picture. I believe that each one of them has a similar statement.

Now the next one is Document F-896, which becomes Exhibit USA-905. And this as well on the back of the original bears an affidavit by François Boix.

The next one is Document F-897, which becomes Exhibit USA-906. And this as well, bears the affidavit of François Boix and shows Kaltenbrunner and Himmler and other SS officials.

And then, lastly, Document F-895, which becomes Exhibit USA-907; and this picture we particularly call to the Tribunal's attention. It, as well, bears the certificate of François Boix. Kaltenbrunner is there in the second row, Himmler and Hitler in the immediate center between Kaltenbrunner and, apparently, Martin Bormann, taken at a concentration camp, which appears from the picture of the inmates on the left side.

Then we wish to offer a very short affidavit, which is Document 4033-PS and we offer as Exhibit USA-907—no, 8, 908. It is the deposition of Oswald Pohl, P-o-h-l, dated the 28th of May 1946. The affidavit—the substance of the affidavit reads as follows:

"I can say with absolute certainty that while on official business at Mauthausen I saw and spoke to SS Obergruppenführer Kaltenbrunner . . ."

THE PRESIDENT: One moment. Was Pohl called as a witness?

MR. DODD: No, Sir, he was not, he was not called. That was Puhl, P-u-h-l. The names are similar.

"... I saw and spoke to SS Obergruppenführer Kaltenbrunner there at the officers' mess on the right-hand side of the camp entrance either in the autumn of 1943 or the spring of 1944. I took lunch with him there at the mess table."

And then another affidavit, Document 4032-PS, which becomes Exhibit USA-908—no, 909. I think it is unnecessary to read this; it has been translated. It is the deposition of one Karl Reif, R-e-i-f, in which he states that he saw Kaltenbrunner either in May or June, about midday, in 1942 in the camp at Mauthausen.

That is all we have to offer, Mr. President.

THE PRESIDENT: Do the other members of the Prosecution wish to offer any other evidence?

[There was no response.]

Then now we can pass to evidence to be called on behalf of Bormann. Dr. Bergold, will you call the witnesses you wish to call—Kempka.

DR. BERGOLD: Gentlemen of the Tribunal, I shall call the witness Kempka.

[The witness Kempka took the stand.]

THE PRESIDENT: Will you state your full name, please.

ERICH KEMPKA (Witness): My name is Erich Kempka.

THE PRESIDENT: Will you repeat this oath after me; I swear by God—the Almighty and Omniscient—that I will speak the pure truth—and will withhold and add nothing.

[The witness repeated the oath.]

THE PRESIDENT: You may sit down.

DR. BERGOLD: Witness, in what capacity were you employed near Hitler during the war?

KEMPKA: During the war I worked for Adolf Hitler as his personal driver.

DR. BERGOLD: Did you meet Martin Bormann in that capacity?

KEMPKA: Yes, I met Martin—Reichsleiter Martin Bormann in this capacity at that time as my indirect superior.

DR. BERGOLD: Witness, on what day did you see the Defendant Martin Bormann for the last time?

KEMPKA: I saw the Reichsleiter, the former Reichsleiter Martin Bormann, on the night of 1-2 May 1945 near the Friedrichstrasse railroad station, at the Weidendammer Bridge. Reichsleiter Bormann—former Reichsleiter Bormann—asked me what the general situation was at the Friedrichstrasse station, and I told him that there at the station it was hardly possible . . .

THE PRESIDENT: You are going too fast. He asked you what?

KEMPKA: He asked me what the situation was and whether one could get through there at the Friedrichstrasse station. I told him that was practically impossible, since the defensive fighting there was too heavy. Then he went on to ask whether it might be possible to do so with armored cars. I told him that there was nothing like trying it.

Then a few tanks and a few SPW (armored personnel carrier) cars came along, and small groups boarded them and hung on. Then the armored cars pushed their way through the antitank trap and afterwards the leading tank—along about at the middle of the tank on the left-hand side, where Martin Bormann was walking—suddenly received a direct hit, I imagine from a bazooka fired from a window, and this tank was blown up. A flash of fire suddenly shot up on the very side where Bormann was walking and I saw . . .

THE PRESIDENT: You are going too fast. You are still going much too fast. The last thing I heard you say was that Bormann was walking in the middle of the column. Is that right?

KEMPKA: Yes, at the middle of the tank, on the left-hand side.

Then, after it had got 40 to 50 meters past the antitank trap, this tank received a direct hit, I imagine from a bazooka fired from a window. The tank was blown to pieces right there where Martin—Reichsleiter Bormann—was walking.

I myself was flung aside by the explosion and by a person thrown against me who had been walking in front of me—I think it was Standartenführer Dr. Stumpfegger—and I became unconscious. When I came to myself I could not see anything either; I was blinded by the flash. Then I crawled back again to the tank trap, and since then I have seen nothing more of Martin Bormann.

DR. BERGOLD: Witness, did you see Martin Bormann collapse in the flash of fire when it occurred?

KEMPKA: Yes, indeed, I still saw a movement which was a sort of collapsing. You might call it a flying away.

DR. BERGOLD: Was this explosion so strong that according to your observation Martin Bormann must have lost his life by it?

KEMPKA: Yes, I assume for certain that the force of the explosion was such that he lost his life.

DR. BERGOLD: How was Martin Bormann dressed at that time?

KEMPKA: Martin Bormann was wearing a leather coat, an SS leader's cap, and the insignia of an SS Obergruppenführer.

DR. BERGOLD: Do you therefore believe that if he had been found wounded on that occasion he would have been immediately identified, by this clothing, as being one of the leading men of the Movement?

KEMPKA: Yes, indeed.

DR. BERGOLD: You said that another man was walking either beside or ahead of Martin Bormann, namely a Herr Naumann of the Propaganda Ministry?

KEMPKA: Yes, it was the former State Secretary, Dr. Naumann.

DR. BERGOLD: Was he approximately at the same distance from the explosion?

KEMPKA: No, he was about 1 or 2 meters ahead of Martin Bormann.

DR. BERGOLD: Have you seen anything of this State Secretary Naumann subsequently?

KEMPKA: No, I have not seen him again either, nor Standartenführer Dr. Stumpfeker.

DR. BERGOLD: Then you crawled back, did you not?

KEMPKA: Yes.

DR. BERGOLD: And nobody else followed you?

KEMPKA: Certainly. Always, when you passed this antitank trap, you would run into defensive fire; a few only would remain lying on the spot while the rest always retreated. But those on that tank I have never seen again.

DR. BERGOLD: Gentlemen of the Tribunal, I have no further questions for this witness.

MR. DODD: I have no questions, Mr. President.

THE PRESIDENT: Do the Defense Counsel want to ask him any questions?

[There was no response.]

[Turning to the witness.] How many tanks were there in this column?

KEMPKA: That I cannot say at the moment—possibly two or three. There may have been four, but there were more SPW cars, armored personnel carriers.

THE PRESIDENT: How many were there of them?

KEMPKA: More and more came up, and then some of them drove away again. They tried to break through at that point. Possibly one or two tried. The others withdrew after the tank was blown up.

THE PRESIDENT: Where did the column start from?

KEMPKA: That I do not know. They came quite suddenly—there they were, I assume that they were tanks which had withdrawn into the middle of the town and were also trying to break out in a southerly direction.

THE PRESIDENT: When you say they were there suddenly, where do you mean they were? Where did they pick you up?

KEMPKA: I was not picked up. I left the Reich Chancellery...

THE PRESIDENT: Well, where did they join you? Where did you first see them?

KEMPKA: At the Weidendammer Bridge, behind the Friedrichstrasse station. They turned up there during the night.

THE PRESIDENT: Where was it that Bormann first asked you whether it would be possible to get through?

KEMPKA: That was at the tank barrier behind the Friedrichstrasse station at the Weidendammer Bridge.

THE PRESIDENT: Do you mean that you met him in the street?

KEMPKA: Yes. Martin Bormann was not present when we left the Reich Chancellery; he did not appear at the bridge until between 2 and 3 o'clock in the morning.

THE PRESIDENT: You met him there just by chance, do you mean?

KEMPKA: I only met him by chance, yes.

THE PRESIDENT: Was there anybody with him?

KEMPKA: State Secretary Dr. Naumann from the Ministry of Propaganda was with him, as well as Dr. Stumpfecker who had been the last doctor who was with the Führer.

THE PRESIDENT: How far were they from the Reich Chancellery?

KEMPKA: That is—are—up to—from the Reich Chancellery to the Friedrichstrasse station is approximately a quarter of an hour's walk under normal circumstances.

THE PRESIDENT: And then you saw some tanks and some other armored vehicles coming along, is that right?

KEMPKA: Yes, yes indeed.

THE PRESIDENT: German tanks and German armored vehicles?

KEMPKA: Yes, German armored cars.

THE PRESIDENT: Did you have any conversation with the drivers of them?

KEMPKA: No, I did not talk to the drivers. I think State Secretary—former State Secretary Dr. Naumann did.

THE PRESIDENT: And then you did not get into the tanks or the armored vehicles?

KEMPKA: No, we did not get in—neither State Secretary Dr. Naumann nor Reichsleiter Bormann.

THE PRESIDENT: You just walked along?

KEMPKA: I just walked along, yes.

THE PRESIDENT: And where were you with reference to Bormann?

KEMPKA: I was behind the tank, about—on the left-hand side behind the tank.

THE PRESIDENT: How far from Bormann?

KEMPKA: It was perhaps 3 or 4 meters.

THE PRESIDENT: And then some missile struck the tank, is that right?

KEMPKA: No, I believe the tank was hit by a bazooka fired from a window.

THE PRESIDENT: And then you saw a flash and you became unconscious?

KEMPKA: Yes, I suddenly saw a flash of fire and in the fraction of a second I also saw Reichsleiter Bormann and State Secretary Naumann both make a movement as if collapsing and flying away. I myself was thrown aside with them at that same moment and subsequently lost consciousness.

THE PRESIDENT: And then you crept away?

KEMPKA: When I recovered I could not see anything and then I crawled away and crawled until I bumped my head against the tank barrier.

THE PRESIDENT: Where did you go to that night?

KEMPKA: I waited there for a while, and then I said farewell to my drivers, some of whom were still there; and then I stayed in the ruins of Berlin, and on the following day I left Berlin.

THE PRESIDENT: Where were you captured?

KEMPKA: I was captured at Berchtesgaden.

THE TRIBUNAL (Mr. Biddle): How near were you to the tank when it exploded?

KEMPKA: I estimate 3 to 4 meters.

THE TRIBUNAL (Mr. Biddle): And how near was Bormann to the tank when it exploded?

KEMPKA: I assume that he was holding on to it with one hand.

THE TRIBUNAL (Mr. Biddle): Well, you say you assume it. Did you see him or did you not see him?

KEMPKA: I did not see him on the tank itself. But to keep pace with the tank I had done the same thing and had held on to the tank at the back.

THE TRIBUNAL (Mr. Biddle): Did you see Bormann trying to get on the tank just before the explosion?

KEMPKA: No, I did not see that. I did not see any effort on Bormann's part which indicated that he wanted to climb onto the tank.

THE TRIBUNAL (Mr. Biddle): How long before the explosion were you looking at Bormann?

KEMPKA: All this happened in a very brief period. When I was still talking to Bormann the tanks turned up and we passed the tank trap right away and after 30 or 40 meters the tank was hit.

THE TRIBUNAL (Mr. Biddle): What do you call a brief period?

KEMPKA: Well, while we were talking, that was perhaps a few minutes only.

THE TRIBUNAL (Mr. Biddle): And how long between the conversation and the explosion?

KEMPKA: I cannot tell you the exact time, but surely it was not a quarter of an hour, or perhaps rather not half an hour.

THE TRIBUNAL (Mr. Biddle): Had you been in the Chancellery just before this?

KEMPKA: I left the Reich Chancellery in the evening about 9 o'clock.

THE TRIBUNAL (Mr. Biddle): Have you ever told this story to anyone else?

KEMPKA: I have been interrogated several times on this subject and have already made the same statement.

THE TRIBUNAL (Mr. Biddle): And who took your interrogation, some officers?

KEMPKA: Yes.

THE TRIBUNAL (Mr. Biddle): Of what army, what nations?

KEMPKA: I have been interrogated by various officers of the American Army, the first time at Berchtesgaden, the second time at Freising, and the third time at Oberursel.

MR. DODD: As a result of the Court's inquiry there are one or two questions that occur to me that I think perhaps should be brought out which I would like to ask the witness, if I may.

THE PRESIDENT: Certainly.

MR. DODD: You were with Bormann, were you, at 9 o'clock in the bunker in the Reich Chancellery on that night?

KEMPKA: Yes, indeed. I saw him for the last time about 9 o'clock in the evening. When I said farewell to Dr. Goebbels; I also saw Martin Bormann down in the cellar; and then I saw him again during the night about 2 or 3 o'clock in the morning.

MR. DODD: Well, maybe you said so, but I did not get it if you did. Where did you see him at 2 or 3 in the morning prior to the time that you started to walk with him along with the tank?

KEMPKA: Before that I saw him at the Friedrichstrasse station between 2 or 3 in the morning, and before that I saw him for the last time at 21 hours in the Reich Chancellery on the preceding evening.

MR. DODD: Well I know you did. But did not you and Bormann have any conversation about how you would get out of Berlin when you left the Reich Chancellery bunker at about 9 o'clock that night?

KEMPKA: I took my orders from the former Brigadeführer Milunke. I was not receiving direct orders from Reichsleiter Bormann any more.

MR. DODD: I did not ask you if you got an order from him. I asked if you and Bormann had not—and whoever else was there—had not discussed how you would get out of Berlin. It was 9 o'clock at night and the situation was getting pretty desperate. Did you not talk about how you would get out that night? There were not many of you there.

KEMPKA: Oh yes, there were about 400 to 500 people in all still in the Reich Chancellery and those 400 or 500 people were divided into separate groups, and these groups left the Chancellery one by one.

MR. DODD: I know there may have been that many in the Chancellery. I am talking about that bunker that you were in. You testified about this before, have you not? You told people that you knew that Hitler was dead as well as Bormann. And you must have been in the bunker if you know that.

KEMPKA: Yes, I have already testified to that effect.

MR. DODD: Well, what I want to find out is whether or not you and Bormann and whoever was left in that bunker talked about leaving Berlin that night before you left the bunker?

KEMPKA: No, I did not speak about it any more to Reichsleiter Bormann at that time. We had marching orders only to the effect that if we were successful we should report at Fehrbellin where there was a combat group which we were to join.

MR. DODD: You are the only man who has been able to testify that Hitler is dead and the only one who has been able to testify that Bormann is dead, is that so, so far as you know?

KEMPKA: I can state that Hitler is dead and that he died on 30 April in the afternoon between 2 and 3 o'clock.

MR. DODD: I know, but you did not see him die either, did you?

KEMPKA: No, I did not see him die.

MR. DODD: And you told the interrogators that you believe you carried his body out of the bunker and set it on fire. Are you not the man who has said that?

KEMPKA: I carried out Adolf Hitler's wife, and I saw Adolf Hitler himself wrapped in a blanket.

MR. DODD: Did you actually see Hitler?

KEMPKA: I did not see all of him. The blanket in which he was wrapped was rather short, and I only saw his legs hanging out.

MR. DODD: I do not think I will inquire any further, Mr. President.

DR. BERGOLD: I have no further questions either.

THE PRESIDENT: The witness can retire.

DR. BERGOLD: Gentlemen of the Tribunal, the witness Walkenhorst is also still present here. It appears to me that there is a misunderstanding between the High Tribunal and myself. I stated Saturday that I did not wish to call any more witnesses besides the witness Kempka, and I expressly waive the witness Walkenhorst.

THE PRESIDENT: What was he? What did you ask for him to prove in the first instance?

DR. BERGOLD: I had originally called him as a substitute...

THE PRESIDENT: We have got your application.

DR. BERGOLD: But after talking to witness Klopfer, whom I have also waived, I am also waiving the witness Walkenhorst because he does not appear to me to be competent enough to testify on what I wanted him to testify about.

My entire presentation of evidence, therefore, is now completed, except for the two documents which the Tribunal have already granted me, namely, the decree about stopping the measures against the churches and Bormann's decree from the year 1944, with which he forbade members of the Chancellery to be members of the SD.

Those two documents I have not yet received. When I have received them I shall submit them.

THE PRESIDENT: Very well.

Dr. Servatius, you have some question or affidavit you wanted to get from this witness Walkenhorst, did you not?

DR. SERVATIUS: I have an affidavit from this witness Walkenhorst which deals briefly with the question of the telephone conversation which Sauckel had at that time about the evacuation of the Buchenwald Camp. He has been accused of having ordered the evacuation of the camp when the American army approached. Now this witness Walkenhorst has accidentally been found and it turns out that oddly enough he was the man with whom Sauckel spoke. He has confirmed to me in an affidavit that Sauckel demanded that the camp should be surrendered in an orderly way.

That is all I wanted to ask this witness. I can submit it here in the form of an affidavit.

THE PRESIDENT: Do the Prosecution want the man called or will the affidavit do?

DR. SERVATIUS: I am satisfied with handing over the affidavit.

COL. PHILLIMORE: My Lord, as far as the Prosecution are concerned, an affidavit would suffice.

THE PRESIDENT: Very well.

DR. SERVATIUS: Then I shall submit the affidavit and I will give the exhibit number together with my list.

THE PRESIDENT: Yes, there is one other matter to which I wish to draw the attention of defendants' counsel.

The Tribunal have been informed as to the length of the speeches of certain of the defendants' counsel which have been placed before the Translation Division for translation, and in the case of the Defendant Keitel and in the case of the Defendant Jodl the speeches which have been put into the Translation Division seem to be very much longer than the Tribunal had anticipated and quite impossible to be spoken in 1 day.

Would counsel for the Defendant Keitel explain to the Tribunal why that is and what steps he has taken to shorten his speech?

DR. NELTE: Mr. President, I have sent a letter to the Court today which I believe is not yet in the Tribunal's possession. In it I requested that in the case of the Defendant Keitel I should be permitted to exceed the regular length of time, which had been limited to 1 day for the big cases. When, at the request of the Tribunal, I stated the time which my final speech would take, I had my manuscript completed. This manuscript would have taken about 7 hours. I gave that manuscript to the Translation Division

in that form because it was no longer possible to alter it. I submitted the first part last Wednesday and then the second part on Saturday morning.

If the Tribunal, in accordance with its decision, fixes 1 day, that is, 5½ hours of actual speech, as the maximum and is unwilling to depart from that ruling in any case, not even in the case of the Defendant Keitel, who has been particularly seriously implicated, then I shall be forced to eliminate certain passages from the manuscript and to submit them only in writing. I hope the Tribunal will also decide whether that is possible.

THE PRESIDENT: Dr. Nelte, the Tribunal takes note of the fact that when you were asked how long your speech would take, you said, I think, 7 hours.

DR. NELTE: Yes.

THE PRESIDENT: 7 hours. Well, according to the estimate which has been given to the Tribunal, the speech which you submitted for translation would take about 13 hours. That is nearly double as long as you yourself said, and it is almost exactly double the length of the speech which has been submitted for the Defendant Ribbentrop, whose case is almost as extensive if not quite as extensive; and it appears to the Tribunal to be out of all reason to put in a speech which will probably take nearly double the time that you yourself stated. The speech you put in is more than double the length of the speech which has been put in on behalf of the Defendant Göring.

DR. NELTE: Naturally, I am unable to know by what points of view the counsel for Reich Marshal Göring or Foreign Minister Von Ribbentrop are guided and governed. I can only be guided by my own views and sense of duty.

THE PRESIDENT: Perhaps that is a matter of comparison, it is true, but you said 7 hours yourself, and you now put in a speech which will probably take 13.

DR. NELTE: I believe, Mr. President, that I shall make that speech in 7 hours, if I have 7 hours speaking time.

THE PRESIDENT: Well, the Tribunal has given this matter a very full consideration, as you are aware; and they have said that every speech must be made in 1 day and that will take up some considerable time for the whole of the defendants to make their speeches.

DR. NELTE: Mr. President, I shall wait for your decision. If I am confined to 1 day, then I shall have to leave out certain parts from my manuscript. But in that case I should have to ask that the remainder be taken cognizance of by the Tribunal, because

every thing that I have included in my manuscript is the minimum of what should be delivered on such a comprehensive case.

THE PRESIDENT: Dr. Nelte, we will consider that application for you to be allowed to put in the other passages in your speech; and we will let defendants' counsel know what our decision is upon that.

Dr. Siemers, the Tribunal has now received a full report showing the immense trouble taken by the Secretariat to find or to try and find the witness Schulze, Otto Schulze, for you since you first asked for him in February of this year; and the Tribunal would like to know what steps you have taken in the meantime to try and find him.

DR. SIEMERS: I believe, Mr. President, that there was no need to find the witness because, actually, it was known that he was living in Hamburg-Blankenese and because, in my opinion, he is still in Hamburg-Blankenese; and I have given this address to the General Secretariat many times.

THE PRESIDENT: Well, you knew what the General Secretary's office were doing about the matter. You knew that they were unable to find him at the address. You knew that they had sent the interrogatories to Washington because they were told he had been taken over there, and we are told that you have been in Hamburg yourself.

DR. SIEMERS: That the interrogatory was sent to Washington is something which I have known only since last Friday, after my return from Hamburg. I personally did not anticipate that such a mistake or such a misunderstanding could arise. Unfortunately, I also do not know how it did arise. Far be it from me to make any kind of accusation. I have merely requested that if the document were received, then the Tribunal should agree to receive it in evidence later. Unfortunately, I cannot submit it today. I immediately informed the General Secretariat of the address once more; I do not know anything more than this address in Hamburg, either. In my opinion, Admiral Schulze is not in captivity. It is possible that during my absence some misunderstanding occurred, but I myself heard that only last Friday.

THE PRESIDENT: Well, I cannot understand why, during all these months that you have been here and have had full opportunity of seeing the General Secretary and have received all the assistance which you and all the other defendants' counsel have received from the General Secretariat, that you should not have helped the General Secretary better to find this witness. That is all.

We will adjourn now.

[The Tribunal adjourned until 4 July 1946, at 1000 hours.]

ONE HUNDRED AND SEVENTY-FIRST DAY

Thursday, 4 July 1946

Morning Session

THE PRESIDENT: Dr. Sauter.

DR. SAUTER: If you please, Mr. President.

THE PRESIDENT: The Tribunal has received your letter of the 17th of June of this year, signed by the Defendant Walter Funk.

DR. SAUTER: Yes.

THE PRESIDENT: The Tribunal proposes to take notice of that; and if you will read it, it will then become a part of the record. So if you will read it to us now.

DR. SAUTER: Mr. President, at the moment I do not have the letter with me.

THE PRESIDENT: You may have my copy, but that is in English. The Tribunal would wish you to do it at 2 o'clock, then—to read that letter.

DR. SAUTER: Thank you, Mr. President.

THE PRESIDENT: The same observation applies to Dr. Exner's letter of the 23d of June 1946 on behalf of the Defendant Jodl; only the Tribunal thinks that that letter also should be signed by the defendant, and read by Dr. Exner at 2 o'clock.

I call on Dr. Jahrreiss.

PROFESSOR DR. HERMANN JAHREISS (Counsel for Defendant Jodl): Mr. President and Gentlemen of the Tribunal, the main juridical and fundamental problem of this Trial concerns war as a function forbidden by international law; the breach of peace as treason perpetrated upon the world constitution.

This problem dwarfs all other juridical questions.

The four chief prosecutors have discussed the problem in their opening speeches, sometimes as the central theme of their presentation, sometimes as a fundamental matter, while indeed differing in their conceptions thereof.

It is now up to the Defense to examine it. The body of Defense Counsel have asked me to conduct this examination. It is true that

it is for each counsel to decide whether and to what extent he feels in a position to renounce, as a result of my arguments, his own presentation of the question of breach of the peace. However, I have reason to believe that counsel will avail themselves of this opportunity to such an extent that the intention of the Defense to contribute materially toward a technical simplification of the phase of the Trial which is now beginning, will be realized by my speech.

I am concerned entirely with the juridical question, not with the appreciation of the evidence submitted during the past months. Also, I am dealing only with the problems of law as it is at present valid, not with the problem of such law as could or should be demanded in the name of ethics or of human progress.

My task is purely one of research; research desires nothing but the truth, knowing full well that its goal can never be attained and that its path is therefore without end.

I wish to thank the General Secretary of the Tribunal for having placed at my disposal documents of a decisive nature and very important literature. Without this chivalrous assistance it would not have been possible, under the conditions obtaining at present in Germany, to complete my work. The literature accessible to me originated predominantly in the United States. Familiar as I am with the vast French and English literature on this subject, which I have studied during the last quarter of a century—I am, unfortunately, not conversant with the Russian language—I believe, however, that I can fairly say that no important concept has been overlooked, because in no other country of the world has the discussion of our problem, which has become the great problem of humanity, been more comprehensive and more profound than in the United States.

This very fact has enabled me to forego the use of legal literature published in the former German sphere of control. In this way even the semblance of a *pro domo* line of argumentation will be avoided.

Owing to the short time at my disposal for the purpose of this speech, and at the same time in view of the abundance and complexity of the problems with which I have to deal, it will not be possible for me to cite all the documents and quotations I am referring to. I shall present only a few sentences. Any other procedure would interrupt the train of argument for the listener. I shall therefore submit to the Tribunal the documents and literary references in the form of appendices to my juridical arguments. What I am saying can thus quickly be verified.

The Charter threatens individuals with punishment for breaches of the peace between states. It would appear that the Tribunal is

accepting the Charter as the unchallengeable foundation for all juridical considerations. This means that the Tribunal will not examine the question whether the Charter, as a whole or in parts, is open to juridical objections; yet such a question nevertheless continues to exist.

If this is so, why, then, have any discussion at all on the main fundamental legal problems?

The British chief prosecutor even made it the central theme of his long address to examine the relationship of the Charter, where our problem is concerned, to existing international law. He justified the necessity of his arguments by saying that it was the task of this Trial to serve humanity and that this task could be fulfilled by the Trial only if the Charter could hold its own before international law, that is, if punishment of individuals for breach of the peace between states was established in existing international law.

It is, indeed, necessary to clarify whether certain stipulations of the Charter may have created new laws, and consequently laws with retroactive force.

Such a clarification does not serve the purpose of facilitating the work of the historians. They will examine this, just as all the other findings in this Trial, according to the rules of free research; perhaps through many years of work and certainly without limiting the questions to be put and, if possible, on the basis of an ever greater wealth of documents and evidence.

Such a clarification is indispensable, if only for the reason that the decision as to right and wrong depends, or may depend, thereupon, all the more so if the Charter is considered legally unassailable.

Let us assume for the sake of argument that the Charter does not formulate criminal law which is already valid but creates new, and therefore retroactive, criminal law. What does this signify for the verdict? Must not this be of importance for the question of guilt?

Possibly the retroactive law which, for instance, penalizes aggressive war had not yet become fixed or even conceived in the conscience of humanity at the time when the act was committed. In that case the defendant cannot be guilty, either before himself or before others, in the sense that he was aware of the illegality of his behavior. Possibly, on the other hand, the retroactive law was promulgated at a time when a fresh conscience was just beginning to take shape, although not yet clear or universal. It is then quite possible for the defendant to be not guilty in the sense that he was aware of the wrongfulness of his commissions and omissions.

From the point of view of the European continental conception of penal law, the fact that a person was not aware of doing wrong is certainly a point which the Tribunal must not overlook.

Now the question as to whether the penal law contained in the Charter is *ex post facto* penal law does not present any difficulty as long as the stipulations of the Charter are unequivocal and the prescriptions of international law as applying to date are uncontested.

But what if we have regulations capable of different interpretations before us or if the concepts of international law are the subject of controversy? Let us take the first: A stipulation of the Charter is ambiguous and therefore requires interpretation. According to one justifiable interpretation the stipulation appears to be an *ex post facto* law; according to another, which can be equally well justified, it does not. Let us take the second: The regulation is clear or has been clarified by interpretation of the Court, but experts on international law are of different opinions as to the legal position applying to date; it is not certain whether we are not concerned with an *ex post facto* law. In both cases it is relevant whether the defendant was conscious of the wrongfulness of his behavior.

I intend to demonstrate how important these considerations are in this Trial, and shall now begin the examination.

The starting points of the British and French chief prosecutors are fundamentally different.

The British chief prosecutor argues as follows, if I understood him correctly:

First, the unrestricted right of states to wage war was abolished in part by the League of Nations Covenant, later as a general principle by the Kellogg-Briand Pact, which continues to be the nucleus of world peace order to this very day. War, thus prohibited, is a punishable violation of law within and toward the community of nations, and any individual who has acted in a responsible capacity is punishable. Secondly, the indictment of individuals for breach of the peace, although novel, not only represents a moral necessity, but is in fact long overdue in the evolution of law; it is quite simply the logical result of the new legal position. Only in outward appearance does the Charter create new law.

And if I understood the British chief prosecutor correctly, he is asserting that since the conclusion of the Pact of Paris there exists a clear legal order based on the entire world's uniform conviction as to what is right. Since 1927 the United States have negotiated first with France, then with the remaining Great Powers, with the exception of the Soviet Union, and also with some of the smaller powers concerning the conclusion of a treaty intended to abolish war. Secretary of State Kellogg stated (in a note to the French Ambassador, 27 February 1928) with memorable impressiveness what the Government in Washington were striving for, namely:

The powers should renounce war as an instrument of national politics, waiving all legal definitions and acting from a practical point of view, plainly, simply, and unambiguously, without qualifications or reservations.¹ Otherwise the object desired would not be attained: To abolish war as an institution, that is, as an institution of international law.²

After the negotiations had been concluded, Aristide Briand, the other of the two statesmen from whose initiative springs that pact which in Germany is often called the "Pact to Outlaw War," declared, when it was signed in Paris:

"Formerly deemed a divine right and remaining in international law as a prerogative of sovereignty, such a war has now at last been legally stripped of that which constituted its greatest danger: its legitimacy. Branded henceforth as illegal, it is truly outlawed by agreement. . . ."³

According to the conception of both leading statesmen, the Paris Pact amounted to a change of the world order at its very roots, if only all, or almost all, nations of the world—and particularly all the great powers—signed the pact or adhered to it later on, which did actually happen.

The change was to be based on the following conception: Up to the time of the Kellogg-Briand Pact, war had been an institution of international law. After the Kellogg-Briand Pact, war was high treason against the order created by international law.

Many politicians and scholars all over the world shared this conception. It is the definite basic conception of that unique commentary on the League of Nations Covenant by which Jean Ray, far beyond the borders of France, stirred the hearts of all practical and theoretical proponents of the idea of preventing war.⁴ It is also the basic conception of the Indictment at Nuremberg.

¹ Note of Secretary of State Kellogg to the French Ambassador of 27 February 1928.

² Note of the United States Government to the Governments of Great Britain, Germany, Italy, and Japan of 13 April 1928.

³ "Considérée jadis comme le droit divin et demeurée dans l'éthique internationale comme une prérogative de la souveraineté, une pareille guerre est enfin destituée juridiquement de ce qui constituait son plus grave danger: sa légitimité. Frappée désormais d'illégalité, elle est soumise au régime conventionnel d'une véritable mise hors la loi. . . ." The speech by the French Foreign Minister is reproduced in The Department of State; Treaty for the Renunciation of War. United States Government Printing Office; Page 309.

⁴ Commentaire du Pacte de la Société des Nations selon la politique et la jurisprudence des organes de la Société. Paris 1930. (See especially Page 73 et sequentes) Further in the supplements for 1931-35; 1er Supplément au Commentaire du Pacte (1931) Page 13 et sequentes; 2ème Supplément (1932) Page 17 et sequentes; 3ème Supplément (1933) Pages 18, 39; 4ème Supplément (1935) Pages 19, 99.

Diplomacy and the doctrine of international law found their way back into their old tracks after the first World War, after a momentary shock from which they recovered with remarkable rapidity. This fact horrified all those who were anxious to see the conclusions—all the conclusions—drawn from the catastrophe.

Mankind had a "grand vision of world peace" then, as Senator Bruce called it when the Pact of Paris was before the Senate for ratification.⁵ I know how much the personality and the achievements of Woodrow Wilson are a subject of dispute. But the more detachment we achieve, the clearer it becomes that he—by making fortunate use of his own preparatory work and of that of others⁶—finally conceived and presented to the humanity of the time an entirely brilliant train of thought which is as right today as it was then, and which can best be condensed as follows:

It is necessary to start afresh. The tragic chain of wars and mere armistices termed peace must be broken. Sometime humanity must have the insight and the will to pass from war to real peace, that is, to peace which is good in its essence, founded on existing legal principles, without regard to victory or defeat; and this peace, which is good in its essence, must be maintained—and maintained in good condition—by an organized union of states.

These aims can only be achieved if the most frequent causes of war are eliminated, namely excessive armaments, secret treaties, and the consecration—detrimental to life—of the *status quo* as a result of lack of insight on the part of the possessor of the moment.

Humanity did not follow this path. And it is not to be wondered at that among those who fought against the instruments of Versailles, St. Germain, Trianon, Neuilly, and Sèvres, be it in the camp of the vanquished or in that of the victors, were the very ones who strove after real, lasting peace. When the Governments of the South African Union and Canada, in their replies to Secretary of State Hull's Principles of Enduring Peace of 16 July 1937, indicated in unusually strong language that a revision of unjust and forcibly imposed treaties was an indispensable precondition for real world peace, they took up one of the basic views of the great American President.⁷

⁵ Congressional Record, Proceedings and Debates of the Second Session of the 70th Congress of the U. S., Volume LXX, Part. 2, Page 1333.

⁶ See Baker, Ray Stannard, Woodrow Wilson and World Settlement, New York 1922, *passim*.

⁷ See Kuhn, Arthur K., Observations of Foreign Governments upon Secretary Hull's Principles of Enduring Peace (A. J., Volume 32, 1938, Pages 101—106). Also: Wilson, Woodrow, War and Peace. Presidential Messages, Addresses and Public Papers, 1917-24 (edited by Ray Stannard Baker and William E. Dodd), New York 1927.

Humanity did not follow Wilson.

Even for the members of the League of Nations war remained a means for settling disputes, prohibited in individual cases, but normal on the whole. Jean Ray⁸, as late as 1930, said:

"The League of Nations did not prove to be a guide to the true order of peace, indeed it did not even prove to be a sufficient brake to prevent a complete backward movement into the former state. For the world did in fact slide back entirely."

For this is the all-important factor in our problem of law. Before the commencement of the second World War the whole system of collective security, even in such scanty beginnings as it had made, had collapsed;⁹ and this collapse was acknowledged and declared expressly, or by equivalent action, by three world powers—and, in fact, declared with full justification. Great Britain clearly stated this at the beginning of the war to the League of Nations. I shall show this immediately.

The Soviet Union treated the German-Polish conflict simply according to the rules of classical international law concerning *debellatio*. I shall explain this shortly.

The United States declared their strict neutrality. I shall also explain the import of this declaration.

The system of collective security has been the subject of much dispute. In this matter involving the world's conscience, which is of fundamental importance in this very Trial, it cannot be a matter of indifference that the system, rightly or wrongly, appeared in 1938 to such a prominent specialist on international law as the American, Edwin Borchard, to be absolutely inimical to peace and the offspring of the hysteria of our age.¹⁰ The collapse may have had various causes; it is certain that the above-mentioned three world powers testified at the beginning of September 1939 to the collapse—the complete collapse—and that they did not, in fact, do so as a consequence of the German-Polish war.

To begin with, on 7 September 1939 the British Foreign Office told the Secretary General of the League of Nations¹¹ that the British Government had assumed the obligation, on 5 February 1930,

⁸ Commentaire, Page 74.

⁹ On the indisputable fact of the collapse, and the guilt of the great powers therein, cf. the bitter statements of Fenwick from the period immediately preceding the second World War. (International Law and Lawless Nations; A. J., Volume 33, 1939; Pages 734-745.)

¹⁰ Neutrality and Unneutrality (A. J., Volume 32, 1938, Page 778 et sequentes.)

¹¹ See also the Memorandum on the Signature by His Majesty's Government in the United Kingdom of the Optional Clause of the Statute of the Permanent Court of International Justice (Cmd. 3452, Miscellaneous Number 12, 1929).

to answer before the Permanent International Court of Justice at The Hague whenever a complaint was filed against Great Britain, which would include all cases of complaints which other states might lodge on account of conduct whereby Great Britain in a war had, in the opinion of the plaintiff, violated international law. The British Government had accepted this regulation because they had relied on the functioning of the machinery of collective security created by the League of Nations Covenant and the Pact of Paris—because, if it did function properly, and since Britain would certainly not conduct any forbidden wars, her opponent on the contrary being the aggressor, no collision between Britain and those states that were faithful to the security machinery could possibly be caused by any action of Britain as a seapower.¹² However, the British Government had been disappointed in this confidence: Ever since the League Assembly of 1938 it had no longer been possible to doubt that the security machinery would not function; on the contrary it had, in fact, collapsed completely. A number of members of the League had already declared their strict neutrality before the outbreak of war:

“The entire machinery intended to maintain peace has broken down.”¹³

I will proceed to show how right the British Government were in the conclusions they drew. It should not be forgotten that the British Premier, Mr. Neville Chamberlain, had already proclaimed, on 22 February 1938 in the House of Commons, that is, before the so-called Austrian Anschluss, the complete inefficiency of the system of collective security. He said:¹⁴

“At the last election it was still possible to hope that the League might afford collective security. I believed it myself. I do not believe it now. I would say more: If I am right, as I am confident I am, in saying that the League as constituted today is unable to provide collective security for anybody, then I say we must not delude ourselves, and, still more, we must not try to delude small weak nations into thinking that they will be protected by the League against aggression and acting accordingly, when we know that nothing of the kind can be expected.”

The Geneva League of Nations was “neutralized,” as Noel Baker politely expressed it later in the House of Commons.¹⁵

¹² It is the same train of thought developed by Briery, *Some Implications of the Pact of Paris* (Br. YB 1929).

¹³ “Tout le mécanisme prévu pour le maintien de la paix s'est disloqué.”

¹⁴ *Parliament Debate, H. C., Volume 332, Column 226 et sequentes.*

¹⁵ *Parliament Debate, H. C., Volume 353, Number 198, Column 1178 (21 November 1939).*

Secondly, in view of the correct conclusions drawn by the British Government and expressed in their note of 7 September 1939 to the League of Nations, it is no wonder that the Soviet Union treated the German-Polish conflict in accordance with the old rules of power politics. In the German-Russian Frontier and Friendship Pact of 28 September 1939 and in the declaration made on the same day in common with the Reich Government,^{15a} the Moscow Government bases its stand on the conception of the *debellatio* of Poland, that is, the liquidation of Poland's government and armed forces; no mention is made of the Pact of Paris or the League of Nations Covenant. The Soviet Union takes note of the liquidation of the Polish state machinery by means of war, and from this fact draws the conclusions which it deems right, agreeing with the Reich Government that the new order of things is exclusively a matter for the two powers.

It was therefore only logical that in the Finnish conflict, during the winter of 1939-1940, the Soviet Union should have taken its stand on classical international law. It disregarded the reactions of the League of Nations when, without even considering the application of the machinery of sanctions and merely pretending to apply an article of the Covenant referring to quite different matters, that body resolved that the Soviet Union had, as an aggressor, placed itself outside the League.¹⁶ The report of the Swiss Federal Council of 30 January 1940 to the Federal Assembly endeavored to save the face of the League which was excluded from all political realities.

Thirdly, the President of the United States stated on 5 September 1939 that there existed a state of war between several states with whom the United States lived in peace and friendship, namely, Germany on the one hand, and Great Britain, France, Poland, India, and two of the British dominions on the other. Everyone in the United States was required to conform with neutrality regulations in the strictest manner.

Since the time of the preliminary negotiations, it was a well-known fact in the United States that Europe, and particularly Great Britain and France, saw the main value of the Pact to Outlaw War in the fact that the United States would take action in case of a breach of the pact. The British Foreign Secretary stated this on 30 July 1928, that is, 4 weeks previous to the signing of the pact. During the deliberations of the American Senate on the ratification of the pact, Senator Moses drew particular attention to this.¹⁷

^{15a} See Jahrreiss Plea, Annex, Exhibit Numbers. 35 and 36.

¹⁶ Resolutions of the Assembly and the Council of 14 December 1939.

¹⁷ Congressional Record, Proceedings and Debates of the Second Session of the 70th Congress of the U.S., Volume LXX, Part 2, Pages 1169/99. See also Ellery C. Shotwell, Responsibility of the United States in Regard to International Cooperation for the Prevention of Aggression (A. J., Volume 26, 1932, Page 113).

Senator Borah affirmed at the time that it was utterly impossible to imagine that the United States would calmly stand by.¹⁸ After the discredit resulting from the failure of the policy of collective security in the case of Manchuria and Abyssinia the world had come to understand the now famous "quarantine" speech of President Franklin D. Roosevelt on 5 October 1937 and his "Stop Hitler!" warnings before and after Munich to mean that the United States would act on the next occasion. The declaration of neutrality of 5 September 1939 could therefore only mean: Like Great Britain and the Soviet Union, the United States accepts as a fact the collapse of the system of collective security.

This declaration of neutrality has often been looked upon as the death blow to the system. The Washington Government would be entitled to reject such a reproach as unjustified. For the system had already been dead for years, provided one is prepared to believe that it was ever actually alive. But many did not realize the fact that it was no longer alive until it was brought into relief by the American declaration of neutrality.

By 1 September 1939 the various experiments, which had been tried since the first World War with a view to replace the "anarchic world order" of classical international law by a better, a genuine, order of peace, were over, that is, to create in the community of states a general statute according to which there would be wars which are forbidden by law and others which are countenanced. These experiments, in the opinion of the major powers of the time, had failed. The greatest military powers of the earth clashed in a struggle in which they pitted their full strength against one another. For the proponents of a materialistic conception of history this meant the second phase in a process developing according to inexorable laws, whereby history swept away all diplomatic and juridical artifices with supreme indifference.

The majority of international lawyers throughout the world maintained that in universal international law as at present applied, there exists no distinction as to forbidden and nonforbidden wars.

Hans Kelsen set this forth in 1942 in his paper *Law and Peace in International Relations*, which he wrote after painstaking research into literature. He himself belongs to the minority who are prepared to concede a legal distinction between just and unjust wars, so that his statement carries all the more weight.

Now we must ask: Are we in point of fact right in speaking of the collapse of the system of collective security? This would

¹⁸ See also Brierly, J.L., *Some Implications of the Pact of Paris* (Br. YB 1929). He thinks that a violation of neutrality is impossible. In 1936 the same thought was expressed by the Englishman McNair: *Collective Security* (Br. YB).

presuppose that such a system at one time existed. Can that really be maintained? This is a question of the greatest importance for this Trial, in which the existence of a world-wide consciousness of right and wrong is taken as the basis for the indictment for breach of the peace.

Let us recall the tragedy of the Kellogg-Briand Pact, that tragedy from which all those have suffered so much who rejoiced when the pact was concluded and who later, after a first period of depression, hailed the Stimson Doctrine as a long overdue step essential for the achievement of real peace and as an encouraging omen of fresh progress.

The United States had a great goal in view in 1927 and 1928, as I already mentioned. In the League of Nations the problem had been tackled only half-heartedly and with half measures, and this had perhaps done more harm than good to the cause of real peace. The Geneva Protocol had failed. Kellogg now wanted to overcome all the difficulties inherent in the problem and bring the world round by vitality and determination. The pact as published, with its two articles containing the renunciation of war and the obligation of peaceful settlement, seemed to still the yearning of humanity eager for some deed.

But the difficulties it was desired to surmount are in part rooted in the problem, and no rules laid down by any legislator will ever fully eliminate them. For even if unambiguous criteria existed, who among fallible mankind would have the authority to give a decision in case of dispute? We do not even possess unambiguous criteria for aggression and defense.¹⁹ This holds good both for the so-called political concept, which is in a way natural, and for the legal concept or concepts of aggression and defense.

Yet these were not the only difficulties pointed out, explicitly and implicitly, by the French Government in the preliminary negotiations for the pact; they did so with the full title²⁰ of one who knows Europe and its ancient historical heritage just as the United States Government knows America and its vastly different history.

¹⁹ See, for instance, Eagleton, Clyde, *An Attempt to Define Aggression* (International Conciliation Number 264, 1930). Cuten, A., *La notion de guerre permise*, Paris 1931. Wright, Quincy, *The Concept of Aggression in International Law* (A. J., Volume 29, 1935, Page 395 et sequentes).

²⁰ Note of the United States Government to the Governments of Great Britain, Germany, Italy, and Japan of 13 April 1928; draft treaty of the 20 April 1928 drawn up by the French Government; Note of the British Secretary of State for Foreign Affairs of 19 May 1928 to the American Ambassador; Note of 23 June 1928 from the U. S. Government to all nine participants in the negotiations; Note of the British Secretary of State for Foreign Affairs of 18 July 1928; Note of the Soviet Commissar for Foreign Affairs to the French Ambassador of 31 August 1928.

When the world came to know the notes exchanged during the preliminary negotiations with all their definitions, interpretations, qualifications, and reservations, it became manifest to what extent the opinions of the governments differed behind that wording. One saw the Soviet Government's frank—even scathing—criticism of the refusal of the Western Powers to disarm and thus create the essential precondition for an effective policy of peace and generally of the vagueness of the treaty;²¹ but especially of the famous British reservation of a free hand in certain regions of the world, that reservation which has often been called the British Monroe Doctrine or the Chamberlain Doctrine;²² and one knew that in reality there existed only formal agreement behind the signatures and that no two powers were implying exactly the same thing by the treaty. Only on one thing did complete agreement exist: War in self-defense is permitted as an inalienable right to all states; without that right, sovereignty does not exist; and every state is sole judge of whether in a given case it is waging a war of self-defense.

No state in the world at that time was prepared to accept foreign jurisdiction concerning the question of whether its decisions on basic questions of its very existence were justified or not.

Kellogg had declared to all the nine states participating in the negotiations, in his note of 25 June 1928:²³

“... The right of self-defense . . . is inherent in every sovereign state and is implicit in every treaty. Every nation . . . is alone competent to decide whether circumstances require recourse to war in self-defense.”

The friends of peace were cruelly disappointed. What was the use of such a treaty anyway? They were only too right. Very soon afterward they heard with even greater grief of the course of the discussions in the American Senate. The ratification was, it is true, passed with 85 votes against 1, with a few abstentions; but if, behind the signatures of the contracting states there was no material agreement, there was even less behind the result of the vote in the Senate of that world power which was, as far as the conception and initiative was concerned, the leading one.

The discussions in the Senate, which will remain memorable for all time because of their earnest and profound character, showed—and several senators expressly said so—that the opinions of the senators were oscillating between two poles which were worlds apart. For some the treaty really meant a turning-point in world

²¹ Note of the Soviet Commissar for Foreign Affairs of 31 August 1928.

²² Note of the Soviet Commissar for Foreign Affairs of 31 August 1928.

²³ See also Kellogg, F., *The War Prevention Policy of the United States* (A. J., Volume 22, 1928, Page 261 et sequentes).

history; to others it appeared worthless, or at best a feeble or friendly gesture, a popular slogan, a sort of international embrace; to yet others as fertile soil for all the wars of the future, a gigantic piece of hypocrisy, as the legalization of war or even of British world control, or as a guarantee of the unjust *status quo* of Versailles for France and Great Britain.

Some senators criticized the utter vagueness of the stipulations of the treaty even more bitterly than the Russian note. And if Kellogg's declaration about the right of self-defense, which, according to the will of the signatory states, was an integral part of the treaty, was taken literally: What kind of war was then forbidden?²⁴ Sarcastic and ironical words were used in the Senate.

Nothing was gained by this Paris Pact if everything were to remain as at its conclusion. In the opinion of the great American expert on international law, Philip Marshall Brown, the pact unwittingly engendered by its ineptness the horrible specter of "undeclared war."²⁵

Those, Germans or non-Germans, who fought against Versailles because progress was blocked, and those, Germans or non-Germans, who criticized the League of Nations because it did more harm than good to the will toward progress, had all rejoiced for nothing at the end of August 1928. The decisive step had not been taken.

But above all the one thing which, though not sufficient in itself, is indispensable if a guarantee of peace is really to be created, the one thing that is necessary in the unanimous opinion of all who reckon with human frailty, was never tackled: To create a procedure by which the community of states, even against the will of the possessor, can change conditions that have become intolerable, in order to provide life with the safety valve it must have if it is to be spared an explosion.

The individual state, if at all, can avoid revolutions only by good legislation and an early adjustment of order to changing conditions; and the same is true of the community of states. Wilson also had this fundamental principle in mind, as we saw. One of the great British experts on international law, one of the enthusiastic, unconditional, and progressive adherents of the Paris Pact, McNair, took this into account too when, in 1936, he wanted to see placed beside collective force the collective and peaceful revision of conditions which had become dangerous.²⁶ And it was also taken into account

²⁴ Congressional Record, Proceedings and Debates of the Second Session of the 70th Congress of the United States, Volume LXX, Part 2 (5 January 1929 to 26 January 1929, Page 1169 et sequentes, Washington 1929).

²⁵ International Lawlessness, (A. J., Volume 32, 1938, Page 775).

²⁶ Collective Security (Br. YB, 1936, Page 150 et sequentes).

by the American experts on international law, Borchard²⁷ and Fenwick,²⁸ in their warning illustration of the situation as regards international law shortly before the second World War. The Reich Government, by the way, had pointed out this problem, which overshadowed all others, in Stresemann's note to the American Ambassador, dated 27 April 1928, when unconditionally agreeing to Kellogg's proposal.²⁹

Later, the problem of "collective revision" was never seriously tackled. This is not surprising, if only because the very character of such a procedure would presuppose renunciation of their sovereignty by the states. And can such a renunciation be considered in the times we live in? In Philip Brown's melancholic opinion—"less than ever."³⁰ For that reason a real forward step in the question as to how war could legally be outlawed was impracticable.

In spite of these intricate complications the Government of the United States and the League of Nations did a great deal to comply with the urgent demands of the nations. They subsequently tried to give the pact a precise content, and "teeth." The doctrine of international law provided suggestions for this and checked it. Although it remained completely unsuccessful, we shall have to trace this process briefly, because the seed for the ideas contained in the Indictment are to be found here, insofar as its line of argument is not a political or ethical but a legal one.

In its ban on aggression, the Paris Pact unquestionably starts from the political concept of aggression. But that is quite indefinite. Shotwell and Brierly, among others, tried to assist immediately by deducing a legal concept of aggression from the second article of the treaty, which establishes the obligation to follow a procedure of peaceful settlement.³¹ We can leave open the question whether it is permissible to apply this interpretation to the treaty. In practice nothing is gained by doing so; one kind of difficulty is simply put in the place of another. There are no fewer obscurities. Measures for peaceful settlement presuppose good will on both sides; what if that is lacking on one side or the other? And what still constitutes a measure of peaceful settlement, and what no longer does? The Russian Government were quite right in their note of 31 August

²⁷ *Neutrality and Unneutrality* (A. J., Volume 32, 1938, Page 778 et sequentes).

²⁸ *International Law and Lawless Nations* (A. J., Volume 33, 1939, Pages 743-745).

²⁹ See also Scelle, George, *Théorie juridique de la révision des traités*. Paris, 1936; further: Kunz, Josef, *The Problem of Revision in International Law* ("peaceful change"), (A. J., Volume 33, 1939, Pages 33-35).

³⁰ *International Lawlessness* (A. J., Volume 32, 1938, Page 775).

³¹ Brierly, *Some Implications of the Pact of Paris* (Br. YB 1929, Page 208 et sequentes).

1928 on the Kellogg-Briand Pact when they brought up this question.

Other attempts to help tried to develop a completely new world constitution out of the entirely vague pact by way of logic. They are connected with the name of the American Secretary of State, Stimson, and with the work of the Budapest meeting of the International Law Association in 1934.³² In order to understand this, it will be found necessary to assume that the Kellogg Pact really did bring about, in a legally conceivable manner, the unambiguous and unconditional renunciation of war. Then, of course, there exists no longer any right to wage wars as and when one likes. War waged in defiance of this prohibition is an offense against the constitution of the community of states. We are immediately faced by the question: Can the legal position of a state which attacks contrary to law be the same as that of a state which is being attacked contrary to law?

If one answers "no," as does for instance the influential French commentator of the League of Nations Covenant, Jean Ray,³³ does not this mean the elimination of the most important fundamental principles of classic international law?

(1) Do the international laws of war—which, after all, spring from the right to wage war freely and from the duel-like character of war and certainly from the equality of the belligerents before the law—apply for the qualification of the acts of the belligerent powers against one another?

(2) Is it possible, or indeed permissible, that neutrality should still exist in such a war?

(3) Can the result of the war, assuming that the aggressor is victorious, be valid under law, especially when compressed into the form of a treaty, or must not the community of states deprive the aggressor of the spoils of his victory by a policy of nonrecognition? Should there not be, or must there not be, joint coercive action by the states against the aggressor?

It must be noted that not even theoretical law has drawn all possible conclusions. The practice of the states, after a few tentative beginnings in isolated points, never came to a definite conclusion in a single case.

With regard to the first point, the validity of the international laws of war during a war, whatever its origin, has never so far been seriously disputed by any state. Any doubts that arose were cleared up in a way which allowed of no misunderstandings. I draw attention to Resolution Number 3 of the League of Nations Assembly

³² The well-known "Budapest Articles," International Law Association: Briand-Kellogg Pact of Paris, London 1934, Page 63 et sequentes.

³³ Commentaire, Page 371.

of 4 October 1921 and to the report of the Committee of Eleven of the League of Nations for the adaptation of the Covenant to the Pact of Paris.³⁴

The aggressor state has the same rights and duties in a war as the attacked nation, that is, those laid down by the traditional international laws of war. The French chief prosecutor appears to wish to deviate from this line, although he does not seem disposed to draw the full conclusions. However, I do not see any tendency to deviate from the present path even in the most recent practice of states.

With regard to the second point:

Attempts have been made to deny the obligation to remain neutral and, in fact, finally to establish for the states not involved the right of non neutrality and even the right to wage war against the aggressor. Some statesmen and scholars have devoted themselves just as passionately to undermining, and even to outlawing, the right to neutrality as other statesmen and scholars have spoken in favor of its undiminished continuance.³⁵ The clearer it became that the whole system of collective security failed to function in those particular cases which were of decisive importance, namely, where steps would have had to be taken against a great power, the more the idea of neutrality asserted itself with fresh vigor. The complete discredit attaching to the League of Nations and the system of the Kellogg-Briand Pact since the Abyssinian conflict put classical international law back into its old position. In 1935 Switzerland declared her unrestricted neutrality;³⁶ Belgium, Denmark, Finland, Luxembourg, Norway, Holland, and Sweden followed with their

³⁴ Of 8 March 1930. See also Rutgers in the *Recueil des Cours* (Académie de Droit International), Volume 38, Page 47 et sequentes. Further: "Budapest Article 7" and Kunz, Josef, "Plus de loi de la guerre?" (*Revue Générale de Droit International Public*, 1934). — Cohn, Neo-Neutrality (1939).

³⁵ The Peruvian delegate, Senor Cornejo, in the Committee of the League of Nations Assembly in 1929 said (*Assemblée 1929*, C III J. O., Page 201): "Neutrality no longer exists!" Stimson, *The Pact of Paris*, Address 8 August 1932. Hull, *Declaration on the Neutrality Law of 17 January 1936*. Pact of Rio de Janeiro of 10 October 1933. Speech by the Swedish Foreign Minister Sandler of 6 December 1937 (see *Jahrreiss Plea*, Annex Exhibit Number 27). 3 October 1939: Declaration of Panama; the exchange of notes by the 21 American Republics with Great Britain, France, and Germany (23 December 1939), 14 January, 23 January, 14 February 1940) is based completely on the classic Neutrality Law. The "Budapest Articles."—Literature: D'Astroy, B. (1938); Baty, Th. (1939); Bonn, M. J. (1936/37); Borchard, E. M. (1936, 1937, 1938, 1941); Brierly, J. L. (1929, 1932); Brown, Ph. M. (1936, 1939); Buell (1936); Cohn (1939); Descamps, de (1930); Eagleton, Clyde (1937); Fenwick, Charles G. (1934, 1935, 1939); Fischer Williams, Sir John (1935, 1936); Garner, James Wilford (1936, 1938); Hambro, Edvard (1938); Hyde, C. C. (1937, 1941); Jessup, P. C. (1932, 1935, 1936); Lauterpacht (1935, 1940); Mandelstam (1934); Miller, David Hunter (1928); McNair (1936); Politis, N. (1929, 1935); Rappard, W. E. (1935-1937); Schindler, D. (1938); Stimson, H. (1932); Stowell, Ellery C. (1932); Tenekides, C. C. (1939); Whitton, J. B. (1927, 1932); Wright, Quincy (1940).

³⁶ *Réserves de la Délégation Suisse* (M. Motta) of 10 October 1935.

declaration at Copenhagen on 24 July 1938.³⁷ The failure of the League of Nations was the reason quite openly given.

With reference to the third point:

The idea underlying the policy of nonrecognition is that the states not involved in a conflict should conduct themselves as members of the community of states, that is, they should protect the constitution of the community of states by refusing to recognize the fruits of victory, should the victor have been the aggressor. The situation he has created by force should not even seem to become a legal situation. He will thus be deprived of what he has gained, and one of the main inducements to wage war will thereby be eliminated. Such a policy of nonrecognition is undoubtedly not enough to guarantee by itself a system of collective security, but it is an indispensable part of such an order. There can be no dispute about this. The Brazilian representative, Senhor Braga, gained merit by proposing, at the second League Assembly in 1921, that such a policy be followed by the members of the League of Nations under the name of a "universal legal blockade" (*blocus juridique universel*).³⁸

The Finnish representative, M. Procope, interpreted Article 10 of the Covenant in this sense in 1930 before the League Assembly.³⁹ The notes by the American Secretary of State, Stimson, of 7 January 1932 to China and Japan⁴⁰ made this idea echo throughout the world. Their contents are commonly referred to as the Stimson Doctrine. The League of Nations accepted the Doctrine as a resolution of the Assembly on 11 March 1932.⁴¹ The concept was later the focal point of the Pact of Rio de Janeiro of 10 October 1933 and of the Budapest Articles of 10 September 1934.

The conflict between Italy and Abyssinia in 1935-36 became the great test case,⁴² which decided the fate of the system of collective security. The League of Nations declared a member, which was a great power, to be the aggressor and decreed economic sanctions but then shrank from coercive military measures and finally, after Italy's victory, struggled painfully in debates on procedure, especially at the 18th Assembly of the League, to find an answer to the

³⁷ Udenrigspolitiske Meddelelser 4. Aergang, Numbers 4-5, Page 122 et sequentes (see Jahrreiss Plea, Annex Exhibit Number 30).

³⁸ Actes de la IIe Assemblée, séance des commissions, I, Page 396 et sequentes.

³⁹ Actes de la IXe Assemblée, Page 75.

⁴⁰ Department of State, Press Releases, 9 January 1932, Page 41.

⁴¹ Actes de l'Assemblée 'extraordinaire (J. O., Supplément special, Number 101, Page 87).

⁴² Jean Ray, 4e Supplément du Commentaire, 1935, Page 10: "Un homme d'Etat a dit un jour en parlant de l'article 16 que, s'il s'appliquait, il ne s'appliquerait sans doute, qu'une fois. On peut dire la même chose de tout le mécanisme qui doit faire obstacle à la guerre."—See also Fischer Williams, Sir John, Sanctions under the Covenant (Br. YB 1936) and McNair, Arnold D., Collective Security.

question as to how the League, without openly betraying its constitution, could cross the attacked member, the minor power of Abyssinia, off the list of existing states and recognize it as part of the Italian Empire. The United States, too, did not enforce the Stimson Doctrine but remained strictly neutral.^{43,44}

It is necessary to realize all this; and also to know that the British Government, on 20 February 1935, politely but firmly refused, through Lord Chancellor Viscount Sankey,⁴⁵ to accept the logical explications and paid tribute to the old truth: "It is not logic but history that creates law."⁴⁶ On a later occasion, when Secretary of State Cordell Hull had explained the principle of American policy to all the powers on 16 July 1937,⁴⁷ the Portuguese Government issued a warning against "the abstract and generalizing tendency of jurists"; it warned against attempts to "find a single formula" and against not studying historic facts sufficiently.⁴⁸

We therefore come to the conclusion that in the actual relations between states there existed—quite a number of years prior to 1939—no effective general ruling of international law regarding prohibited war. No such general ruling existed so far as the leading statesmen and the peoples were aware.

This is, in fact, the ultimate reason why the system of specific rulings on international law was followed to an ever-increasing extent. Two states would thus conclude treaties, in full knowledge of their particular historical conditions and with a view to guarantee peace between each other.

Now, during the second World War the United States Government decided to help Great Britain. Great Britain was able to acquire destroyers, and it later received the assistance of Lend-Lease. The American public recognized this act of assistance as

43 With reference to the Stimson Doctrine and the case of Abyssinia see also the works and papers of Borchard (1933), Fischer Williams (1936), McNair (1933), Sharp (1934), Stimson (1932), Wild (1932), Wright (1932, 1933).

44 With reference to the system of collective security see from the literature concerning the whole position in international law: Brierly (1932); Bourquin (1934); Brouckere (1934); Cuten (1931); Descamps (1930); Eagleton (1930, 1937, 1938); Elbe (1939); Fenwick (1932, 1934, 1935, 1939); Fischer Williams (1932, 1933, 1935, 1936); Giraud (1934); Garner (1933); Graham (1929, 1934); Hill (1932); Hyde (1941); Jessup (1935); Mandelstam (1934); Politis (1929); Ritgers (1931); Shotwell (1928); Wickersham (1928/29); Whitton (1932); Wright (1942).

45 Parliament Debates H.L. 5th series, Volume 95, Cols. 1007, 1043.

46 Lauterpacht, *The Pact of Paris and the Budapest Articles of Interpretation* (Transactions of the Grotius Society, XX, 1935, Page 178), draws his conclusions from the fact that the states can accept or refuse, as logically established as law in Budapest. Jessup (*Neutrality, Its History, Economics, and Law*, Volume IV, *Today and Tomorrow*, 1936) finds that the states failed to accept the Budapest Articles.

47 See A. J., Volume 31, 1937, Pages 680-693.

48 See the concurring statements by Kuhn, Arthur K., *Observations of Foreign Governments upon Secretary Hull's Principles of Enduring Peace* (A. J., Volume 32, 1938, Pages 101, 106).

being essentially no longer neutral; it was regretted by some, welcomed by others, sometimes attacked and sometimes defended. The supporters of the measures before the American public, above all Stimson and Cordell Hull, quite rightly refrained from justifying them as consistent with neutrality. On the contrary, they took their stand on the Pact of Paris as interpreted by the Budapest Articles.⁴⁹ As we saw, this would, according to Viscount Sankey's indisputably correct conception of the sources of international law, have been wrong as far back as 1935.

After the developments which had taken place since Italy's victory over Abyssinia, such discussions were entirely outside the field of legal realities. Their purpose was to resolve internal dissensions in America and for that very reason could not have been of direct importance for international law. Even had these discussions taken place between states, they could at most have helped to create law. But is it actually necessary to assert or prove that such discussions could not have created, in the midst of the great struggle, a law to attain which so many efforts—efforts which were proved to have been Utopian—were made in vain in peacetime?

In this Court many ways of legal thinking meet—ways which are in part very different. This leads to a number of ineradicable differences of opinion. But no manner of legal thinking anywhere on earth, from the most ancient times to the most recent, could or can make possible arguments which contradict the very nature of law as a social order of human life arising out of history. If several governments accept articles about whose contents they are of different opinions and if these articles then find no real application in the practice of these governments—which is not to be wondered at considering the circumstances under which they arose—and if logicians then interpret these articles, while the practice of governments rejects these interpretations either expressly or tacitly, then one will simply have to resign oneself to this, inasmuch as one proposes to keep to the task of legal appreciation, however much the goal may seem worth striving for, politically or morally.

But let us forget for a moment the bitter realities of those years following upon the Italo-Abyssinian conflict. Let us suppose for a moment that a general and unambiguous pact had existed, accepted and applied by the contracting parties in fundamental and factual agreement. Would the liability of individuals to punishment for the breach of such a treaty be founded in international law?

No—not even the liability of the state to punishment, let alone that of individuals.

⁴⁹ See Wright in A. J., Volume 34, 1940, Page 680 et sequentes; particularly Stimson's speech of 6 January 1941 should be mentioned here.

The breach of such a treaty would not be any different, under existing international law, from any other violation of international law. The state violating a treaty would be committing an offense against international law, but not a punishable act.⁵⁰ Attempts were occasionally made to deduce from words *délit* (offense), *crime international* (international crime), and *condamnation de la guerre* (condemnation of war) the existence of an international criminal law dealing with our case. Such conclusions are based on wrong premises.⁵¹ Every lawyer knows that any unlawful behavior can be called a *délit* (*delictum*), not only punishable behavior. And the word *crime* is used even entirely outside the legal sphere. And this is precisely the case here. When in 1927, on Poland's application, the League of Nations Assembly declared war to be a *crime international*, the Polish representative expressly stated that the declaration was not actually a legal instrument but an act of moral and educational importance.⁵² The endeavor to organize a universal world system of collective security on a legal basis failed. But this does not mean that the numerous bilateral treaties whose purpose it is to preclude wars of aggression between the two partners became inapplicable. One will have to examine whether the parties to the treaty may have made the existence or continued existence of a general machinery of collective security the prerequisite for the validity of the treaty.

For unilateral assurances of nonaggression the same holds good as for bilateral treaties.

Many bilateral nonaggression pacts were concluded and several unilateral assurances were given. In some cases a political, in others a legal concept of aggression, or even a number of such legal concepts may determine right and wrong.

The Reich also concluded a series of such pacts. They have been cited by the Prosecution in argument. One must examine whether all these treaties were still in force at the critical moment, and this examination will be left to the individual defendant's counsel. But if the Reich did attack, in some specific case, in breach of a non-aggression pact which was still valid, it committed an offense in international law and is responsible therefor according to the rules of international law regarding such offenses.

⁵⁰ Fischer Williams also stresses this, (Sanctions under the Covenant, Br. YB, 1936, Page 130 et sequentes). Also Kelsen, Collective and Individual Responsibility... 1943, Page 531.

⁵¹ An all too appropriate warning against mistaken conceptions in connection with the term "crime international" is given by Fischer Williams, Sanctions under the Covenant, (Br. YB, 1936, Page 130 et sequentes).

⁵² Actes de l'Assemblée 1927, P., Page 153. Also Jean Ray, Commentaire, Pages 74/75.

But only the Reich—not the individual, even if he were the head of the State. This is beyond all doubt, according to existing international law. It is unnecessary even to speak about this. For up to the most recent times not even the possibility was mentioned, either in the Manchurian, or in the Italo-Abyssinian, or in the Russo-Finnish conflict, of instituting criminal proceedings against those people who were responsible, on the Japanese, Italian, or Russian side, for planning, preparing, launching, and conducting the war, or who simply participated in these acts in any way. And it was certainly not because matters had, paradoxically enough, not been thought out to the end, that they were not prosecuted. They were not prosecuted because this cannot take place as long as the sovereignty of states is the organizational basic principle of interstate order.

THE PRESIDENT: I think this would be a convenient time to break off.

[A recess was taken.]

DR. JAHRREISS: One thing or another⁵³—should things reach the point where, according to general world law, the men who participated in the planning, preparation, launching, and conduct of a war forbidden by international law could be brought before an international criminal court, the decisions regarding the state's final problems of existence would be subject to super-state control. One might, of course, still term such states sovereign; but they would no longer be sovereign. In his paper, written late in 1943, which I have already mentioned several times and which was prepared after the Moscow conference of 1 November 1943, Kelsen again and again repeats that in questions of breach of the peace, the liability of individuals to punishment does not exist according to the general international law at present valid and that it cannot exist because of the concept of sovereignty.⁵⁴

For Europeans, at any rate, the state has during the last four centuries, especially following the pronounced advance made by the idea of the national state, achieved the dignity of a super-person.

Of course, acts of state are acts of men. Yet they are in fact acts of state, that is, acts of the state carried out by its organs and not the private acts of Mr. Smith or Mr. Müller.

What the Prosecution is doing when, in the name of the world community as a legal entity, it desires to have individuals legally

⁵³ Correctly Fischer Williams, *Sanctions under the Covenant* (Br. YB, 1936).

⁵⁴ *Collective and Individual Responsibility...*, Pages 534, 538, 539, 540, 542.

sentenced for their decisions regarding war and peace, is, when facing the issue from the angle of European history, to look upon the state as one would look upon a private individual; indeed, more than that: What it is doing is destroying the spirit of the state. Such an indictment, the moral justification of which is not my concern—such an indictment is, as we have already shown, incompatible with the very nature of sovereignty and with the feeling of the majority of Europeans. It seems, indeed, as though not only Europeans feel that way. In 1919, in Paris, it was the American delegates at the War Guilt Investigation Committee who opposed most strongly any legal sentence on the Kaiser for the very reason of the incompatibility of such a procedure with the sovereignty of the State.⁵⁵ And it is impossible to underline the idea of sovereignty more strongly than Kellogg did 8 years later during the negotiations in connection with the Pact of Paris, when he declared, as I have already said, "Every state is the sole judge of its behavior with regard to questions affecting its very existence."

There are epochs which idolize the sovereignty of the state; others deprecate it. Certain epochs have done both at the same time—ours does so. Perhaps we are living in a period of transition. Perhaps a transformation of values is taking place. Perhaps world community will become the supreme political value for the peoples in place of their own particular states, which, at any rate, held this position hitherto. Perhaps we shall reach a point where the unleashing of a war deserving moral and also legal condemnation will, for the general legal conscience, constitute high treason against the world community. Perhaps we shall reach a point where it will be permissible, or even compulsory, to betray a government starting such a war to foreign countries without this being termed high treason toward one's own. At the moment there is in no nation a majority, let alone unanimity, in support of this conclusion.

The punishment of individuals by the legal community of nations for breach of the peace between states can thus be ordered only provided the fundamental principles of international law as at present valid and the scale of values as for centuries they have been firmly rooted in the feeling of the European nations are abandoned—that scale of values according to which the state, one's own sovereign state, forms the indispensable foundation for free personality.

The Prosecution breaks up in its own mind the German State at a time when it stood upright in its full strength and acted through

⁵⁵ Scott, James Brown, stresses the great merit gained by the American delegates at that time in the interests of law and justice (see House-Seymour, *What Really Happened at Paris*; New York 1921).—Williams, E.T., *The Conflict between Autocracy and Democracy* (A. J., Volume 32, 1938, Page 663 et sequentes).—Kelsen, *Collective and Individual Responsibility...*, Page 541.—Also Borchard, Edwin, *Neutrality and Un-neutrality* (A. J., Volume 32, 1938, Page 778 et sequentes).

its organs. It must do so if it desires to prosecute individual persons for a breach of the peace between states. It must turn the defendants into private individuals. Then again the defendants—as it were, on the private level—are strung together into a conspiracy by legal concepts rooted in Anglo-Saxon law and alien to us. They are placed on a pedestal provided by the many millions of members of organizations and groups which are designated as criminal, thereby once more allowing them to appear as an “ultra-individual” value.

Insofar as the Charter supports all this by its regulations, it is laying down fundamentally new law, if—concurring with the British chief prosecutor—one measures against existing international law. That which, originating in Europe, has finally spread to the whole world and is called international law is, in essence, a law of the co-ordination of sovereign states. Measuring the regulations of the Charter against this law, we shall have to say: The regulations of the Charter deny the basis of this law; they anticipate the law of a world state. They are revolutionary. Perhaps, in the hopes and yearnings of the nations, the future is theirs.

A lawyer, and only as such may I speak here, will merely have to establish that they are new—revolutionarily new. The laws regarding war and peace between states provided no room for them and could not do so. Thus they are criminal laws with retroactive force.

Now the French chief prosecutor—if I understand correctly—recognized the sovereignty of states in his profoundly moving speech and quite rightly saw that an unbridgeable gulf exists between the Charter and existing international law where it desires to see individuals punished as criminals for breach of international peace. He therefore transposes the Trial from the plane of international law to that of constitutional law. It might have happened that a German State would have settled accounts after the war with those people who were responsible for launching the war. Since the whole life of the German people is paralyzed today, those foreign powers, who jointly on the basis of treaties have territorial power in Germany, are undertaking this settlement of accounts. The Charter has laid down the rules which are to guide the Court in its investigation and verdict.

We can leave the question open as to whether this concept is legally right or not. Even if it is right, our question is not modified thereby. When looking at the problem from this point of view, no differently from that of international law, we must know how far the Charter creates penal law with retroactive force. But we must now measure the regulations of the Charter not only against the international law which was valid for Germany and was recast into national law, as we say, but also against that national criminal

law which was binding on the defendants at the time of the deed. It is, after all, quite possible for a state, a member of the community of states, to be more cosmopolitan in its criminal law than actual international law. Some rule of the Charter, although new with regard to existing international law, may correspond to an already existing national law, so that it would not constitute criminal law with retroactive force. So how was the breach of peace between states—particularly the breach of nonaggression pacts—treated in that national criminal law to which the defendants were subject at the time of the preparation and launching of the war?

It is possible that in some state those people might be threatened with punishment who prepared or launched or waged a war in opposition to the international obligations of that state.⁵⁶ That would, it is true, be completely impractical, for the result of a war determines the internal settlement of accounts. No criminal court will threaten a victorious government, whereas, in case of defeat, the defeat itself provides the measure for such settlement. In any case the regulations of the Charter regarding punishment for breach of the peace between states are novel for the national criminal law to which the defendants were subject at the time of the deed. If one is not prepared to understand the phrase *nulla poena sine lege previa* as it is understood on the European continent, that is, as meaning that law in the sense of *lex* is a rule laid down by the state, a state law, but holds the opinion which—as far as I can see—is peculiar to English legal thinkers, that law in the sense of *lex* can also be a deeply rooted rule of ethics or morality, then we still have one question left: As things happened to be, did the defendants—formerly ministers, military leaders, directors of economy, heads of higher authorities—at the time of the deed feel, or could they even have felt that a behavior which is now made punishable by a retroactive law was originally in violation of their duty? The answer to this question cannot be given without insight into the nature of the constitution of the German Reich at the moment of the deed.

The German Reich was incorporated into the community of states in the form and with the constitution which it happened to have at any given moment. Such is the case with every member of the community of states. The United States and the British Empire, the Union of Soviet Socialist Republics and the French Republic, Brazil and Switzerland, stand in the framework of the family of nations with such a constitution as they happen to have at the time.

The Prosecution, with full justification, has tried to convey a picture of this concrete legal structure of the Reich. Without trying

⁵⁶ Kelsen seems to think that no such state exists. (Collective and Individual Responsibility..., Page 543).

to obtain such a picture, no one in this Trial will be able to arrive at a decision regarding right and wrong. In addition it seems to me that many ethical questions which have been raised here require such an endeavor to be made. However, I am afraid that with the picture presented by the Prosecution one will not come as close to the truth as is possible, notwithstanding the complex nature of the subject.

The Prosecution is based upon the conception of a conspiracy to conquer the world on the part of a few dozen criminals. The German State, if one looks upon things in this way, becomes a mere shadow or tool. But this State had long been in existence; no one could set aside the enormous weight of its history. A number of facts in its history, domestic and especially foreign, accounted for Hitler's rise to power or facilitated it for him, while there were other things in this history that guided, urged, limited, or restrained Hitler in his choice of aims and means, and helped to decide the success or failure of his measures and undertakings.

The Prosecution was certainly right in laying great stress on the so-called Führer Principle. This Führer Principle has, in fact, for the eyes and even more for the ears of the German people and of the world in general, been the organizational guiding principle in the development of the Reich constitution after 1933.

It has never been unambiguous, and it considerably changed in character during the course of the years. In human life leading and dominating present inherent contradictions. There exists one, as it were, soulless, mechanical way of directing mankind, which is to dominate, to rule by issuing commands; and there is another one, which is to precede by setting an example and being followed voluntarily, which is to lead or whatever one wishes to call it. This differentiation between two fundamentally different methods of directing men is often already complicated by the words used; in the German language, for instance this is so because "leading" is sometimes substituted for unconscious domination, while domination is occasionally called leading. The differentiation is rendered even more difficult by the fact that leading may alternate with domination in relations between the same persons or by the fact that methods which are actually applicable to leading are used in dominating and vice versa. Every state has been, is, and will be, faced by the question of how it is to link up both these methods, so that they may complement, promote, and keep a check on each other. Both methods appear continually and everywhere. There has never yet been a truly dominating ruler who was not also a leader, although minor rulers are also subject to this law. And the Hitler regime did bring about—at least to begin with—a synthesis of both methods which had at least the appearance of being tremendously efficient.

To this synthesis has been attributed—perhaps not unjustly—much of what the world registered with wonder, sometimes approvingly, but more often disapprovingly, as the result of an unheard-of mobilization, concentration, and increase in the energies of a nation.

This remarkable synthesis of leading and dominating found its maximum expression in the person of Hitler himself, in his acts of leadership, for instance, in his speeches, and in his commands. Hitler's acts of leadership and commanding became the motive power of the German political life of that time. Above all, this phenomenon must be taken into correct account. It is of absolutely decisive importance in judging the enormous mass of facts which has been produced here. With all due caution, which is natural to men accustomed to think along scientific lines and imbues them with an almost unconquerable mistrust of any attempt to comprehend and evaluate events which have happened so recently, one is perhaps entitled to vouchsafe this assertion: In the course of the years Hitler accorded the act of command an increasingly favored place to the detriment of acts of leadership and finally brought it so much to the fore that commands, not the act of leadership, became the all-decisive factor. Hitler, the man of the people, became more and more the dictator. The speeches in which he repeated himself *ad nauseam*, even for his most willing followers, and shrieked out, to the irritation even of the most faithful disciples, became rarer, while the legislative machine worked faster and faster. A later age will perhaps realize to what extent the great change in the attitude of the German people toward Hitler, which was beginning to show even before the war, was the cause or effect of this modification.

Whereas on a superficial question, that is, the question as to how he wished to be designated, Hitler urged not to be called "Führer and Reich Chancellor" any longer, but only "Führer," the way in which the State was being governed was taking the exactly opposite path; leadership disappeared more and more, and there remained naked domination. The Führer's orders became the central element of the German state edifice.

In the public hierarchy, this development was attended by an increase rather than a decrease in Hitler's power. The great majority of German civil servants and officers had seen nothing behind the organized leadership but a machinery of domination invested with a new label and, if possible, an even more bureaucratic nature functioning side by side with the inherited state machinery. When Hitler's orders became the Alpha and Omega, they felt themselves, so to speak, returned to the old familiar path. The queer and puzzling apparition had gone.

They were back in their world of subordination. Nevertheless, this development had given the Führer's orders a special aura of sanctity for them too; there was no contradicting the Führer's orders. One could perhaps raise objections; but if the Führer abided by his order, the matter was decided. His orders were something quite different from the orders of any official within the hierarchy under him.

Here we have the fundamental question in this Trial: What position did Hitler's orders occupy in the general order of Germany? Did they belong to the type of orders which were disallowed by the Charter of this Court as grounds for the exclusion of punishment?

It was perhaps harder for a lawyer who grew up in the habits of the state founded on law than for other people to witness the slow and then ever more rapid disintegration of that foundation of law supporting the state; he never came to feel at home in the new order and always remained half outside. Yet for that very reason he probably knows better than anyone else the peculiarities of this new order, and he may attempt to make them comprehensible.

State orders, whether they lay down law or decide individual cases, can always be measured not only against the existing written and unwritten law of the state concerned but also against the rules of international law, morality, and religion. Someone, even if only the conscience of the person giving the orders, will always ask whether the person giving the order did not perhaps order something which he had no right to order or whether he may not have formed and published his order by an inadmissible procedure. Now an unavoidable problem for all domination lies in this: Should or can it grant the members of its hierarchy, its civil servants and officers, the right—or even impose on them the duty—to examine at any time any order which demands obedience from them, to determine whether it is lawful and to decide accordingly whether to obey or refuse?

No form of rule which has appeared in history so far has given an affirmative answer to this question. Only certain members of the hierarchy were ever granted this right, and they were not granted it without limits. Such was the case, for instance, under the extremely democratic constitution of the German Reich during the Weimar Republic, and it is again the case today under the occupation rule of the four great powers over Germany.

Insofar as no such right of examination is granted to members of the hierarchy, orders are binding upon them. All constitutional law, including that of modern states, provides for acts of state which must be respected by the authorities, even when defective. Certain acts constituting rules, certain decisions on individual cases which have acquired legal force, are held to be valid even when the person

giving the order has exceeded his competency or made a mistake in form.

If only because the process of referring to a still superior order finally comes to an end, there must under every government exist orders that are binding on the members of the hierarchy under all circumstances, and therefore represent law to the officials concerned, even though outsiders may find that they are defective as regards content or form when measured against the previous laws of the state concerned or against rules applying outside the state. For instance, in direct democracies, an order given as the result of a plebiscite of the nation is a fully valid rule or an absolutely binding decree. Rousseau knew how much the *volonté de tous* can be in contradiction to what is right, but he did not fail to appreciate that orders by *volonté de tous* are binding.

In indirect democracies the resolutions of a congress, a national assembly, or a parliament may have the same force.

In the partly direct, partly indirect democracy of the Weimar Constitution of the German Reich the laws resolved by a majority of the Reichstag large enough to modify the constitution and duly promulgated under all circumstances were binding upon all functionaries, including the independent courts of law, even though the legislator—willingly or unwillingly—might have violated rules not imposed by the state but by the Church or by the community of states. In the latter case the Reich would have been guilty of an international offense, since it would have failed to see to it that its legislation was in accordance with international law. It would, therefore, have been responsible under the international regulations regarding reparation for international offenses. But until the law concerned had been eliminated in accordance with the rules of German constitutional law, all officials of the hierarchy would have had to obey it. No functionary would have had the right, let alone the duty, to examine its legally binding nature with the aim of obeying or refusing to obey it, depending on the result of this examination.

Things are no different in any other state in the world. It never has been and never can be different. Every state has had the experience of seeing its ultimate orders, its supreme orders, which must be binding on the hierarchy if the authority of the state is to subsist at all, on occasion coming into conflict with rules not imposed by the state—to divine law, to natural law, and to the laws of reason. Good governments take pains to avoid such conflicts. To the great sorrow—indeed, to the despair—of many Germans, Hitler frequently brought about such conflicts. If only for this reason, his way of governing was not a good one, even though it was for several years successful in some spheres.

One thing however must be said straight away: these conflicts never affected the entire nation or the entire hierarchy—at least not immediately—but always merely groups of the nation or individual offices of the hierarchy. It was only some of the people concerned who were fundamentally affected, the bulk being only superficially involved—not to mention those conflicts that remained unknown to the overwhelming majority of the people and of the hierarchy, those orders, therefore, by which Hitler not only showed himself to be inhuman in individual instances but simply put himself outside the pale of what is human. Here is a purely academic question: Would Hitler's power have taken such deep root, would it have maintained itself, if these inhumanities had become known to wider sections of the people and of the hierarchy? There can be no answer: they did not.

Now in a state in which the entire power to make final decisions is concentrated in the hands of a single individual, the orders of this one man are absolutely binding on the members of the hierarchy. This individual is their sovereign, their *legibus solutus*, as was first formulated—as far as I can see—by French political science with as much logic as eloquence.

After all, the world is not faced by such a phenomenon for the first time. In former times it may even have appeared to be normal. In the modern world, a world of constitutions based on the separation of powers under the supervision of the people, absolute monarchy does not seem to be proper in principle. And though this may not yet be the case today, one day the world will know that the vast majority of intelligent Germans did not think any differently on this matter from the majority of intelligent people of other nations in and outside Europe.

Such absolutely monocratic constitutions can nevertheless come about as the result of events which no individual can grasp in their entirety, much less control at will.

This is what happened in Germany from the beginning of 1933 onward. This is what happened gradually, stage by stage, to the parliamentary Weimar Republic, which under Hindenburg was changed into a presidential republic, in a process which partly furthered the development by acts of state which stressed legal forms and which can be read in state documents, but partly simply formed the rules by accepted custom. The Reich law of 24 March 1933, by which the institution of Reich Government Laws was created, whereby the separation of powers in the sense in which it had been customary was, in practice, eliminated, was, according to the transcript of the Reichstag session, passed with a majority sufficient for altering the constitution. Doubts about the legality of the law have nevertheless been raised on the grounds

that a section of the deputies elected had been prevented from attending the session by the police, while another section of the deputies who were present had been intimidated, so that only an apparent majority sufficient for altering the constitution had passed the law. It has even been said that no Reichstag, not even if everybody had been present and all of them had voted, could have abolished the fundamental constitutional principle of the separation of powers, since no constitution could legalize its suicide. We need not go into this. The institution of government laws became so firmly rooted as a result of undisputed practice that only a formal jurisprudence entirely cut off from the realities of life could have attempted to play off paragraphs against life and to ignore the constitutional change which had taken place. And for the same reason one's arguments are faulty if one chooses to ignore how the institution of government laws, that is, cabinet law, was later changed by custom into one of several forms in which the Führer legislated. At the base of every state order, as of any order whatsoever, there lie habit and custom. From the time when Hitler became head of the State, practice quickly resulted in Hitler heading both the hierarchy and the whole people as the undisputed and indisputable possessor of all competency. The result of the development was, at any rate, that Hitler became the supreme legislator as well as the supreme author of individual orders.

He gained this position to some extent under the impression of the surprising successes—or what were considered successes—in Germany and abroad, especially during the course of the past war. Perhaps the German people, although with great differences between North and South, West and East, particularly easily falls a prey to actual power, particularly easily obeys by orders, particularly well conforms to the idea of a superior. Thus the whole process may have been rendered easier.

Finally, the only thing that was not quite clear was Hitler's relationship to the judiciary. For, even in Hitler Germany, it was not possible to exterminate the idea that it was essential to allow justice to be exercised by independent courts, at least in matters which concern the bulk of the people in their everyday life. Up to the top group of Party officials—this was shown by some of the speeches by the Reich Leader of jurists, the Defendant Dr. Frank, as quoted here—there showed resistance, which, it is true, was not very effective, when justice in civil and ordinary criminal cases was equally to be subjected to the *sic volo sic jubeo* of one man. But apart from the judiciary, which in the end also was beginning to succumb, absolute monocracy was complete. The Reichstag's pompous declaration about Hitler's legal position, dated 26 April 1942,^{56a}

^{56a} Compare Jahrreiss Plea. Annex Exhibit Number 42.

was actually only the statement of what had become a fact long before. The Führer's orders constituted law already a considerable time before this second World War.

In this state order the German Reich was treated as a partner by the other states, throughout the whole field of politics. In this connection I do not wish to stress the form—so impressive to the German people and so fatal to all opposition—which this treatment took in 1936 at the Olympic Games, a show which Hitler could not order the delegations of foreign nations to attend, as he ordered Germans to the Nuremberg Party Rally with its state displays. Rather would I wish to point out that the governments of the greatest nations in the world considered the word of this "all-powerful" man to be the final decision, incontestably valid for every German, and based their decisions on major questions on the very fact that Hitler's order was incontestable. To mention only the most striking cases, this fact was relied upon when the British Prime Minister, Mr. Neville Chamberlain, after the Munich Conference, displayed the famous peace paper when he landed at Croydon. This fact was pointed to when people went to war against the Reich as the barbaric despotism of this one man.

No political system has yet pleased all people who live under it or who feel its effects abroad. The German political system in the Hitler era displeased a particularly large and ever-increasing number of people at home and abroad. But that does not in any way alter the fact that it existed. Its existence was in part due to the recognition from abroad and to its effectiveness, which caused a British Prime Minister to make the now world-famous statement at a critical period, that democracies need two years longer than totalitarian governments to attain a certain goal. Only one who has lived in the outer cold and as though outcast among his own people amidst blindly believing masses, who idolized this man as infallible, can tell how firmly Hitler's power was anchored in the nameless and numberless following who held him capable of doing only what was good and right. They did not know him personally; he was for them what propaganda made of him, and this he was so uncompromisingly that everybody who saw him from close range and summed him up differently clearly realized that opposition was utterly pointless and, in the eyes of other people, did not even represent martyrdom.

Would it therefore not be a self-contradictory process if both the following assertions were to be applied at the same time in the rules governing this Trial? First, the Reich was the expression of the despotism of this one man and for that very reason a danger to the world. Secondly, every functionary had the right—in fact the duty—to examine the orders of this man and to obey or not obey them, according to the result of this examination.

The functionaries had neither the right nor the duty to examine the orders of the monocrat to determine their legality. For them these orders could never be illegal at all, with a single exception which will be discussed later—an exception which, when carefully examined, will be seen to be only an apparent one—namely, with the exception of those cases in which the monocrat placed himself, according to the indisputable axioms of our times, outside every human order and in which a genuine question of right or wrong did not arise, so that no genuine examination was called for, either.

Hitler's will was the final authority for their considerations on what to do and what not to do. The Führer's order cut off every discussion. Thus a person who as a functionary of the hierarchy invokes an order by the Führer is not trying to claim exemption from punishment for an illegal action but opposes the assertion that his conduct was illegal; for it is his contention that the order with which he complied was legally unassailable.

Only a person with full comprehension of this can have a conception of the hard inner struggles which so many German officials had to fight out in these years in the face of many a decree or resolution of Hitler's. For them such cases were not a question or a conflict between right and wrong; disputes about legality sank into insignificance. For them the problem was one of legitimacy; as time went on, human and divine law opposed each other ever more strongly and frequently.

Whatever the Charter means by the orders which it rejects as grounds for exemption from punishment, can this be meant to apply to the Führer's orders? Can they come within the meaning of this rule? Must one not accept this order for what it was according to the interior German constitution as it had grown, a constitution explicitly or implicitly recognized by the community of states? Many Germans disapproved of Hitler's position of power from the very beginning; and to many Germans, who welcomed it at first because they yearned for clear and quick decisions, it later became repugnant. But that in no way affects the following: Must not those people who did their duty in the hierarchy, willingly or unwillingly, in accordance with the constitution, feel that an injustice is being done to them if they were sentenced because of a deed or an omission which was ordered by the Führer?

A community of states might refuse to accept or tolerate as members such states as have a despotic constitution. Yet up to now this has never been the case. If it is to be different in the future, the nondespotic powers must take the necessary steps to prevent any member of the family of states turning into a despotic power and to prevent any despotic power from entering the family circle from outside. Today people are realizing more and more clearly that this

is the crux of our question. The circumstances must be very special ones if a modern people is to let itself be governed despotically, even when as well-disciplined as the German people. But wherever such circumstances do exist, no domestic countermeasures are of avail. In that eventuality only the outside world can help. If, instead, the outside world prefers to recognize this constitution, it is impossible to see where successful domestic resistance can spring from. In pointing to these special circumstances and to the recognition by the outside world, we are drawing attention to facts for the existence of which, to take our case, no German was responsible but which cannot be ignored when the question is asked how all this was possible.

Attention must also be drawn to certain further facts without knowledge of which one cannot fully grasp the fact that Hitler's absolute monocracy was able to establish such a terribly firm hold. Hitler combined in his person all the powers of issuing legislative and administrative orders of a supreme character, orders which could not be questioned and were absolutely valid; but immediately below him the power of the state was divided up into a vast mass of spheres of competence. The dividing lines between these spheres, however, were not always sharply drawn. In a modern state, particularly in major states of our technical era, this cannot be avoided. The tendency to exaggerate questions of competency is certainly no less marked in Germany than in any other country. This certainly facilitated the erection of barriers between the departments. Every department was jealously watching to see that no other trespassed into its field. Everywhere it was prepared for tendencies of other departments toward expansion. Considering the great mass of tasks which the so-called "totalitarian" state had heaped upon itself, cases where two or three departments were competent for the same matter could not be avoided. Conflicts between departments were inevitable. If a conspiracy existed, as the Indictment assumes, the conspirators were remarkably incompetent organizers. Instead of co-operating and going through thick and thin together, they fought one another. Instead of a conspiracy we would seem to have had more of a "dispiracy." The history of the jealousy and mistrust among the powerful figures under Hitler has still to be written. Now let us remember that in the relations between all departments and within each department, people surrounded themselves with ever-increasing secrecy; between departments and within each department, between ranks and within the various ranks, more and more matters were classed as "secret." Never before has there been so much "public life," that is, nonprivate life in Germany as under Hitler; and also never before was public life so screened off from the people, particularly from the individual members of the hierarchy themselves, as under Hitler.

The single supreme will became, quite simply, technically indispensable. It became the mechanical connecting link for the whole. A functionary who met with objections or even resistance to one of his orders on the part of other functionaries only needed to refer to an order by the Führer to get his way. For this reason many, very many, among those Germans who felt Hitler's regime to be intolerable, who indeed hated him like the devil, looked ahead only with the greatest anxiety to the time when this man would disappear from the scene. For what would happen when this connecting link disappeared? It was a vicious circle.

I again stress the fact that an order by the Führer was binding—and indeed legally binding—on the person to whom it was given, even if the directive was contrary to international law or to other traditional values.

But was there really no limit? During the first period, at any rate, that is, just at the time when the foundations of power were being laid, at the time when the monocratic constitution was being developed step by step, Hitler's followers among the people saw in their Führer a man close to the people, an unselfish, almost superhumanly intuitive and clear-thinking pilot and believed only the best of him; they had only one worry: Was he also choosing the right men for his assistants, and was he always aware of what they were doing? The tremendous power, the unlimited authority were vested in this Hitler. As in every state, this might include harsh orders. But it was never intended as giving full power to be inhuman. Here lies the boundary line; but this line has at no time and nowhere been quite clearly drawn. Today the German people are utterly torn in their opinions, feelings, and intentions; but they are probably in agreement on one thing, with very few exceptions: As accusers, they would not wish to draw this line with less severity than other people do toward their leaders. Beyond that line, Hitler's order constituted no legal justification.

It must not be forgotten, however, that this line is not only vague by nature but also follows a different course in peace than in wartime, when so many values are changed and when men of all nations, especially in our days, take pride in deeds which would horrify them at any other time. And the decision to wage war does not in itself overstep that line, in spite of its tremendous consequences—not with any nation in the world.

Hitler himself, at any rate, did not recognize this boundary line of inhumanity, of nonhumanity, as a limit to obedience in his relations with his subordinates; and here again opposition would have been considered a crime worthy of death in the eyes and judgment of this man, invested as he was with limitless power and controlling an irresistible machine. What should a man

who received an order exceeding the line have done? What a terrible situation! The reply given in Greek tragedy, the reply by Antigone in such a conflict cannot be imposed. It would show scant knowledge of the world to expect it, let alone demand it, as a mass phenomenon.

Before we come to the specific question of who in the Reich possessed the power of deciding on war and peace, one more word remains to be said about the forms which Hitler's orders assumed.

Hitler's orders are solely the decisions of this one man, whether they were given orally or in writing and, in the latter case, whether they were clothed in more or less ceremony. There are some orders by Hitler which can be recognized as such immediately. They are called "Erlass" (decree), such as the decree concerning the institution of the Protectorate of Bohemia and Moravia of 16 March 1939; or "Verordnung" (order), like the order for the execution of the Four Year Plan of 19 October 1936; or "Weisung" (directive), like the strategic decisions so often cited during this Trial; or simply "Beschluss" (decision) or "Anordnung" (instructions). Often they are signed in Hitler's name only; sometimes we find the signatures of one or more of the highest civil or military functionaries as well. But it would be fundamentally wrong to assume that this was a case of countersignature as understood in the modern democratic constitutional law of nations ruled constitutionally or by a parliament — of a countersignature which makes the signatory responsible to a parliament or to a state court of law. Hitler's orders were his own orders and only his own orders. He was much too fanatical a champion of the one-man doctrine, that is, of the principle that every decision must be made by one and only one man even to consider anything else, especially in the case of his own decisions. We will leave his high opinion of himself entirely aside in this connection. Whatever the more or less decorative significance of such countersigning may have been, there was never any doubt that the Führer's orders represented nothing but his own decision.

Special attention must be drawn to those laws which appeared as Reich Cabinet Laws or Reichstag Laws. Hitler's signing of a law of the Reich Cabinet represented the formal certification of a Cabinet decision. In actual fact, however, a stage was reached where the Reich Cabinet Laws were also merely decisions by Hitler, who had previously given some of his ministers the opportunity to state the opinion of their departments. And when Hitler signed a law which, according to its preamble, had been decreed by the Reichstag, this was again only a case of a formal certification. In reality, however, it was a decision by Hitler. From November 1933 onward, at the latest, the German Reichstag was no longer a parliament but merely an assembly for the acclamation of Hitler's

declarations or decisions. These scenes of legislation appeared to many people at home and abroad to amount almost to an attempt to make democratic forms of legislation ridiculous by caricaturing them; nobody, either at home or abroad, regarded them as proceedings during which an assembly of several hundred men arrived at a decision after consideration, speeches, and counterspeeches.

There exist, however, also orders by Hitler which are not signed by him but which can immediately be recognized as his orders. They are drawn up by a Reich Minister or some other high functionary, who states in the introduction "The Führer has ordered" or "the Führer has decreed." This is not an order by the signatory, but a report by the signatory on an order given orally by Hitler. The orders by Hitler as Supreme Commander of the Armed Forces were thus often clothed in the form of such a report.

Finally there are orders by Hitler which can only be recognized as such by a member of the public if he possesses knowledge of the constitutional position. When the High Command of the Armed Forces (OKW) issues an order, it is always an order by Hitler; Hitler himself, together with his working staff, was the OKW. The power to issue OKW orders rested solely with Hitler.

By my explanations regarding the constitution of the Hitler Reich, I have already—as it were by implication—dealt with the question as to who was responsible for the ultimate decisions, for this state's decisions regarding fundamental questions of existence, especially for the decision about war and peace. Kelsen said—in his great treatise of the year 1943,⁵⁷ which I have already mentioned above—"probably the Führer alone." We shall have to say: quite definitely alone.

Under the Weimar Constitution the sole body responsible was the Reich legislature, for Article 45 demands a Reich Law for a declaration of war and for the conclusion of peace. And a Reich Law could be passed only by the Reichstag or by a vote of the German people. Neither the Reich President, that is, the head of the State, nor the Reich Cabinet had the power. They might, at most, have created such circumstances by acts lying within their jurisdiction—possibly the Reich President as Commander-in-Chief of the Armed Forces—so as to give the Reich legislature no option in its decision; a problem which, as far as I know, became a tangible one in the United States with regard to the relationship of the President to Congress and was therefore seriously discussed, while it was never a tangible one for the Germany of the Weimar Constitution. If, however, the Reich legislature had by means of a law taken the decision to wage war, the Reich President and the whole State hierarchy, particularly the Armed Forces, would have been bound

⁵⁷ Kelsen, *Collective and Individual Responsibility*, Page 546.

by this decision with no right of examination, let alone of objection, even if all the experts on international law in the world had regarded the law as contrary to international law. The Weimar democracy could not have tolerated, any more than any other nation, a state of affairs in which military leaders as such could examine the decision to wage war taken by the political leaders, in the sense that they could refuse obedience if they saw fit. The military means of power must remain at the disposal of the political leaders of a state. Otherwise they are not means of power at all. That has always been so. And it will have to be so all the more if the duty to give assistance against aggression is really to apply among the nations.

I have already shown how, in the course of a gradual transformation which laid particular emphasis on legal forms, Hitler replaced all the highest authorities of the Weimar period and combined all the highest competencies in his own person. His orders were law.

The circumstances in a state can be such that the man who is legally the only one competent for the decision on war and peace, may have, in practice, no—or not the sole—authority. If, however, both the sole legal competence and the sole authority in actual practice have ever been coincidental in any state, then such was the case in Hitler Germany. And if, in any question, Hitler did ever go as far as to accept the advice of a third party, then that was certainly not the case in the question of war or peace. He was the arbiter of war and peace between the Reich and other nations—he alone.

I conclude: Sentences against individuals for breach of the peace between states would be something completely new under the aspect of law, something revolutionarily new. It makes no difference whether we view the matter from the point of view of the British or the French chief prosecutors.

Sentences against individuals for breach of the peace between states presuppose other laws than those in force when the actions laid before this Tribunal took place.

The legal question of guilt—and I am here only concerned with that—is thus posed in its full complexity, for not one of the defendants could have held even one of the two views of the legal world constitution, on which the chief prosecutors base their arguments.

THE PRESIDENT: Dr. Sauter, could we take up the time between now and 1 o'clock in dealing with that letter, if you have it now? And possibly Dr. Exner also has his letter.

DR. SAUTER: The Defendant Walter Funk was questioned here as a witness under oath. After his examination, he told me that on one point his testimony was not quite correct; and he asked me to

correct his testimony on this point, since he himself had no opportunity to do so. On 17 June 1946 I wrote the following letter to the President of the International Military Tribunal, which is signed by defendant's counsel Dr. Sauter as well as by the Defendant Walter Funk personally. I shall read the text of the letter:

"Re: Penal case against Walter Funk; correction of the testimony.

"The Defendant Walter Funk in his cross-examination on 7 May said that he"—that is, Funk—"heard only through Vice President Puhl of a deposit of the SS at the Reichsbank. The witness, Emil Puhl, when he was examined, testified that it was Funk who had spoken with the Reichsführer SS Himmler and he"—that is, Puhl—"was then informed by Funk about the deposit to be set up. From the statements of the witness Emil Puhl the Defendant Funk reached the conclusion that, in fact, on this point, the statement of the witness Emil Puhl is correct; and after some consideration, the Defendant Funk believed that he could recall that it was he, Funk, to whom Reichsführer SS Himmler first applied concerning the establishment of a deposit for the SS and that he then informed Vice President Puhl about this matter.

"The statement by the Defendant Funk under cross-examination was due to faulty recollection, because of the fact that these cross-examination questions of the Prosecution had completely surprised and greatly disturbed Funk. Immediately after the examination of the witness Puhl, Funk informed me of his mistake and asked me to correct his factually incorrect statement on this point, since he himself would have no opportunity to do so.

"I put forward this request of the Defendant Funk, and I take the liberty of informing the President of the correct state of affairs. The Defendant Funk agrees with this correction by cosigning this letter."

Then there are the two signatures, "Walter Funk" and "Dr. Sauter." That is the content of the letter, which I sent on 17 June 1946, to the President to correct the testimony of Funk.

THE PRESIDENT: Thank you, Dr. Sauter.

Dr. Exner, have you got your letter so that you can read it?

PROFESSOR DR. FRANZ EXNER (Counsel for Defendant Jodl): Mr. President, I was downstairs in the General Secretary's office, and I was promised it at 1:30, but I have not yet received it. I am sorry; at the moment I am not in a position to fulfill your request.

THE PRESIDENT: You probably will have it at 2 o'clock.

[The Tribunal recessed until 1400 hours.]

Editor's Note: *In respect to the presentation of the final pleas by Counsel for the Defense, the Tribunal in several instances directed that written speeches of excessive length be shortened for oral presentation in Court and that notice would be taken by the Tribunal of the paragraphs omitted. In the sessions to follow such passages have been reproduced in small type.*

Afternoon Session

DR. EXNER: Mr. President, I shall read the letter dated 22 June 1946, sent to the International Military Tribunal:

"Mr. President:

"During the cross-examination on 6 June 1946, the British Prosecution presented Document C-139 to the Defendant Jodl, obviously thinking that the document showed evidence of preparatory measures for occupying the Rhineland as early as 2 May 1935..."

[The proceedings were interrupted by technical difficulties in the interpreting system.]

THE PRESIDENT: Go on, Dr. Exner.

DR. EXNER:

"...the Defendant Jodl has stated that he did not know the document. After looking through the document, he explained that it is quite obvious from the document that in the West, at any rate, there was no plan for any German action, but that definitely only defensive measures were considered. He did not discover where the 'Operation Training' was supposed to take place; he could only guess.

"Defendant Freiherr von Neurath has now informed him that in 1934, during the summer, Mussolini had stationed several divisions at the Brenner Pass in order to occupy the North Tyrol in the event of the Anschluss. The Defendant Jodl, after receiving this information, perused the document again, and he now imagines that according to this document an operation was to be prepared to thrust the Italians back across the Brenner Pass in the event of their marching in. But he knows nothing about this affair.

"The entire matter has nothing at all to do with the Defendant Jodl, and for that reason I shall not refer to it during this session. He is extremely anxious, however, that it should not appear as if he had attempted to conceal anything."

It is signed "Dr. Exner," and "Jodl."

THE PRESIDENT: Very well.

Now I call on Dr. Stahmer.

DR. STAHLER: Mr. President, to begin with, I should like to remark that I have still to complete the Case Katyn. The Case Katyn could not be incorporated into the book which has been submitted to the Tribunal, because the hearing of the evidence only took place on Monday and the day before yesterday. I shall have to present it, therefore, without its being in the book. It is only a brief presentation, and the interpreters will receive copies of my draft. Unfortunately, however, I cannot submit a translation to the Tribunal at the moment, as the hearing of the evidence was concluded only the day before yesterday and I could not work on it before. I shall add this at a suitable moment, and I hope that in spite of this I shall be finished within the time I mentioned.

[The proceedings were interrupted by technical difficulties in the interpreting system.]

THE PRESIDENT: Is that all right now? Go on, Dr. Stahmer.

DR. STAHLER: When I mentioned the time I should require I could not take into account the Katyn Case. Nevertheless, I hope that I shall be able to finish in the time which I have stated, as I am shortening the report in some places and I believe I shall have sufficient time.

May it please the Tribunal: This Trial, of truly historical and political importance, and of great significance in shaping new laws, is of dimensions such as have not been known hitherto in the history of law; these proceedings which concern not only the defendants present in the Court, but which are of the greatest importance to the entire German people, are now entering upon a new phase.

The Defense takes the floor.

The position of the Defense in these proceedings is especially difficult; for there is an all too unequal distribution of strength between the Prosecution and the Defense.

Months before the start of the Trial the Prosecution was in a position to search all offices and archives in Germany and abroad with a large staff of experienced collaborators, as well as to examine witnesses in all countries. Thus they were able to submit to the Tribunal an immense amount of evidence.

The difficult position of the Defense is further aggravated by the fact that in the Anglo-American procedure on which this Trial is based there is a clause missing which is contained in the German criminal procedure according to which the Prosecution is also bound to procure and submit evidence exonerating the accused...

THE PRESIDENT: Dr. Stahmer, let me tell you that the statement you have just made is entirely inaccurate. There is no such thing as an English code of criminal procedure, but it is the universal practice for the Prosecution to disclose to the Defense any document and any witness who assists the Defense and therefore your statement is entirely false—and I believe that same practice obtains in the United States.

And as for what you say here about the Defense being under any unfair difficulties as compared with the Prosecution, that also is entirely inaccurate because I feel certain that the Prosecution in this case have observed the same rules that would have been observed in England and would have disclosed to the Defense any document or any witness over whom they had control who would assist the Defense, and there have been various occasions on which the Prosecution have disclosed in this case to the Defense documents which have been supplied to them, which appeared to them to help the Defense.

Every document which has been put in by the Defense in this case—or practically every document—has been procured for them after great efforts by the Prosecution, and investigations have been made all over Germany and, I may say, almost all over the world in order to help the Defense in this case.

DR. STAHLER: Thank you for your instruction, Mr. President.

After the reading of the Indictment, Reich Marshal Göring, in reply to the question of the presiding judge as to whether he pleaded guilty or not guilty, declared, "Not guilty in the sense of the Indictment." This statement of the accused necessitates an examination of all the charges made by the Prosecution.

The accused has, of course, already during his personal examination dealt with many questions which are of considerable importance for his defense. He expressed his opinion in detail with regard to political and military developments and exhaustively described the motives for his actions, and the origin and course of events.

I am thankful to the High Tribunal for permitting the accused to portray matters to the total extent to which he saw, felt, and experienced them, for only such direct personal portrayal can afford good insight into the attitude of the accused, thus making it possible to obtain a reliable opinion of his personality. This knowledge is absolutely necessary if the Tribunal is to come to a decision which is not only in harmony with objective law, but which also renders the maximum of justice to the individuality of the perpetrator.

I do not consider it necessary—after the accused was heard so exhaustively on all particulars—to deal with every question to

which he has already given the requisite explanation. For this reason I can limit the defense to the following statements:

We are in a transitory period of history of the greatest significance. An age is coming to an end which has been known less for its concept of order than for its concept of liberty. This striving for liberty released tremendous forces—so gigantic that in the end it was impossible to master them. The tremendous progress this era has unquestionably made in scientific and technical spheres we have dearly paid for with the shattering of all human order and the loss of peace in the entire world.

So far the profound reasons for such a disastrous development have hardly been discussed in this Court. But in order to understand properly the grave crimes and aberrations which are indicted here it is imperative to throw some light on the historical background.

The French chief prosecutor has already pointed out that the roots of National Socialism are to be found in a period far removed from us. He goes back to the beginning of the last century. He sees the first step to a leading astray of the German character in Fichte's *Reden an die deutsche Nation* (Speeches to the German Nation). Fichte preached the doctrine of Pan-Germanism, he says, insofar as he wanted to see the world planned and organized by others, just as he himself saw it and would have liked it to be shaped. I cannot understand how this can be taken to express more than the universal human desire to take part in the shaping of a common destiny. Only the methods of such attempts to participate may, at times, be justly criticized.

A Swiss assertion, which also perceives in Fichte the cause of Germany's going astray, seems to me to be clarifying in this respect. It does not, however, accuse him of Pan-Germanism, that is, of the will to subjugate foreign peoples, but rather reproaches him for having attempted at all to unite the Germans into one nation. It contends that this was an inadmissible attempt to imitate the French and British, whereas it would have been more suited to the German character to remain a nation made up of different peoples. For only as such could it have continued its historical mission of remaining the nucleus of a European federation. Judging by Fichte alone the development is therefore not so easily interpreted.

If one wishes to think historically, one cannot simply fall back on Fichte. For his *Reden an die deutsche Nation* was only an answer to the "Call to Everyone" which the French Revolution had sent out into the world, and they were directly provoked by the appearance of Napoleon I. One must go back over the chain of causes and effects to their very beginning. This, the beginning of a national and personal striving for liberty which has characterized the whole of modern times, we find in the Middle Ages.

The colorful play of national and imperial tendencies and struggles which had been the hallmark of ancient times was overcome by the conception of one eternal and omnipotent Christian

Church. With this a static order superseded the dynamic forces of the time, an order which according to the doctrine of the Church was created by the Lord himself and was therefore by "the grace of God." It strove to embrace all humans, and to lead them to peace and rest. It was the teachers of the Church in the Middle Ages who first ventured to subject war to the principles of law. Prior to that it was accepted as a natural phenomenon, like sickness or bad weather, and was often looked upon as a judgment of God. Men like St. Augustine and Thomas Aquinas opposed this conception and declared that one must differentiate between a just and an unjust war. They did this upon the basis and within the framework of a Christian belief, by which God had entrusted mankind with the fulfillment of a moral world order to bind one and all; an order which would provide the answer to the question of the righteousness or unrighteousness of a war.

When by the advent of the Renaissance and the Reformation the spiritual basis of the medieval order was shaken, this development into a universal world peace was reversed. Life, formerly tending toward stagnation and tranquillity, now turned into a torrent which, as it swept ever faster through the centuries, gradually swelled to the present catastrophe. The individual, thirsting for freedom, cast off the shackles of Church and class distinction. The State, declaring itself sovereign, violated the universal order of God as represented by the Church. Not recognizing any superior power, it began to conquer as much living space as it could on this earth, unless the stronger will of another nation did not impose any natural barriers. Peace hence existed only in the naturally rather unstable equilibrium of powers obeying only their own laws.

Thus there came into existence world empires such as the British Empire, Russia, the United States, and the enormous French colonial empire, which as living space today comprise more than one half of the surface of the entire world.

The theory of war as a crime, created by Grotius, the teacher of international law quoted by the Prosecution, failed because it was incompatible with the dynamic power of this time. It represents, as we know, only an attempt to keep alive through secular arguments the aforementioned Christian concept of warfare. One cannot, however, derive justice from simple nature, for it knows no other measure than brute force, and always decides in favor of the stronger. Only metaphysically can justice be defined as an independent force set above natural impulses. Therefore the theory of Grotius necessarily petered out in the eighteenth century since, thinking in a purely worldly sense, it could not find a criterion for a just war.

This development from the old order to new liberty, in other words, the fight of all against all, found its climax and culminating point in the great French Revolution. By attempting to set human intellect upon the throne of

God, they reached the apex of secularization. Human intellect, however, proved unable to balance the conflicting ideals of liberty, equality, and brotherliness, that is, to practice true justice.

From that time on the search for true justice stirs the world. All socialist theories are merely attempts at solving this problem. After having been disappointed by the disadvantages of too much liberty, mankind once again seeks security and order. Some wish to return to the Christian truth of God, while others want to proceed in order yet to solve the problem through human intellect.

The National Socialists, whose most revolutionary leaders wanted to go further backward, and at the same time forward to deification of life itself in a biological-political sense, have been conquered and eliminated. Yet no solution of the problems of world order has hitherto been found. The victorious powers hope to arrive at it, however, in drawing a line between themselves and the vanquished by jointly indicting and punishing them as criminals.

From whence, however, will they take the standard by which to define justice and injustice in a legal sense? Insofar as such standards exist by international law as applied up to now, no further statements are required. That a special Court for the Trial was created by the Charter of this Tribunal I will not object to. I must, however, protest against its use, insofar as it is meant to create new material law by threatening punishment for crimes which, at the time of their perpetration, at least as far as individuals are concerned, did not carry any punishment.

One cannot, by an arbitrary act, suddenly create new law when, after centuries of revolutionary development, the old universal principles of medieval law have been gradually abolished and the autonomous thinking of the individual in the moral field has opened gate and door to anarchy. As we know, the very cause of the general state of anarchy in the sphere of justice, from which originated the crimes that are the subject of the accusation here, was the fact that people had forgotten to differentiate between might and justice. The success of so many revolutions over once legitimate rulers "by the grace of God" has shown that might apparently goes before right and that the latter can be changed at will. By what would it then be possible to tell what is right except through the force with which it is able to assert itself and hold its own? This relativity of law which had come about, this positivism of law, no longer concerned itself with a moral justification of law.

Can one expect that punishment will be recognized as just, if the culprit was unable to foresee any punishment because at the time he was not threatened thereby, and therefore believed himself able to derive the authorization for his way of acting solely from the political aims pursued? Of what help is reference to the ethical laws, if such must first be found again? According to Justice Jackson's opinion, however, the Nazi Government from the start was never the representative of a legitimate state which had pursued the legitimate aims of a member of the international community. Only from such an attitude can the Indictment for conspiracy be understood, which will be discussed later. In fact this Indictment, as the entire argumentation of Justice Jackson,

is far ahead of its time. For there were no internationally recognized standards according to which—outside of positive international law—the legitimacy of states and their aims could have been judged, nor was there an international community as such. Slogans about the legitimacy of one's own and of the illegitimacy of foreign aspirations served only the formation of political fronts, just as did the efforts to brand political adversaries as disturbers of the peace. Whatever they did, they certainly did not create law.

Justice Jackson correctly declared that it would have been possible for the conquerors to deal with the conquered as they saw fit. But, said he, nondiscriminatory punishments without a final and fair establishment of guilt would be a breach of promises repeatedly given and would be a heavy burden on America's conscience. For that reason he himself proposed judicial proceedings which were to differ from ordinary criminal proceedings by not admitting the usual tactics of obstruction and delay by the defendants. However, an establishment of guilt was to be arrived at on the basis of a just and fair trial. If the defendants were the first leaders of a conquered nation which had to answer before the law, they were also the first ones to whom the opportunity was to be given to defend their lives "in the name of justice."

If this phrase is to have a meaning, then it must also be of significance for the interpretation of the Charter, because it would not be reasonable if the Court were obliged to rest exclusively upon the Charter without taking into consideration the convictions of others with regard to law. In that case the judgment would represent a mere dictate of force, against which there would be no defense "in the name of justice."

The Charter may therefore be applied by the Court only insofar as its decrees are justifiable in all conscience, not only formally but also materially. The Charter itself says that nobody shall be excused for a violation of its decrees on the grounds of orders from his government or from a superior. In that case it must apply this, its own logic, also to itself, by allowing the judge to examine the congruence of its prescripts with the general principles of legal concept. For a judge, after all, is far more free and independent of the legislator than a subordinate of his superior, or a subject of his dictator.

Then there is another question, namely, whether the decrees of the Charter are really so much in opposition to the previous and ordinary state of law, especially as to the fundamental ideas of all rules of law, that the Court cannot acknowledge them as right or apply them. In practice, the most serious problem consists in deciding which should have precedence in the case of conflict—the Charter or the legal maxim *nulla poena sine lege*.

An attempt has been made to justify disregard of this rule in this specific instance with the highly political character of the Trial. Such a justification, however, cannot possibly be accepted. The political significance of a trial is usually apparent from its consequences rather than during the course of the procedure and through the influence exercised upon the legal norms to be applied. A judge should administer law, and not deal in politics. Still less is he called upon to rectify mistakes made by the politicians. Punishment, the establishment of which in due time was neglected, may only be meted out by him on the strength of a subsequent law if he would have done so in any case.

Basically, the principle of the division of power is presumably to be maintained. By this principle Montesquieu divided the originally united power of the absolute king into legislative, administrative, and judiciary. The three different forms of expression of state domination were to have equal importance, counterbalance each other, and so aid in controlling one another. This system of the division of power characterizes the modern constitutional state. Straining the point somewhat, one might define the field of activities and competency of the three different forms of expression of sovereign authority by stating that the legislature has to deal with the future, the administration with the present, and the judiciary with the past. The legislature sets the standards to which life is to conform. From time to time these must be changed in accordance with the changed way of living. But until then they must remain valid.

Insofar as a mere establishment of norms of life is not sufficient it will be shaped, as the case arises, by the administration. Administration itself is bound by certain norms, but on principle is free to move within the lawful bounds of its good judgment, so as to be able to respond to the daily changing needs. Just as for the law-making politician, the idea of serving a purpose is its main consideration.

The judge, on the other hand, may not decide according to the usefulness, but should decide according to the law. In general, it is not his task to shape, but to judge. He has to pass judgment on actions after they have been committed, and examine conditions after they have arisen in the light of whether and to what extent they corresponded to the standards, or what juridical consequences they have brought about. Therefore, as a matter of principle, his view is directed toward the past. In the life of the state, which is continuously inspired by politicians looking to the future, he is the restraining counterpole.

Although bound by the laws decreed by the politician, he is not merely an executive organ. On the contrary, he should control the

legislator by re-examining the laws with regard to their conformity to the constitution. This, logically, ought to include the examination of whether the principle of the division of power was maintained, because just as the judge may judge only *de lege lata* and must leave the decisions *de lege ferenda* to the legislator, the latter in turn is obliged to refrain from interfering with the former's competency by making laws with retroactive power.

The criticism of the administration of justice by the National Socialist State is mainly based on its having abandoned the division of power. By putting at the top the political Leadership Principle, the Führerprinzip, it interfered dictatorially with the competency of the judges. By means of the Police, that is, the administration, it arrested and imprisoned people without judicial warrant of arrest, simply for reasons of political prevention, and even re-arrested those who had been acquitted by the judge and set free. On the other hand, for political reasons convicted criminals were withdrawn from the hands of justice. Thereby, quite naturally, the sureness and clarity of the law were seriously endangered.

But not even this National Socialist State dared renounce outright the principle *nulla poena sine lege praevia*. In its police measures it dispensed with their justification by the judge exactly as today the execution of denazification sentences was justly not placed under the jurisdiction of the Ministry of Justice by the Regional Council of the American Zone, on the grounds of being "alien to justice." By three laws, however, the National Socialist State decreed an increase in the scope of punishment previously in force with retroactive validity, but they did not provide penalties for acts hitherto unpunishable. More particularly, this was not brought about by the fact that by Article 2a of the Criminal Code the possibility of criminal analogy was created, because by this article a threat of punishment only was created, although not retroactively; and everybody was enabled to conform.

A certain degree of protection against arbitrary judgments and the splitting-up of law lay in the fact that the National Socialist State was based on a specific ideology by which the judge was bound. Concerning the close connection between finding of justice and ideology the Swiss professor of law, Hans Fehr, of Berne, already in 1927 wrote in his book, *Recht und Wirklichkeit; Einblick in Werden und Vergehen der Rechtsformen*: "Without ideology law floats in a vacuum. . . . Whoever has no ideology can have no sense of right and wrong. . . ."

Fehr showed that every judge, as far as the law allows him latitude, judges individually according to his ideology. In an era of liberal freedom of ideology this naturally brought forth a danger for the uniformity and sureness of the law. Therefore the liberal state in particular had to make its criminal court judges conform closely to the codified substance in each case and forbid them to employ analogies. Fehr already pointed out the danger inherent in such judgment based on codified substance, tending to give undue preponderance to the act over the perpetrator. Following the lines of a dynamic jurisprudence, the liberal school of legal conception, he therefore advocated an extension of the judge's authority to create law.

In that sense, as will be understood from the above, the nonliberal states directed by a definite ideology had taken the lead. The Soviet Union, after the Marxists had already long ago rejected the liberal, allegedly objective,

jurisdiction as "bourgeois class justice," was the first to introduce a proletarian class justice which deliberately abandoned the idea of the equality of all before the law. The National Socialists, according to their racial ideology, followed suit by forming the thesis, "Right is what serves the people, wrong is what injures it." Inside such a solid ideological frame the dangers of criminal analogy, which were still further narrowed down by Article 2a of the Criminal Code, dwindled considerably.

In contrast to this, no fixed ideological base as a foundation for the Charter is discernible. Since its signatories stand on very different ideological ground we will have to proceed, as in the international law valid hitherto, from the liberal idea of freedom of ideology. Therefore the legal thesis *nulla poena sine lege* should be especially sacred to it. This is also proven by the fact that the Control Council for Germany, by abolishing the criminal analogy of Article 2a of the Criminal Code, brought the above maxim back again to all Germans most emphatically.

It would be all the more unintelligible and intolerable for the German sense of justice if this phrase were not to apply to Germans accused of War Crimes. In itself the Charter is an exceptional law by the mere fact that it was created only against members of the Axis Powers and based on an agreement made for one year and subject to notice. If, in addition, it should abolish the maxim *nulla poena sine lege praevia*, specifically for actions that were not only within the scope of German legality, but under most severe penalties had even been made a duty by the Government of the sovereign German State, then all understanding would cease for the interpretation that the Court is bound by the Charter.

Nor is an examination of the political aims connected with the Charter of any assistance. Justice Jackson has called the Charter and the Trial a step toward "creating a juridical guarantee that he who starts a war will pay for it personally." The American commentator Walter Lippmann stated elsewhere that the system of collective security for the prevention of wars had broken down because nobody was prepared to declare war on the country breaking the peace in order to help prevent a war which did not directly affect them.

The means for combating the disease of war would have been just as bad as the disease itself. In consequence of the fiasco of the collective methods the conception of basing security in the future upon holding responsible those individual persons accountable for breaking the peace was evolved by the enemies of Germany in the last war. And this finally led to the Nuremberg Trial. Taking one's starting point from this fact, today one might say: During this second World War revolutionary developments have taken place; it has driven humanity beyond the bounds of what was the modern age until a short time ago. The first but essential steps to create a world state have been made.

The way to peace, as shown here, will be welcomed on principle, although one will still doubt its absolute reliability. Justice Jackson himself has expressed doubts whether punishment will serve to intimidate and thus help prevent breaking the peace in the future.

Only somebody certain of victory will decide to wage a war and thus will not seriously consider punishment, which would reach him only in the case of defeat. Therefore the educational issue of this Trial, namely, to strengthen the sense of justice, seems more important than the effect of intimidation, which can also be achieved by warning for the future. The politician will have to learn that the principle of division of power will have to be observed by him, too, and that he will not find a judge willing subsequently to condone his mistakes, because he will also punish him on the basis of subsequent laws. Confidence in international jurisdiction, which today still suffers from a suspicion of being easily misused for political purposes, would be heightened considerably through such a pronouncement. On the other hand, it would most certainly suffer by the sentencing of acts whose punishable quality remained doubtful. Thus the violation of the sentence *nulla poena sine lege* could not be justified even from the angle of political utility, although conversely one must realize that the strengthening of the belief in the inflexibility of justice as the basic pillar of the tremendous dynamics of political forces serves peace best.

This result cannot be questioned on the basis of the individual considerations presented by the prosecutors.

The French prosecutors have pointed out that living international law could not be imagined without international morals, and that a moral code has precedence over all claims for freedom by the individual as well as by the nations. These certainly are facts well worth bearing in mind. Correctly considered, however, they speak only for my viewpoint that any strengthening of the sense of justice must not start out with a violation.

When the French chief prosecutor declared that without punishing the chief culprits of Nazi Germany there could be no future belief in justice, then obviously he went too far. Justice does not grow out of obtaining satisfaction for the violated sense of justice at any price. Otherwise we should quickly arrive again at reprisals, at the endless chain of vendetta. No; justice demands moderation and consideration of motives and countermotives. And there the one-sided action taken only against members of the Axis Powers, violates the idea of justice. It is impossible to justify it by a direct violation of its own principles, that is, of the commonly prevailing rule: *nulla poena sine lege*. The British chief prosecutor himself declared the possibility of subsequent legislature to have been one of the most offensive doctrines of National Socialist jurisdiction. He does, however, believe that the possibility of punishing an act already branded as a crime does not represent a change of the legal situation but only its logical further development, and is therefore permissible. I do not at all want to

contest the institution of the Tribunal as thereby justified by him. But the question certainly arises whether this Tribunal is obliged to punish even though no penal law can be found which threatened the offenses with punishment at the time of their commission. To affirm this question would be going much further than the National Socialist judicial procedure which is so vehemently denounced by the British chief prosecutor. He did not offer the slightest motivation for such a course, and appears thus to reject it.

Moreover, he would certainly be ready to admit that the Charter, if it not merely presumed but possibly wished to establish that the acts concerned were punishable, ought to have stated this clearly and unambiguously. The passage involved, in Paragraph 6 of the Charter, completely lacks such clarity. It reads: "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal."

This may be interpreted either as a mere regulation of competence or, albeit with difficulty, as a regulation originally establishing some act as being punishable. Therefore, this passage must definitely be interpreted in favor of the defendants according to the established legal principle *in dubio pro re*. The next phrase, "for which there shall be individual responsibility," and the material regulations for punishment quoted in the following paragraphs, according to their wording leave no reason for doubt as to their interpretation. However, they contain only modifications in dealing with acts established as punishable. The Tribunal may decide whether or not and to what extent they are compatible with the principle *nulla poena sine lege praevia*.

I find the viewpoint of the American prosecutor most difficult to understand. On the one hand he denounces all legal arbitrariness on the part of the Nazis, yet on the other hand he is not prepared to acquiesce in the punishment of the defendants only for those crimes which were not merely considered reprehensible at the time they were committed, but were actually threatened with punishment. On the one hand he does not desire executions or punishment without first having established guilt in a fair manner; on the other he demands a strict application of the Charter even where it contains new laws surprising the defendants. On the one hand he wants the Trial to appear to future generations as the fulfillment of the human yearning for justice; on the other, in the face of objections to the Charter, he invokes the power of the victorious, who really could have made short work of the defendants.

It seems to me that he speaks too much as an accuser, the sole role he really wants to assume according to his own words. For the prosecutor—especially in Anglo-American procedure—the word "justice" has a different meaning than for the judge, let alone the defendant. Unquestionably Justice Jackson

thinks of himself not only as a prosecutor but to a large degree also as politician. To him this Trial is to serve not only as an atonement for wrongs committed, but also, and above all, in order to develop legal principles which he wishes to enforce by precedence and from which he expects a consolidation of international law for the prevention of future wars. Whoever approaches a cause with so many preconceived opinions and intentions lives in so completely different a world from that of the defendants, that from them to him, and vice versa, hardly any ways of understanding will be found.

As far as the political side of this Trial is concerned, I have already stated why it must not exert any influence on the course of the proceedings. I merely wish to point out here that a policy applied by the victors to the vanquished, which perhaps may be characterized as one of "least resistance," has once before proved to be a failure—namely, with regard to the question of disarmament under the Versailles Treaty.

If Justice Jackson really wishes to forego straightforward decision by force and is prepared to become a party to and submit to a legal procedure, although not bound to do so, then he will have to forego presenting arguments which do not belong in a legal procedure. A hybrid, which is neither a clear act of violence nor a trial in the usual sense—however much one may try to place it in a halfway position under the name of a political trial—is an absurdity. It is true that history knows of other so-called "political" trials of similarly vague character. I want to point out only the sentencing of Louis XVI by the French National Assembly. There, however, it was clear from the composition of the judicial gremium as well as from the procedure employed, that this was not a matter of finding justice but amounted simply to a revolutionary act of violence, and courage to proceed with it was found in mutual exhortation. But here outstanding professional judges have been entrusted with the proceedings by the victorious powers. They have been given certain directions by the Charter, but otherwise their judicial discernment was granted the most far-reaching authority. There can be no doubt that the politicians called upon the judges to relieve them of a job which they could not manage themselves. And now the judges will have to decide by their own competence if and in how far they are able to execute the mandate. With any remainder the politicians will have to manage somehow or other on their own.

I was not able to pick a single one from among Justice Jackson's arguments which might cause the Tribunal to punish acts which were not punishable at the time of their perpetration. For this reason I shall examine the individual points of the Indictment only from the legal situation prevailing at the time of perpetration.

Of the crimes of which all the defendants are accused the conspiracy is most extensive as regards time and object. Professor Exner, in his capacity as a university teacher of criminal law, has given special attention to this legal conception for our Trial. In order to save time by avoiding a duplicate report, Professor Exner has placed the result of his research at my disposal. In conformity with him I have to present the following regarding this question.

The concept of conspiracy belongs to the sphere of Anglo-American law. Even there, however, it is in no way uncontested; remarkably enough, some opinion in England has it that this conception is long since obsolete: "It has been said that in England this law has become entirely disused."

In these proceedings it is a different point that matters. The concept of conspiracy as used by the Prosecution is entirely

unknown to German law. I would like, therefore, to begin my short legal argument with two questions which give rise to doubts.

(1) May a criminal procedure, bent on realizing justice, employ legal concepts which are and always have been utterly alien to the defendants and to the legal trend of thought of their people?

(2) How would this be consistent with the rule *nullum crimen sine lege praevia*, a principle which the British chief prosecutor has acknowledged as a fundamental principle of civilized criminal law?

Can it be honestly stated that already before 1939 not only the initiation of an illegal war was held to be an act punishable individually, but also the conspiracy to initiate such a war? The affirmative answer to this question given by the Prosecution has surprised not only Germany. May I clear up, in this connection, a misunderstanding. It has been said that the National Socialist State itself had issued criminal laws ignoring the rule of *nullum crimen sine lege*, so that the defendants had no right to invoke this rule. It is by no means my purpose to defend National Socialist criminal law, but honesty compels me to say that this is an error. The Third Reich has—as mentioned before—issued three laws increasing the penalty for an action with retroactive effect by applying the death penalty to acts which carried, when committed, prison sentences only. But in no case so far was a lawful act declared punishable, nor an act which was not a crime when committed retroactively converted into a crime. And that is the case here.

However, the Charter, which I follow now, has enjoined the use of the concept of conspiracy. I do not, therefore, go any further into these questions of doubt. At any rate, it would appear therefrom that if such a concept is to be applied to Germans, this must only be done with all limitations imposed by equity.

Anglo-American law defines conspiracy as an agreement between a number of persons to commit crimes, "a combination or an agreement between two or more persons for accomplishing an unlawful end or a lawful end by unlawful means."

Similar definitions keep recurring. Two points form the main characteristics: "agreement" and "common plan."

Agreement means an explicit or tacit understanding. If several persons pursue the same end independently of one another, then there is no conspiracy. It is accordingly not enough that the plan be common to all of them, they must have knowledge of this community and everyone must voluntarily accept the plan as his own. The very expression "to conspire" implies that everyone contributes knowingly and willingly. A person under duress is no conspirator, for duress does not produce agreement, at the utmost purely external assistance. For instance, if somebody imposes his will on another,

then there is no conspiracy. Therefore, a conspiracy with a dictator at its head is a contradiction in itself. A dictator does not enter into a conspiracy with his followers; he does not make any agreement with them, he dictates.

Knowledge and will of the conspirators are aimed at a common plan. The contents of such a plan can be very different. In English law, for instance, conspiracies are known for committing murder, fraud, blackmail, false accusation, certain economic delicts, and so forth. In all these cases, conspiracy is treated as a crime *sui generis*; and therefore the conspirators are punishable for conspiracy regardless of whether a murder, a fraud, or even a mere attempt at such crimes has been committed in any given case.

According to German terminology, we would say that conspiracy is one of the cases where even preparation of a crime is punishable. Such cases are known to German criminal law. The partner in an agreement for committing a crime against life is punishable. According to Article 49b he is punishable for a crime of preparing a killing even if the intended action failed to take place.

In a certain sense Article 129 can also be applied here. Participation in an association pursuing certain aims hostile to the state is punishable, again independently of whether a crime has actually been committed. But if it becomes a fact, everybody is charged with his own culpability in this action. If it happens that the individual conspirator is guilty neither as the perpetrator, nor as an instigator, nor as an accessory to the actual crime, then he can be charged only with participation in an association hostile to the state, but not with such a crime.

The prosecutors in this Trial go further. They want to punish, under certain circumstances, the conspirators for individual actions they did not participate in. To take the most significant example: They want to charge a conspirator even with those crimes which were committed prior to his entering the conspiracy.

With the scant material at my disposal, I was not able to find any evidence that this has any foundation in English or American law. One thing is certain, however, that such a conclusion is utterly contrary to the German criminal law, for the latter is based on the self-evident and unanimously accepted principle that a person is responsible for an action only when he was the author, or at least the coauthor of it.

Let us now look at the Charter. The Charter quotes two cases which are declared as punishable and which fall within the competence of the Court:

(1) Article 6(a) states: Participation in a Common Plan or Conspiracy for the perpetration of a Crime against Peace. As such are

listed the planning, preparation, launching, and conducting of a war of aggression or of a war involving the violation of international treaties or assurances. It is remarkable that a concept which belongs to the internal criminal and civil law of England and America is applied here, without more ado, to international facts. The Charter does this by treating individuals who plan or conduct illegal wars as gangsters participating in a highway robbery. This is a piece of legal audacity, because in this case the sovereign state stands between the individuals and the result of their actions, and this removes all foundation from the comparison with facts in national daily life. Up to now the concept of conspiracy has been unknown to international law.

(2) According to the last paragraph of Article 6 of the Charter, the partners in a conspiracy or in a common plan to commit crimes against peace, the law of war, or humanity are responsible for all actions committed by any partner while executing such a plan. This is fundamentally quite another thing from the case mentioned in (1). It does not mean punishment of the crime of conspiracy, but responsibility for the individual act of another conspiracy. In other words, conspiracy, as taken here, is not a crime *sui generis*, but a form of complicity in the actions of the conspirators. Mr. Justice Jackson has given us an example: If three robbers conspire and one of them kills the victim, then all of them, through their complicity, are responsible for the killing.

The case mentioned under (2) is of the greatest importance in this Trial. The individual conspirator is to be punished for crimes committed not by himself, but by another conspirator. One defendant, who had nothing to do with the annihilation of the Jews, is to be punished for this Crime against Humanity only because he was a partner in a conspiracy.

The question at issue is: In this Trial, are principles of liability to be applied which go beyond our German criminal law?

Article 6 of the Charter says that all conspirators are responsible for any action committed by any one of the conspirators "in execution of such plan." These are the decisive words for the interpretation.

In my opinion the meaning of these words is as follows: The other conspirators are also responsible for any actions of their comrades forming part of the common plan which they helped to conceive, desired, or at least condoned. A few examples:

Case (a): A, B, C, and D commit a concerted housebreaking in a villa. They happen to find a girl in the house, and A rapes her. B, C, and D cannot be charged with this rape. The reason is that A was not, when committing the crime, acting "in execution of the plan" but at best "on occasion of the execution of the plan." The

point at issue is not the execution, but merely the occasion arising while executing the plan. This view, which will hardly be disputed, is of importance in that it shows that there cannot be any question of responsibility for all the actions of the partners to the conspiracy.

Case (b): While exploring the villa, B and C begin to fight about some loot and B knocks down C. This action, too, was not committed "in execution of the plan," but was foreign to the plan. A and D are not responsible for this "excess."

The third case: While exploring the villa the burglars are detected by the owner. D shoots him. Now the issue depends on the special circumstances of the case. Let us, for instance, go back to the example, quoted by Mr. Justice Jackson, of the three robbers, one of whom kills the victim. Considering the nature of American gangsterism, it would appear quite normal that the individual gangsters concerned bore in mind the possibility of such an occurrence, and were quite prepared to accept it. If this is the case they are responsible for the killing, as accessories or assistants, according to our opinion as well. In such a case there would be no objection to Mr. Justice Jackson's solution. But if the case is different, if the fatal issue had not been foreseen by the others, perhaps could not be foreseen—for instance, if they assumed that the inhabitants of the house were away from home—then there exists no liability on the part of the coconspirators. They are responsible only for acts incidental to the "execution of the plan." The common plan, however, includes only what was foreseen and approved from the beginning. Other ways of execution are alien to the plan.

Mr. Justice Jackson's argumentation is deceptive insofar as he derives a common principle from a decision which clearly and obviously happens to apply to the "normal case" of his parable of the robbers and can hardly be applied to any other case. As the case stands, coresponsibility in any single act could be made to apply to those conspirators only who foresaw and approved of their comrade's act.

A legal principle extending the fellow conspirator's responsibility to actions not included in their common responsibility is alien to German law. Whether or not it belongs to Anglo-American law, the application of such a principle in the present Trial would make punishable acts which heretofore could not be punished. This would clearly contradict the rule of *nullum crimen sine lege*, a principle, as I previously emphasized, acknowledged explicitly by the British prosecutor, too. In view of the fact that Article 6 can be interpreted in various ways, we should select from two possible interpretations, as corresponding to the author's will, the one which does not contradict the said principle.

There is such a thing as withdrawal from a conspiracy, and also later entrance into it. The question is: What about responsibility for acts committed during the period of nonmembership? The Prosecution appears to be of the opinion that a person entering into the conspiracy thereby approves anything previously done by any conspirator in pursuance of the common plan. Such an assertion seems to arise out of the civil law theory of a subsequent ratification of a business transaction. This theory is not tenable in criminal law. The Charter does not mention anything of the sort; after all, the common plan, in the execution of which the act was perpetrated, was common only to those who were members at that time. Even if one takes the act of joining the conspiracy to be an approval of any acts so far committed, the approval of a crime already committed does not establish partnership in such crime. The person joining later has nothing to do with these crimes. The same applies to the withdrawal from the conspiracy. The person withdrawing can be made responsible only for what happened during his membership, even if the result has come about only after his withdrawal. Any other opinion would again lead to the result that an *ex post facto* law is being applied. Now, did the 22 defendants participate in a conspiracy within the meaning of the Indictment, namely, a conspiracy to commit crimes against peace, usages of war, and humanity?

If such a conspiracy had existed, then Hitler would have been—nobody can doubt it—the leader of these conspirators. But it has already been emphasized that a conspiracy headed by a dictator is a contradiction in itself. Hitler would have ridiculed the suggestion that he had made an agreement with his Ministers, Party leaders, and generals to wage this or that war, or to conduct the war by such or such means. He was an autocrat. He was not concerned with the approval of these men, but merely with having his decisions executed, whether they agreed with these decisions or not. Quite aside from legal considerations, Hitler's environment, in fact, was quite different from a band of conspirators, as visualized by the Prosecution before the hearing of evidence. Apart from a small Party clan, he was surrounded by an atmosphere of distrust. He trusted neither the "defeatist club" of his Ministers nor his "generals."

Such was already the case before the war, and his surroundings during the war have been described by witnesses with great impressiveness. A cunning system of secrecy insured that the plans and aims of the Führer remained unknown to his associates as long as at all possible, so that his most intimate assistants time and again were taken by surprise by the events, and, in fact, were shocked to learn some of them only at the present Trial. This system of secrecy

also insured an isolation of the individual collaborator, since one person was not allowed to know what the other did. Does this look like a conspiracy? In fact, Hitler complained at times that the generals were "conspiring" against him, and used, strangely, this very word while speaking of those who today are charged with having conspired with him. The hearing of evidence repeatedly mentions conspiracies, but conspiracies against Hitler. From a psychological point of view it is, to say the least, highly improbable that the score of survivors of the Third Reich selected and put in the dock by the Prosecution should have formed a gang of conspirators in the sense of the Indictment. In this group of people all homogeneity as to outlook, background, education, social position, and function is lacking, and some of the defendants only met in the dock.

The Prosecution considers the Party with its organizations as the nucleus around which the conspiracy formed. We should, however, in this connection consider the different attitude displayed by the individuals. Some of the defendants have never been Party members at all, or, at any rate, not for a long time, and only a few of them have played an important part in the Party. Some held top positions in the Party and its organizations, and devoted their entire activity to the aims of these organizations, while others did everything in their power to eliminate from their sphere of activity any influence of Party and SS.

The NSDAP was founded in a period of utter powerlessness of the State and of general war-weariness of the people at a time when, truly, no intelligent person thought of a second war, much less of a war of aggression.

But were not some of the defendants' aims attainable without war?

Presumably every true German from the bottom of his heart desired the union of all adjoining German territory with the Reich. This applied to the Saar territory, Austria, Memel, Danzig, and, as a hope lingering in the far future, also to the Sudeten territory. In the past they all had been parts of the German Reich, they all would have returned to the German Reich already in 1919, had the right of self-determination solemnly promised to all peoples been realized. But these objectives of German longing could be reached by peaceful means. And in fact, they had been reached without a shot or a stroke with the one exception of Danzig, which would have been managed in the same peaceful way if the Führer had had a shred of patience and the Poles a shred of good will.

But they neither wanted nor believed in a war. Hitler was thought capable of large-scale bluffing, but not of launching the catastrophe of a war. I cannot, therefore, believe in a conspiracy to

commit crimes against peace and the usages of war. May I add two points of general importance:

(1) The first point refers to Göring's attitude immediately previous to the outbreak of war. He was at that time Hitler's confidant and friend, the country's second string, and he is now the chief figure among the defendants. If there had been, in truth, a conspiracy to launch wars of aggression at that time, then he would have taken second place within such a conspiracy, yet it was actually he who tried everything within his power during the last days of August 1939 to prevent the attack on Poland, and who tried behind Hitler's back to maintain peace. How can this be consistent with a conspiracy for initiating wars of aggression? Nor did he approve of a war against Russia and strongly advised the Führer against such a war.

(2) If there had been a conspiracy to commit war crimes, then the war would have been waged, from the very beginning, with utter ruthlessness and disregard of rules of war. Just the contrary actually happened. In fact, during the first years of the war, international law was on the whole respected. Especially in the beginning every endeavor was made to wage war with decency and chivalry. If any evidence is needed, a glance at the orders of the German High Command of the Armed Forces regulating the behavior of the soldiers in Norway, Belgium, Holland is sufficient proof.

MARSHAL: The Tribunal adjourns until tomorrow.

[The Tribunal adjourned until 5 July 1946 at 1000 hours.]

ONE HUNDRED AND SEVENTY-SECOND DAY

Friday, 5 July 1946

Morning Session

THE PRESIDENT: Dr. Stahmer.

DR. STAHLER: I continue.

Number 2. If there had been a conspiracy to commit war crimes, then the war would have been waged from the beginning with utter ruthlessness and disregard of rules of war. Just the contrary happened. In fact, during the first years of the war...

THE PRESIDENT: Dr. Stahmer, the Tribunal thinks you got a little bit further with your speech.

DR. STAHLER: I had gone somewhat further, that is true; but in order to get this into the context again I have started again with Number 2, but if the Court wishes, I can continue where I stopped.

Especially in the beginning every endeavor was made to wage war with decency and chivalry. If any evidence is needed, a glance at the orders of the High Command of the Army regulating the behavior of the soldiers in Norway, Belgium, Holland, is sufficient proof. Moreover, a leaflet with "10 Commandments for the Conduct of the German Soldier in Wartime" was issued to the soldiers when they went into the field. Field Marshal Milch has read them out from his pay book, during this Trial. They all obliged the soldier to act in a proper manner and according to international law.

A gang of conspirators at the head of the state, which plans to wage a war regardless of right and morals, would certainly not send their soldiers into the field with a detailed written order saying just the opposite.

I believe the assumption of the Prosecution that these 22 men are conspirators against peace and the laws of war and humanity is quite erroneous.

It is up to counsel for the individual defendant to show what connection his client might have had with the alleged conspiracy.

I just mentioned that Reich Marshal Göring was the second man in the State. During the Trial the Prosecution also referred repeatedly to this elevated position of Göring's and tried to make it the basis of a special charge against the defendant, pointing out that

Göring, by virtue of this advantageous position, knew about everything, even the most secret matters, and had the possibility of intervening independently in a practical way in the course of government business.

This opinion is wrong and is based on ignorance of the importance of his position. It meant that according to rank Göring was the second man in the State.

This rank was due to the fact that Hitler, in the fall of 1934, had made a will and by a secret Führer order had appointed Göring as his successor in the Government. In 1935 or 1936 this succession was confirmed in an unpublished Reich law which was signed by all the ministers. On 1 September 1939 Hitler announced this law in the Reichstag. In this way the successorship of Göring became known to the German people.

Göring's task of deputizing for the Führer in the Government was to apply only in the event of Hitler's being incapacitated by illness or absence from Germany—this occurred when in March 1938 Hitler spent a few days in Austria. During Hitler's presence, that is, as long as Hitler exercised office himself, Göring derived no special powers from the deputyship. In this instance his authority was limited to the offices directly under him, and he was not entitled to issue any official directives to other offices. From this follows that, although the second man in the State, Göring could neither rescind, nor change, nor supplement Hitler's orders. He could give no orders whatsoever to offices of which he was not directly in charge. He had no possibility of giving any binding orders to any other office, whether it were an office of the Party, the Police, the Army, or Navy, nor could he interfere in the authority of those offices which were not his own.

This position as second man in the State cannot, therefore, be judged as especially incriminating for Göring; nor is it qualified to serve as a basis for the assumption of a conspiracy.

The Defendant Göring never participated in the drafting or execution of a Common Plan or Conspiracy which was concerned with the crimes stated in the Indictment.

As already emphasized, the participation in such a conspiracy presupposes in the first place that such a common plan existed at all and that, therefore, the participants had the intention and were agreed to carry out the crimes of which they are accused. These presuppositions are not in evidence in the case of Göring. In fact, one may assume the contrary. It is true that Göring wanted to do away with the Treaty of Versailles and to secure again a position of power for Germany. But he believed he could obtain this goal, if not with the legal means of the League of Nations, at least with

political means alone. The purpose of rearmament was only to give more weight to the voice of Germany. The Weimar Government, which could not even express the self-determination of the Germans after 1918 in the surely very modest form of a German-Austrian customs union, though they advocated this determination themselves, owed the lack of success of their foreign policy, in Göring's opinion just as in Hitler's, mainly to the lack of respect for the German means of imposing power. Göring hoped, strengthened in his belief by Hitler's surprising initial successes, that a strong German army by its mere existence would make it possible to secure German aims peacefully, as long as these aims kept within reasonable limits. In politics a state can only have its say and make its voice heard if it has a strong army to back it up, which demands the respect of other states. Only recently the American Chief of Staff, Marshall, said in his second annual report that the world does not seriously consider the wishes of the weak. Weakness is too big a temptation for the strong.

There was no arming for an aggressive war; not even the Four Year Plan, the purpose and aim of which have been clearly explained by the defendant himself and by the witness Körner, was aimed at the preparation of an aggressive war.

Field Marshals Milch and Kesselring have both testified in perfect agreement that the Air Force created by the armament program was only a defensive air force which was not fit for an aggressive war and which was therefore looked upon by them as a risky proposition. Such a modest rearmament does not allow for any conclusions of aggressive intentions.

After all this it is clear that Göring did not want a war. By nature he was an opponent of war. Outwardly also, in his conferences with foreign diplomats and in his public speeches, he has expressed with all possible frankness his opposition to war at every opportunity.

The testimony of General Bodenschatz explains most clearly the attitude of Göring toward war. He knew him intimately from the first World War, and he has exact knowledge of the attitude of Göring toward war from frequent conversations he has held with him. Bodenschatz states that Göring repeatedly told him that he knew the horrors of war very well from the first World War. His aim was a peaceful solution of all conflicts and to spare the German people, as far as possible, the horrors of a war. A war was always an uncertain and hazardous thing and it would not be possible to burden with a second war a generation which had already experienced the horrors of one great world war and its bitter consequences.

Field Marshal Milch also knows from conversations with the Defendant Göring that the latter opposed a war, and that he advised Hitler in vain against a war with Russia.

In public the Defendant Göring, in his many speeches since 1933, frequently emphasized how he had his heart set on maintaining peace and that rearmament had only been undertaken to make Germany strong outwardly, thus to enable her to play a political role again.

His serious and honest will for peace can best be seen from the speech which he made at the beginning of July 1938 in Karinhall before all the Gauleiter of the German Reich. In this speech he emphasized energetically that the foreign policy of Germany had to be directed in such a way that it would under no circumstances lead to war. The present generation had still to get over the last world war; another war would shock the German people. Göring had not the slightest reason to hide his true opinion before this gathering, which consisted exclusively of the highest Party leaders. For that reason, this speech is a valuable and reliable proof for the fact that Göring really and truly wanted peace.

How deeply the Defendant Göring was interested in maintaining good relations with England is shown by his conduct at the conference with Lord Halifax in November 1937 at Karinhall, in which Göring, with full candor, put before Lord Halifax the aims of German foreign policy: (a) Incorporation of Austria and the Sudetenland into Germany; (b) return of Danzig to Germany with a reasonable solution of the Corridor problem. He pointed out at the same time that he did not want to reach these aims by war and that England could contribute to a peaceful solution.

The meeting in Munich in the fall of 1938 was arranged at his suggestion. The conclusion of the Munich Pact is essentially due to his influence.

When, due to the occupation of the remainder of Czechoslovakia in March 1939, the relations with England had deteriorated considerably because England was very angry about this step of Hitler's, which was a violation of the Munich Pact, Göring made serious efforts for the restoration of normal relations. In order to achieve this goal he arranged the meeting, described by the witness Dahlerus, with English industrialists at the beginning of August 1939 in the Sönke-Nissen-Koog. In an address he pointed out that under no circumstances must a war with England come about, and he asked those present to contribute to the best of their ability to the restoration of good relations with England.

When, after the often-quoted speech of Hitler's to the commanders-in-chief of the Armed Forces on the Obersalzberg on

22 August 1939, the danger of a war became imminent, Göring immediately—that is, already on the following day—summoned the witness Dahlerus from Sweden and endeavored, passing over the Foreign Office, to reach an agreement with England for the prevention of war on his own responsibility.

The objection was raised here that Göring had left Dahlerus in the dark as to his true intentions. His efforts were not aimed at the maintenance of peace but only at persuading England to deny to the Poles the support guaranteed to them and thus to separate England from Poland, which would enable Germany, after this separation, to exert pressure on Poland to submit to the German demands or to attack Poland and to realize her plans toward Poland without any risk. Any doubt about the honest will for peace is unjustified; the imputed intention was far from Göring's thoughts.

If this objection is substantiated by the fact that Göring did not inform the witness Dahlerus either of the content of the Führer speech of 23 May 1939 or that of 22 August 1939, then it cannot be considered relevant and nothing is gained by it. Under no circumstances could Göring inform a third person—and especially a foreigner—of those strictly confidential speeches without exposing himself to the accusation of high treason or treason against his country. These speeches were all without significance as far as the task given to the witness was concerned, especially since the peculiar situation arose here that Göring—after the efforts of the diplomats had reached a deadlock—as a last resort knew of no other way out than to use his personal relations, his personal influence, and his personal prestige.

The only thing that mattered for the activity of Dahlerus was that the foreign political situation, which had become dangerously critical through the quarrel between Germany and Poland and of which the witness was fully aware, had to be straightened out by an appropriate attitude on the part of England.

That Göring's aim was not to separate England from Poland has been clearly proven by the fact that Göring, to begin with, had transmitted to the British Ambassador in Berlin, Henderson, the text of the note which contained the propositions made by Germany to Poland—propositions which were called moderate by Henderson—and that, hereby, he tried to come to direct negotiations with Poland. Poland, however, obviously did not want an agreement with Germany. Several circumstances point to that.

The conflict with Poland lasted for almost a year. Why did Poland not ask for a decision by a court of arbitration on the basis of the concluded arbitration agreement? Why did Poland not appeal

to the League of Nations? Obviously Poland did not want any arbitration regarding Danzig and the Corridor.

The utterance of the Polish Ambassador, Lipski, to the First Secretary of the British Embassy, Mr. Forbes, which was stated by the witness Dahlerus, is even greater proof of the unwillingness of Poland to come to an understanding. Lipski said he was not interested in any note or proposition by Germany; he was convinced that in the event of war there would soon be a revolt in Germany and the Polish Army would march in triumph to Berlin. This intransigent and incomprehensible attitude of Poland obviously finds its explanation in the fact that she felt too strong and secure as a result of England's assurance. The reference to the imminent revolt makes one believe that Poland was informed of the plans of the Canaris group. There can therefore be no question of an ambiguous attitude or false play on the part of Göring.

The serious will of the Defendant Göring to maintain peace and to restore good relations with England is expressly recognized by Ambassador Henderson, who, due to his thorough knowledge of the German conditions and his connections with the leading men of Germany, summed up Göring correctly. I refer here to his book *Failure of a Mission*, in which, on Page 83, it says:

"I would like to express here my belief that the Field Marshal, if it had depended on him, would not have gambled on war as Hitler did in 1939. As will be related in due course, he came down decisively on the side of peace in September 1938."

Lord Halifax also, according to the information he gave, had no doubts that Göring's efforts for the prevention of war were sincere.

That after the outbreak of the war, which he had wanted to prevent with all the means at his disposal but had been unable to prevent, Göring, as Commander-in-Chief of the Air Force, exerted all his strength to win the victory for Germany is not contrary to the sincerity of his will to avoid the war. From that moment on he knew only his duty as a soldier to his fatherland.

At different times Hitler made addresses to the commanders-in-chief of the Armed Forces, thus for instance in November 1937, on 23 May 1939, and on 22 August 1939. The Defendant Göring at his personal interrogation has already given extensive explanations as to the importance and the purpose of these addresses. For the question of whether the fact that he was present at these addresses might constitute perhaps a complicity in a conspiracy in the sense of the Indictment, it is important that on these occasions Hitler solely and one-sidedly made known his own opinion about

military and political questions. The participants were only informed of what possible political developments Hitler expected. The participants were never asked for their opinion nor had they even any possibility to express their criticism of Hitler's opinion. Hitler did not ask his generals to understand his orders; all he asked of them was to carry them out.

His autocratic leadership of the State was exclusively directed by the principle *sic volo, sic jubeo*, which he carried through to its logical conclusion. How rigidly Hitler followed this principle can be seen from the fact that after the address of 23 May 1939—as Milch stated in his testimony—he expressly forbade all participants to comment on the speech, even among themselves. That Hitler was irrevocably resolved on an aggressive war could not be deduced by the listeners of the said speeches, and they did not do so. This has been confirmed unanimously by all witnesses who were present when those addresses were given.

At that time Hitler had actually not yet planned a war. In that respect the testimony of Field Marshal Milch is very informative. When the witness, in the months following the speech of 23 May 1939, repeatedly pointed out to Hitler in personal reports that the Air Force was not ready for action with its bombing squadrons and had hardly any stocks of bombs, Hitler refused to give an order for the production of bombs and remarked that this manufacturing was unnecessary and superfluous. Hitler persisted in this refusal, although Milch pointed out that the production would take several months. An order to that effect was given by Hitler only on 20 October 1939.

Hitler's discourse before the commanders-in-chief can be easily explained by the odd inclination of Hitler frequently to develop political ideas without ever thinking of their realization. In each case his practical policy resulted from the requirements of the actual development.

The defendant is accused of having plundered the territories occupied by Germany, thereby violating the Hague Convention concerning Land Warfare. This accusation is not justified.

During his examination the Defendant Göring has explained in detail, with absolutely noteworthy reasons, that the Hague Convention on Land Warfare dating from the years 1899 and 1907 cannot be made to apply to a modern war, since they had become obsolete and insufficient in some respects at the beginning of World War II. At the time when they were drafted, air warfare, economic warfare, and psychological warfare were still unknown. Total war, which put the entire people and the entire national economy without exception at the service of the war, was also not known. Especially,

economic warfare was not considered at all. Due to this gap, there is no international law which has been generally recognized for economic warfare. Therefore the old statement of Hugo Grotius that everything is permitted in war (*quod ad finem belli necessarium est*) applies to economic warfare.

Naturally, this principle only applies so far as it has not been affected specifically by a differing settlement through treaties.

The following must be said about the legal situation as it stands:

Until the beginning of World War I it was generally acknowledged in international law—in any case as far as land warfare is concerned—that the war does not affect any private legal relations between the citizens of the belligerent states, that private property on principle was inviolable, that the war would only be pursued with arms, and that the enemy civilian population would not be affected by it. This method of warfare suffered a basic change at the outbreak of World War I, when England, in the field of naval warfare, applied her interpretation of war of people against people. At that time the enemy powers resorted to the policy of paralyzing the entire German national strength, disregarding all established rules of the law of naval warfare and of neutrality law by cutting off the necessary raw materials and import of food. This new type of warfare corresponded to the Anglo-Saxon interpretation, which was joined by France at the beginning of World War I, that is, that war is not only fought against the troops in combat but against the entire population of the enemy. The citizen of the enemy state is the enemy of England; his property is enemy property, which is subject to seizure by the British Government. With this, naval warfare was not only directed against the combat forces, but also against the peaceful subjects of the belligerent enemy. This goal was achieved by the total blockade carried out by England. The Hague Convention did not contemplate a total blockade in the form in which it was carried out by England. This blockade made any supplying of Germany through neutral countries impossible.

Under these circumstances Germany cannot be blamed for applying to warfare on land the method used by England by means of her naval power.

This fact leads to the following consideration:

The rules of land warfare, according to their meaning, used to apply to land warfare. There the principle of protection of private property obtained. In naval warfare, however, private property was unprotected. Now, is it possible for the rules of land warfare with their restrictions to apply to a combined sea and land war? Would it be just that merchandise should be taken away from a party at sea who would not be allowed to touch similar goods belonging to the other party on land?

According to established international law, the principle applies now as before that private property is actually inviolable during war. This principle suffers exception only insofar as the Hague Convention on Land Warfare permits certain encroachments on private property caused by an emergency in which the state may find itself, which are deemed justified to the extent in which they appear necessary in the interests of self-preservation of the state. Within this scope, therefore, certain actions are permitted during war which are not normally consistent with the laws of war and actually contrary to international law.

By the fact that enemy warfare disregarded the established rules of naval warfare, Germany was driven into a state of economic emergency. If the enemy powers had observed this established law of naval warfare, then Germany could have supplied herself through neutral countries, and the state of economic emergency during the war would not have arisen. But since the enemy powers failed to observe the established blockade regulations, how could they expect Germany to observe the regulations on requisitioning, which form part of the rules of land warfare?

Through the action of the enemy powers Germany was thrown into a state of emergency. The prerequisite for the state of emergency within international law is, according to the prevailing theory, an existing or imminent threat of danger to the state, which it is impossible to avert in any other way and which endangers to the utmost the vital interests as well as the independence and existence of the state.

Thus, wherever the vital interests of a state are threatened in this manner there prevails a state of national emergency; this has the legal effect that such a state does not act illegally when committing a violation of international law necessary for the repulsion of imminent danger.

The economic situation of Germany became extremely precarious during the course of World War II by the action of the enemy powers. All connections with neutral countries were made impossible for Germany by the total blockade, so that supplies of raw materials necessary for the conduct of the war and of food for the feeding of the civilian population were cut off.

Germany was therefore forced, in order to support her own economy which would otherwise have collapsed, to use the stocks of raw materials and food available in the occupied territories and all other items necessary for the continuation of the war, for herself, the interests of the population in the occupied territories being given due consideration. In this, the principles established in the preamble to the Convention concerning the Rules and Customs of

Land Warfare, dated 18 October 1907, as they result from the customs existing among civilized nations, from the laws of humanity, and from the demands of public conscience, were strictly observed. A renunciation of the right to use these resources in the occupied territories would have meant the abandonment of the independence and existence of the state; it would have meant unconditional submission. An emergency involving submission during war is the supreme and most fatal emergency in the life of a nation.

By referring to the state of emergency, however, only such actions are covered which are necessary to remove a danger which could not be averted otherwise. The limitations naturally fluctuate, and it is not always easy to determine in individual cases whether a genuine state of emergency exists. Here the Tribunal will have to consider in favor of the defendant the special circumstances and the wartime conditions, which are difficult to appreciate.

It has not been proved that the defendant intentionally or carelessly infringed these limitations.

It must be left to the examination of the Tribunal whether the defendant personally can be held responsible for a violation, possibly committed intentionally or carelessly—a violation which has been committed exclusively by him in his capacity as plenipotentiary of the Führer—or whether in such a case there is only a liability of the state. The Defense are of the opinion that in this case, too, the problem concerns only a violation of international law which does not constitute personal liability.

Exceptional conditions prevailed in the eastern theater of war because there was no private economy in the East, but only a national economy strictly regulated by a central office. The juridical situation here was such that property of the enemy state could generally be claimed as war loot. For the rest, a particularly careful regulation was made, which was defined in the so-called "Green Folder." The regulations contained in this folder did not suggest any looting or annihilation of the population, as asserted by the Prosecution. Its tenor was rather the mobilization of economy and the rules for keeping it going, the seizure and the orderly utilization of stocks and traffic installations in the zones to be occupied in the course of fighting, taking into account the fact that far-reaching destruction was to be expected owing to the Russian attitude. The folder does not contain any order or indication which might burden certain groups of the population beyond the needs of war. This decree, for which the Defendant Göring has taken full responsibility, does not furnish any reason for disapproval.

In all this one must not overlook one thing. This war was of such bitterness, such proportions, such duration and totality as the creators

of the Hague Convention certainly never had or could have even remotely imagined. It was a war in which nations fought for life or death. It was a war in which all values had changed. Thus the defendant was quite right when he declared, "After all, in a life-and-death struggle there is no legality."

From the standpoint of emergency, a justification can also be found for the deportation of workers from occupied territories to Germany. In his testimony the defendant stated in detail all the reasons which in his opinion made this measure necessary. For the rest, the counsel for the Defendant Sauckel, Dr. Servatius, will review these matters in detail. Therefore, I do not need to concern myself with further considerations in this respect.

The defendant has made a comprehensive statement in regard to the charge of spoliation of art treasures, a statement which will be referred to in order to justify his conduct. In addition it will be observed that Reich Marshal Göring was not directly engaged in the safeguarding of art treasures in Poland. Not one of these art treasures did he take for his own collection. In this respect the defendant cannot be incriminated in any way.

By order of the Führer such works of art in France as were owned by Jews were temporarily confiscated for the benefit of the Reich. They were considered as derelict property, because their owners had left the country. Of these confiscated objects, with the express approval of the Führer, Göring received a small part, though not for himself but for the gallery he had planned, in which he also intended to incorporate the works of art already in his possession. He wished to acquire these objects at a price estimated by French art experts, the proceeds to be distributed among the dependents of French war victims.

The juridical situation, therefore, was as follows:

The objects were confiscated by decree of the Führer for the benefit of the German Reich. By this confiscation the former owners lost their right to possession and it was transferred to the Reich. Such objects as were ceded to him, Göring acquired from the Reich as their present owner. The Reich obviously saw in this a step which, though it was proved premature by the course of events, was intended to anticipate the peace treaty to be concluded at the end of the hostilities, when the final accounts would be made. This is similar to the confiscations and seizures of property carried out at present in Germany in view of the ultimate peace treaty.

Whether the Reich Government was juridically entitled to confiscate the goods and to become their owner is a moot question. A solution of the question is no longer necessary, because Göring acted in good faith in the matter of this acquisition. In his testimony he

emphasized his belief that he was entitled to acquire these things, as they had been previously confiscated by a Führer decree. In consideration of these facts there cannot be any question of looting.

In any event there can be no objection to the purchasing of articles in the course of normal business transactions, which the defendant was offered spontaneously, the sellers being only too eager to dispose of them in view of the good price they received. The same applies to objects which the defendant acquired through a voluntary exchange, in which the other party to the contract enjoyed the same rights as himself.

I will now deal with the accusation of the shooting of 50 officers of the British Air Force after their escape from the prisoner-of-war camp Sagan.

The Indictment reads as follows: "In March 1944, 50 officers of the R.A.F., who had escaped from Stalag Luft III in Sagan, were murdered after their recapture." According to a later declaration of the Prosecution the circumstances were as follows: During the night of 24 to 25 March 1944, 76 officers of the R.A.F. escaped from the prisoner-of-war camp Stalag Luft III in Sagan. 50 of these officers were shot by the Security Service after they had been recaptured.

Investigation must bear on the following points: Who gave the order for the shooting? Did Reich Marshal Göring play any part in this affair? Did he actually take part in the drafting of the order to shoot these 50 airmen? Did he approve the measure, although it was a grave offense against Paragraph 50 of the Geneva Protocol dealing with the treatment of prisoners of war?

The Prosecution states that the Defendant Göring collaborated in the drafting of this order. It referred, among other things, to the reports which Generalmajor Westhoff and Criminal Counsellor Wielen drew up while they were in British custody. But the interrogation of these witnesses in Court, as well as the bringing forward of further evidence, which has been so carefully gone into before the Tribunal, has shown in the meantime that the previous statements of Westhoff and Wielen were inaccurate, and in respect to Göring's presence at the conference and his knowledge of the shooting order were only based on suppositions which had their roots in the fact that it was a question of a prisoner-of-war camp for airmen. The result of the evidence was as follows:

At this general conference on 25 March 1944 Himmler reported the escape of the 76 officers to the Führer. For this Hitler severely reprimanded Field Marshal Keitel. He considered the event a great danger to public security, since the escaped officers might assist the 6 million foreigners in Germany in the organization of an armed

revolt. Then Hitler gave the order: "The prisoners will remain with Himmler." Keitel definitely refused to hand over to Himmler the 15 officers who had already been recaptured by the Armed Forces and returned to the camp, and these officers remained unharmed.

At this general conference in the presence of Keitel, Hitler did not order the shooting of the prisoners who were to remain in Himmler's hands. Neither Keitel nor Jodl expected such measures. Jodl expected the escaped prisoners to be sent to a concentration camp for some time. Keitel and Jodl agree in their testimonies that Reich Marshal Göring did not attend this meeting. Therefore, it cannot possibly be correct that Field Marshal Keitel declared in a conversation with General Westhoff that he had been reprimanded by Göring at the general conference on account of the prisoners' escape.

General Koller has testified that General Korten assured him over the telephone, about the end of March or beginning of April 1944, that the Luftwaffe, that is, the Reich Marshal and Korten himself, were not involved in the order and had only been informed of it later. Furthermore Koller testifies that the Reich Marshal was extremely angry about the shooting. These statements are completely in accordance with the declarations of Reich Marshal Göring, who was on vacation at the time of the conference with Hitler. The fact of the escape reached him only through a telephone report by his adjutant. It was only after his return from vacation, some time around Easter 1944, that he learned through his Chief of General Staff, Korten, about the fact that shootings of prisoners had taken place. Reich Marshal Göring was much upset about this last report because he condemned the deed in itself and, moreover, feared reprisals for his own airmen. Upon inquiry, Himmler then confirmed the executions to Reich Marshal Göring with the justification that an order to that effect had been issued to him by Hitler.

It is made clear by this conversation how the execution was possible and how its perpetration could remain concealed from the Wehrmacht. In the absence of Keitel and Jodl, Hitler issued the order to Himmler to carry out the execution and Himmler thereupon, unknown to the Wehrmacht, immediately passed on the order to the Reich Security Main Office, that is, after Kaltenbrunner's approval, to Müller or, as the case may be, to Nebe.

Not only did Reich Marshal Göring remonstrate with Himmler because he had executed the order without informing Göring, but also raised the most vigorous protest against this measure in a subsequent interview with Hitler. This resulted in heated controversies between Göring and Hitler.

As Göring strongly condemned such proceedings, he requested shortly afterward that the prisoner-of-war camps be taken in

charge by the OKW. On being questioned Field Marshal Keitel confirmed, as a witness, that a few weeks after the occurrence he received a letter from the General Quartermaster of the Luftwaffe, in which the Luftwaffe requested the taking over of its camps by the OKW.

This result of the examination of evidence, correcting the initial statements of the witnesses Westhoff and Wielen, which are contradictory in many respects, as well as Keitel's earlier declaration of 10 November 1945, also justifies the assertion that Reich Marshal Göring was in no way involved in this affair, that he condemned it most severely when he was informed of it, and that he, therefore, cannot be called upon to answer for this extremely regrettable and reprehensible order, which it was not within his power to prevent.

The Prosecution has gone on to the question of "lynch law" as resorted to by the German population in isolated cases in 1944 when enemy airmen had been shot down. For these occurrences, the defendants, especially Reich Marshal Göring, are held responsible. The charge that the Defendant Göring or the Wehrmacht are in any way involved in this action, that they issued orders or instructions to this effect or even merely approved the action, is seen to be entirely unjustifiable. The examination of evidence in this case has thoroughly cleared up the matter in favor of the defendant.

To support their charges against Reich Marshal Göring, the Prosecution invokes first of all a protocol of 19 May 1944 (Document L-166) concerning the so-called "Hunting Conference" which was held on 15 and 16 May 1944 under the direction of the defendant.

Numbered as Item 20 of this memorandum is a statement by the defendant saying he would suggest to the Führer that terrorist enemy airmen be immediately shot at the scene of their offense. The defendant most definitely denies having made any pronouncement to this effect and justly points to the following circumstances which belie any such statement: The session lasted for 2 days, and numerous technical and organizational questions were discussed. The question touched upon in Item 20 had nothing whatever to do with the agenda for the rest of the session, least of all with the purpose of the session. The remark is placed in the midst of themes which deal with matters of an entirely different nature and has no point in this connection. Besides, Göring, had he approved and wished it, could himself have immediately issued such an order without further ado, as he knew the Führer's attitude on this point.

The decisive fact is that the statement is in the sharpest contradiction with the fundamental attitude of the defendant. He always stood for the view that the enemy airman who was shot down was a comrade and must be treated as a comrade, a fact which I have already remarked upon in another connection. Moreover, in the

question as to how terrorist airmen were to be treated, he defended his position with all frankness against the conception held by Hitler and made no secret to Hitler of his entirely different opinion.

In view of this unwavering attitude and its resulting policy, it is utterly out of the question that he should suddenly have urged Hitler to issue the above-mentioned order against the terrorist airmen—an order which he opposed with all his might and the execution of which he sought to prevent by every means as soon as it came to his knowledge. And he did succeed in fact in preventing the execution of this order. If the terrorist airmen were actually discussed at the conference, this discussion could only have occurred with the implication that the Führer suggested such a measure.

With reference to the minutes, the following general remarks must be added: They consist of summary notes by a young officer, stretching over a two-day session during which there had been a great deal of talking and discussion. Experience acquired in many other cases has shown that such recordings are often very unreliable and have even at times reproduced the subject of the discussion in an utterly distorted form, precisely because the person taking notes—especially when several participants were present and talking at random—could not follow the course of the discussion and consequently did not reproduce the substance of it accurately, especially when, in addition to this, he was mixing up the people; this explains many factual errors as well as the inadequacy and unreliability of such records. The minutes were never submitted to the defendant. He has not therefore been able to verify their contents nor to correct their errors.

Records of this sort, which were taken down in the way described above and which are not submitted for perusal and approval by the parties concerned, are worthless in the production of evidence. They cannot in themselves alone serve as an adequate means of proof either to charge or convict the defendant. They can, therefore, only be made use of to the detriment of the parties implicated when the content matter is confirmed by other material brought for evidence from sources other than these minutes. In the present case there is no confirmation from other evidence that Göring actually made the statement contained in Item 20 or made a request to Hitler to that effect.

The note dated 21 May (Document 731-PS) fails to provide support for the claim. The note, "General Korten, according to a speech by the Reich Marshal, reports . . ." cannot, in view of the defendant's uncontested statement, possibly mean that the Reich Marshal delivered an address on this matter in Hitler's quarters but solely that Korten reported on this subject to the Reich Marshal and that Korten informed the Reich Marshal of Hitler's order.

The rest of the examination of evidence has made it clear beyond doubt that Göring was against a special treatment of enemy terrorist airmen who had been shot down and that he opposed Hitler's order.

The witness Colonel Bernd von Brauchitsch pointed out during his interrogation on 12 March 1946 that in the spring of 1944 there was a sudden increase in losses among the civilian population through machine gun attacks by enemy airmen. These attacks by enemy airmen were directed, within Germany, against civilians working in the fields, secondary railway lines without any military importance, and against pedestrians and cyclists. This constituted a gross violation of the Hague Rules of Land Warfare, according to which any combat act against the noncombatant population of the country is prohibited; and any attack or shelling of open cities, villages, residences, or buildings is forbidden.

According to the opinion of the witness Von Brauchitsch, this behavior, which quite evidently violated international law, caused Hitler to order specific measures against these aviators, besides general defensive measures. In this regard Hitler advocated, as far as it is known to the witness, the most severe measures; lynch action was to have a free run.

This attitude of Hitler toward the violations of international law by enemy aviators, however, did not meet with the approval of the Armed Forces, especially not with that of Reich Marshal Göring and his Chief of Staff, General Korten. Both of them did condemn to the utmost the attacks of enemy aviators, which were exclusively directed against the defenseless civilian population. However, they nevertheless opposed the handing over of defenseless, shot-down aviators to the aroused mob for lynch action; and they did not consider such measures to be an appropriate means of combating this conduct, however much in violation of international law.

The witness General Koller expressed himself to the same effect. Early in June 1944 General Korten informed this witness of the fact that the Führer intended to decree an order to the effect that terrorist aviators were to be surrendered to public fury.

In the course of repeated conversations the witness Koller and General Korten arrived at the opinion that the conception of the Führer must be rejected. They certainly considered the direct attacks of low-flying enemy planes on individual civilians, women and children, concentrations of civilians, school classes and kindergartens out on walks, farmers at work in the fields, as well as attacks on public passenger trains and hospitals, to be ruthless. However, the two did not see a way out or a solution of the difficult problem in the Führer's order. They were of the opinion that such an order was contrary to basic military conceptions, the Articles of War, and international law, and that it would give rise to numerous evils through which both enemy and German crews would come to harm. And finally such an order might exercise, by its effects, a harmful influence on the morale of German crews.

All these reasons caused the Armed Forces to reject Hitler's demand, and their attempts were now directed toward preventing the conception of Hitler from being put into practice. The witness Von Brauchitsch credibly states that the

Armed Forces now looked for a way out finally found in the fact that the higher command levels were deceived by measures which were not actually carried out.

The witness Von Brauchitsch was ordered by Reich Marshal Göring to define in discussions with the OKW the concept of terrorist aviators. In the subsequent discussions and exchanges of correspondence those cases were mentioned which represented violations of international law and which were to be considered criminal acts. By this definition of the concept, lynch law was to be prevented. The exchange of correspondence, which lasted for quite a long period of time, showed the tendency of the office to protract the matter as much as possible.

The witness Koller is justified in emphasizing that this exchange of correspondence shows every sign of a "delaying action to gain time," that is, those concerned either did not want any decision or at least wished to postpone it as long as possible.

In particular the marginal note on Document D-785, Exhibit GB-318, "No answer to be obtained from Commander-in-Chief of the Air Force," admits of the conclusion that the Reich Marshal purposely wanted to prolong the matter. Furthermore Reich Marshal Göring, as can be clearly seen from the letter of 19 June 1944, maintained the opinion that in every instance he considered legal procedure against terrorist aviators as definitely necessary. Where it is stated in a subsequent document of 26 June 1944, "The Reich Marshal agrees with the formulation as communicated defining the concept of terrorist aviators and with the suggested procedure," such agreement with the procedure refers exclusively to the procedure of publication suggested in the final paragraph of the letter of 15 June 1944, for which Reich Marshal Göring's approval had been requested. That Reich Marshal Göring until the end of the war maintained the old aviator standpoint, according to which enemy aviators, once they have been shot down, are to be considered and treated as comrades, was not only expressly deposed by the witness Field Marshal Milch, but is also emphasized by General Koller in the following words:

"Notwithstanding occasional expressions of displeasure, the attitude of the Reich Marshal always remained correct and chivalrous in accordance with the flying tradition which he had retained from the first World War and frequently emphasized. In understandable anger about great difficulties in air defense, and pressed by the Führer, he perhaps once in a while used harsher words which were quickly forgotten."—And the witness does not know of any case—"in which such a fit of ill-humor caused the Reich Marshal to take incorrect or harsh measures against members of the enemy air forces."

The behavior of the Air Force as a whole was also correct and humane at all times. To fight chivalrously was a matter of honor with the German aviators. The Air Force as well as the Defendant Göring retained this point of view, although as Koller expressly mentioned, the flying personnel felt extremely bitter over the strafing attacks on German crews suspended on parachutes and individual hotheads spoke of equal measures as reprisals.

The best testimonial for the exemplary comradely behavior of the Air Force even toward an enemy who did not observe the rules of warfare can be seen clearly from the description of the witness Koller about the establishment of a maritime life-saving service of the Air Force, which brought aid to Germans and enemies in equal measure and which carried on despite enemy attacks in violation of international law.

It can thus be said that the Armed Forces and the Defendant Göring rejected lynch law, as well as all procedure against the

terrorist aviators not in accordance with legal regulations, and did not issue any orders to troops under their command; in no case have enemy aviators been shot by the Air Force or by the Army, or handed over to the Security Service (SD).

The Prosecution accuses the Defendant Göring of having established a reign of terror in Prussia immediately after 30 January 1933 in his capacity as Prussian Minister of the Interior and soon afterward as Prussian Prime Minister, in order to suppress all opposition against the Nazi program. In order to carry out his plans he had used the Prussian police, which he had ordered as early as February 1933 to protect the new government by proceeding ruthlessly against all political opponents without consideration of the consequences. In order to safeguard and consolidate power, he had created the dreaded Secret State Police and established concentration camps as early as the spring of 1933.

To these accusations the following is to be said:

All this was only natural and cannot serve as an accusation against the defendant; rather would it have been a severe violation of the duties entrusted to him, if he had not devoted himself with all his strength to the safeguarding of the new government and taken every imaginable precaution in order to make any attack on this new government impossible from the very beginning. In order to achieve this goal, the first step concerned the police institutions.

It only remains to be examined whether the means which the defendant considered it necessary to apply were objectionable. The question must be answered in the negative because of the following considerations:

In every state the police is the inner-political instrument of power; in every state its task is to support the government, to protect it in every direction and to render the disturber of the peace and the violator of the law harmless, if necessary, by force of arms. The defendant assigned these tasks to the police under his direction, whom he ordered, in the speech mentioned by the Prosecution, to act energetically and to fulfill their duties conscientiously. Why such an appeal for the performance of duty should not be permissible is incomprehensible.

In his interrogation the Defendant Göring described expressly for what reasons and along which lines he considered a reorganization of the police necessary, and these directives cannot be objected to.

I should like to point out in this connection that according to the prevailing rules of international law a sovereign state has a right to regulate its internal affairs as it deems fit. The reform of the police is an exclusively internal affair. The violation of

generally recognized rules of international law is, therefore, out of question in this respect.

A political police was also in existence in Prussia before the assumption of power. Before 30 January 1933 it was called Police Department Ia, which among other things had to watch and to combat political adversaries, at that time the National Socialists and Communists in particular. Such a police, dealing with the same tasks, was also needed after the assumption of power in order to protect the new state against attacks which threatened it, in particular from the very strong Communist Party.

In order to make clear that this department of the police was charged exclusively with safeguarding the state against enemies of the state it was named "Secret State Police."

As long as the Defendant Göring was head of the Police—this was, in fact, the case only until 1934, when Himmler was put in charge—he strictly confined himself to the tasks prescribed to him and did not transgress his authority, and no misuse of power worth mentioning occurred. Nor has the evidence produced shown anything against the Defendant Göring for this period of time. Should, at a later date, the Secret State Police have transgressed their authority and committed illegal acts, the defendant had no knowledge of it and did not approve of it. For mistakes and crimes committed by his successors, which remained unknown to him, he cannot be held responsible.

Now there appeared before the Court a witness whose testimony was very incriminating for the defendant. This was the witness Dr. Gisevius. The defendant refuses to deal with this witness and his statement. He merely wishes to point out that this statement is untrue in all points which incriminate him. The conclusiveness of the witness's statement depends on whether he is considered to be credible or not. Dr. Nelte has agreed to deal with this question extensively, so that, in order to avoid reiterated statements, I shall refrain from further declarations.

Naturally, the assumption of power by the National Socialist Party met with some resistance, and in particular the leftist parties were anything but satisfied with the situation thus created. The opponents were by no means weak either numerically or in the means at their disposal. The new rulers were, therefore, apprehensive of serious danger to their power if they allowed the opposition parties to continue their activity without hindrance; accordingly they had to take preventive measures against such dangers in good time. In order to stabilize their own power and to nip in the bud any possible source of unrest, the Defendant Göring considered it necessary for reasons of state to arrest at one blow

both leaders and officials of the Communist Party and its organizations. The defendant himself has spoken at length explaining his reasons for such acts. For the removal of danger and to insure the safety of the state, the measures taken by the defendant were, for the Government, a necessity caused by the unrest of the time. Since it was a preventive measure, it was not requisite before a provisional arrest that a criminal act against the Government had already been committed or was obviously on the verge of being committed. The fact of membership in itself and previous activity in that party was sufficient to warrant arrest as a political act of self-protection on the part of the Government.

Such considerations very soon after the assumption of power led to the establishment of concentration camps, of which there were two at the time when the Defendant Göring was at the head of the Police. The purpose of such camps was to hold temporarily politically unreliable persons, who might be of danger to the new state, until they had either adapted themselves to the new political conditions or until the power of the state had become so great that such persons could no longer endanger it.

The legal basis of this institution was the Reich President's decree of 28 February 1933 for the protection of people and state. Reich President Von Hindenburg issued this decree on the basis of Article 48, Paragraph 2, of the Reich Constitution, in order to prevent Communist armed risings dangerous to the state; accordingly, the decree was perfectly constitutional. The decree temporarily suspended certain constitutional rights and declared legal, among other things, the restriction of personal liberty.

The establishment and use of concentration camps was founded, according to the defendant's ideas at the time, on the revolutionary conviction inherent in the victorious Movement that it was the sole expression of historical truth, that it alone represented the right path, and that therefore everything was wrong that stood in its way.

There was no political discussion of the right political concept based on logical arguments, as in ideologically neutral liberalism; there was only the totalitarian establishment of a popular regime based on creed as the historically necessary truth.

Any person not caught up by this Movement but, on the contrary, opposing it, was therefore to be removed as an enemy of the true order. Under such conditions, the person concerned could not simply be punished for an infringement of specific rules in the traditional course of justice; but, according to the opinion of the National Socialist Government, he deliberately segregated himself from the newly found community of the people and from every foundation for any legal institution. He had therefore to be removed. There was, accordingly, no question of punishment but of a political purge based on ideological intolerance. Therefore no tribunal or administrative procedure was allowed on behalf of the persons concerned for the examination of the police proceedings. The individual who excluded himself from the community was not entitled to legal guarantees which the Constitution provided for his fellow countrymen. And a fellow countryman was he only who recognized such a community. In handling enemies of the people not only legal principles were applied, but also the viewpoint of the necessities of state.

Since it was an act of political expediency, the Defendant Göring could decide in some cases on his own responsibility that there was no necessity for further confinement and could use all his influence to procure the liberation of individuals who did not endanger the security of the state. In that case it was not a question of an act of grace breaking through any legal principle, neither was it

tantamount to an acknowledgement of an injustice done to the other persons concerned; it simply was an act undertaken from the point of view of expediency, each case being decided on its own merits.

Such principles in handling elements which fail to fit into a totalitarian political rule are by no means specifically National Socialist; they also dominate the policy of the victor countries toward the conquered German population. Anyone who does not obey the newly arising democratic order in Germany, even anyone of whom an essential opposition to democracy can be expected because he was grounded in National Socialism before, is now interned. Whereas—according to Document R-129 of the Prosecution—21,000 people were in concentration camps at the beginning of the war in Nazi Germany, more than 300,000 National Socialists and militarists are held in internment camps in the U.S. Zone alone, according to figures published by the occupation powers.

A recently published decree of the Länderrat in the American occupation zone confirms the fact that such acts of political purging are not legal but political acts. This decree removes from the authority of the administration of justice and transfers to the authority of the general administration of the State all workers' camps in which are interned Nazis who have been sentenced to forced labor on account of their Party membership; and this decree is issued because these camps are foreign to the administration of justice.

Those were the only considerations which influenced the Defendant Göring when he created concentration camps in 1933 and issued laws concerning the Secret State Police. These were intended to be, as he conceived them, a means of cleansing and strengthening the young community of the people. He did not aim at a definite annihilation of political enemies but, after a certain period of education, interceded generously for their release and discharged, at Christmas 1933, about 5,000 and in September 1934 about 2,000 prisoners.

He vigorously counteracted inevitable abuses and errors which he openly admitted in the book he published in 1934, intended for the British public, *The Building of a Nation*. For example, he permitted the Communist leader Thälmann personally to report to him about his complaints in the concentration camp and took care to have them remedied. He dissolved the so-called "wild" camps of Stettin and Breslau, punished the Gauleiter of Pomerania who had organized this camp without his knowledge and against his will, and had those responsible for these "wild" concentration camps brought to trial for their infringements of the regulations.

This attitude of the Defendant Göring denotes that he never intended the actual physical annihilation of the prisoners. If the Prosecution establishes that this was all in execution of a conspiracy which aimed at committing Crimes against Humanity, such an interpretation has no bearing on the actual political life during the years in question. Such a conspiracy did not exist, nor was it the intention of the defendant to commit crimes against the principles of humanity, nor did he commit any such crimes. As one of the political trustees of the German Government, he felt himself bound to safeguard it against dangerous disturbers of the peace and thereby to guarantee the future of the National Socialist way of life. Far from looking upon such measures as criminal, he considered

them, on the contrary, to be the inevitable means of consolidating the political order as a basis of all law.

In 1936 the leadership of the Police, and therefore the management of the concentration camps, passed from the defendant to the Reichsführer SS; Heinrich Himmler. The defendant cannot be held responsible for the subsequent development of the concentration camps nor for the fact that they became, especially after the outbreak of the war, more and more gruesome places of torture and death and led—partly intentionally, partly on account of the chaotic war conditions—to the death of countless people and finally, in the last days before the breakdown of Germany, turned into one vast graveyard.

Certainly he knew that there still were concentration camps, also that the number of inmates had risen because of war tension and that they contained foreigners because of the expansion of the war machine over all of Europe; but the terrible happenings which have been disclosed in this Trial were unknown to him. He knew nothing of the inhuman experiments which were being carried out on inmates in misinterpretation of true scientific methods. The testimony of the witness Field Marshal Milch has shown that the Luftwaffe was not interested in these experiments and that the defendant personally did not learn anything specific at all about this matter.

By no means did the establishment of concentration camps as such have anything to do with the later extermination of Jews, which apparently originated in Heydrich's and Himmler's brains and was kept secret in a masterly manner until it was disclosed after the collapse as the horror of Auschwitz and Maidanek.

This brings me to the Jewish question. The Defendant Göring has explained in detail his views on the Jewish question during his interrogation as witness; furthermore, he has shown in all detail the reasons which influenced the National Socialist Party and, after the seizure of power, the State, to take a hostile attitude toward the Jews.

The defendant is reproached for having promulgated the Nuremberg Laws in 1935, which were intended to keep the race pure, and for having, in his capacity as Delegate for the Four Year Plan, issued decrees during the years 1938 and 1939 which had as their aim the exclusion of Jews from economic life. Furthermore he is blamed for a number of other laws which meant a one-sided and serious intervention into the legal sphere of Jews.

The legal reason for this reproach is obscure. For this deals with a purely domestic problem, namely, the regulation of the legal status of German subjects; according to internationally recognized legal opinion at that time, the German Reich as a sovereign state

was free to settle such a matter. Even if these encroachments were harsh and the limitations of citizenship rights extremely severe, they nevertheless in no way represent an offense against humanity.

Legal provisions which limit a certain race or a certain circle of citizens in their legal position have been made by other states without offense being taken at such measures and without other states considering themselves bound to intervene. Reich Marshal Göring always rejected any illegal or violent action against Jews. This is clearly shown by his attitude toward the action against Jews during the night of 9 to 10 November 1938, instigated by Goebbels, of which he was informed only after the deed had been done and which he condemned most severely. In this respect he raised serious objections with Goebbels and Hitler. On this matter, the precise statements of the witnesses Bodenschatz and Körner are available. The testimony of Dr. Uiberreither shows how greatly Göring disapproved of this action. According to the former, the defendant summoned all Gauleiter to Berlin several weeks after this incident and in an address sharply censured this violent action, which was not in keeping with the dignity of the nation and which caused serious damage to German prestige abroad. That the defendant was no race fanatic became generally known by his expression, "I decide who is a Jew." It has been established sufficiently that he aided many Jews.

About a biological extermination of the Jews he learned only at the end of the war. He never would have approved such a measure and would have opposed it with all his might. For he had too much political insight not to recognize the tremendous and at the same time senseless dangers which would perforce result for the German people from such a brutal and horrible act of extermination. Göring had already made it clear in the above-mentioned speech to the Gauleiter that he did not wish to fall foul of the world public and world opinion because of the treatment of the Jews. It is therefore out of the question that Göring should have approved of such an undertaking or participated therein in any manner, although it is natural that it should be put to the defendant that he must have been informed about such horrible measures as the second man in the State.

Furthermore it is no wonder that the statements of the defendant that he knew nothing of these atrocities should meet with a certain amount of distrust. Despite such doubts, however, the defendant insists that no information about such acts ever reached him.

This ignorance of the defendant, which can be completely understood only by one familiar with German conditions, may be explained from the fact—and this is the sole solution of the riddle—that Himmler, as was also emphasized by General Jodl during his

interrogation, knew truly masterfully how to keep his actions secret, to obliterate all traces of his atrocities, and to deceive the surrounding world and even his and Hitler's closer entourage. In this connection I also refer to the testimony of the witness Hoess, who confirms Himmler's instruction concerning absolute secrecy toward everyone.

The question may come up here: Did not a legal obligation exist for the defendant to make investigations about this matter and to get reliable information as to the true whereabouts of supposedly evacuated Jews and as to their fate? And what legal consequence results if he negligently refrained from investigating and by such negligence violated his legal obligation to act, incumbent on him by virtue of his position? The decision of this extremely complicated question of law and fact may be considered a moot question, because Göring, even as the second man in the State, did not have the power to prevent such measures if they were carried out by Himmler and were ordered, or at any rate approved, by Hitler.

Mr. President, yesterday I already stated that I still wished to deal with the Katyn case; and I intend to do so now, before I go on with my conclusion. I am sorry I was not able to get any translations because the testimony was only given a few days ago. However, this matter is not very long. The interpreters have a copy. I shall begin with this report now.

A detailed opinion has still to be given on the Katyn case, in which the taking of evidence was concluded only a few days back. The Russian Prosecution based their indictment on the findings of an investigation which is set down in Document USSR-54. The following conclusion is drawn from the entire evidential material as presented:

(1) Polish prisoners of war, who were in three camps west of Smolensk, were still there in these three camps when the Germans came into Smolensk, up to and including September 1941.

(2) In the Katyn forest German occupation troops undertook the mass shootings of the prisoners of war from the aforesaid camps in the autumn of 1941.

(3) The mass shooting of the Polish prisoners of war in the Katyn woods was carried out by the German military authorities who had camouflaged themselves under the code name "Staff of Construction Battalion 537" at whose head was Lieutenant Colonel Ahrens, together with his collaborators First Lieutenant Rex and Lieutenant Hodt.

The question is, did the Prosecution prove this accusation? This question must be answered in the negative. No confirmation of guilt can be found from the contents of this document. The accusation is

made against a definite military unit and names specific officers. The time mentioned for the perpetration of this deed is September of 1941. The Katyn forest is given as the scene of the crime. In view of the scanty facts, which considerably restricted the accusation, it was merely the task of the Defense to prove that this assertion would not bear examination.

First of all, let us consider the persons involved. Colonel Ahrens, who is obviously the Lieutenant Colonel Ahrens mentioned, is eliminated as the perpetrator because this deed is said to have been committed in September 1941, while Ahrens did not take command of Regiment 537 until the end of November 1941. He arrived only at that time at Katyn and had never before been in the eastern theater of war. Before Ahrens, Colonel Bedenck was in command of the regiment and he joined the regimental staff in August 1941. Before Bedenck, First Lieutenant Hodt took lodgings in the little Dnieper castle in July 1941, immediately after the capture of Smolensk. He came with an advance unit of the 537th Regiment and remained there until the arrival of the regimental staff, to which he was not yet attached at that time. He was transferred to the regimental staff only in September 1941, and from that time on he lived permanently in the little castle.

Special facts which would incriminate Hodt or Bedenck cannot be derived from the document which has been submitted, and such facts have not been presented here. Therefore, it is not proved that Bedenck and Hodt could be considered as perpetrators.

The following circumstances contradict the theory that Unit 537 or any other military unit had participated in this act. The Polish prisoners allegedly fell into the hands of the Germans in the three camps west of Smolensk. Thereby they would have become German prisoners of war. The fact that they had been captured would have had to have been reported to Army Group Center. Such a report was not made, as testified by the witness Eichborn. Considering the tremendous number of prisoners, it is quite out of the question that anyone could inadvertently have failed to make a report of that nature. Apart from that, the capture of 11,000 Polish officers could under no circumstances have been concealed from the Army Group. As results from the testimony of General Oberhäuser, the Army Group never had any knowledge of this.

From the statements of the two witnesses, Eichborn and Oberhäuser, it can be concluded that at the time of the capture of Smolensk by the Germans there could not have been any Polish officers present in these camps. Moreover, no eye witnesses who saw the officers after that date were interrogated by the Russian commission. The railroad employee who was interrogated on this subject knows nothing from his own observation.

Now, allegedly these 11,000 prisoners were taken from the camps to Katyn. The transport of so many Polish prisoners could not have been concealed from the Russian population even if the transport had been carried out most unobtrusively and secretly, nor could shootings on such a large scale have taken place without the Russian population taking notice of them.

Even though this little wood was blocked off, at a distance of about 200 meters there was a public highway open to traffic, and this highway was used daily and to a great extent by the Russian civilian population. Anything that took place in the little wood of Katyn could be seen from this highway.

In the direct vicinity of the Dnieper castle there were isolated homesteads which remained occupied by the owners during the whole time of the German occupation, and there was constant contact with the regimental staff. There are no reliable statements and testimony dealing with either transport or the observation of shootings. The Germans would hardly have chosen the site on which the graves were found for such a mass execution. Owing to its situation between the main road and the regimental quarters, this site was quite unsuitable for such a misdeed. As I have already stated, there was lively traffic not only on the near-by road, but also in the direct vicinity of the graves which were near a small road connecting the regimental headquarters with the main road. The executions could also have been observed by soldiers who had nothing to do with it. Even the unit selected to carry out the deed would have been very unsuitable. A technical unit, such as a signal corps unit, is the least suitable for such a task.

The witnesses Eichborn and Oberhäuser did not move into these quarters near the site of the deed until 20 September 1941, and they can only testify as to what they themselves observed from that date on. But from the end of July there was an advance unit near the castle and from August, a regimental staff. It is, however, quite out of the question that in this span of time or perhaps 6 weeks this act could have been perpetrated. The few people who were available were so overburdened with military tasks that in this short time it would have been quite impossible for them not only to kill 11,000 prisoners, but also to remove the bodies.

According to the statement of the Prosecution, Russian prisoners of war allegedly helped to remove the bodies. That has not been proved. None of the Russian population had ever seen such prisoners. In no case could all traces of the deed be effaced so quickly and the scene so speedily cleared that the witnesses Oberhäuser and Eichborn on their frequent trips to the Dnieper castle would not have noticed some suspicious signs.

The testimony of the witness who was heard here is not sufficient. He merely heard a story of such shootings from a certain Menchagin who cannot be found now. This witness did not make any personal observations. He himself did not see any Poles. He was told by students that they had seen Poles but they did not know the number of Poles or where they were being kept. Testimony which is so scanty in every respect is worthless, and the testimony given by the two doctors heard as witnesses is not adequate for use in the sense of the Indictment.

Within the scope of the evidence admitted by the Tribunal, it would not have been possible to clarify completely all the medical questions which were decisive for the experts in the facts you have established. Therefore, the Defense has also refrained from calling a medical expert to exonerate the defendant.

There is one thing, however, which must not be overlooked in this connection. The expert opinion obtained by the German Government was given by 12 members of a commission of leading representatives of legal medicine from European universities, while the expert opinion referred to by the Prosecution was deposed by a group of Russian experts only. The first expert opinion should be given preference since it was compiled by experts who were completely nonpolitical.

Now, the witness Professor Markov in his examination went back on the opinion contained in the report of 30 April 1943. He claims that already at that time, due to his findings upon making an autopsy on the bodies, he failed to agree with the report that the shooting took place in the months of March and April 1940. However, this testimony must be met with considerable misgivings. The witness could give no plausible explanation why, in view of his opinion, he did not lodge an immediate protest against the version of the report of 30 April 1943 or refuse his signature, nor why, at least, he later . . .

THE PRESIDENT: [Interposing] Dr. Stahmer, you realize, of course, that you have not offered in evidence the report of this German commission. You expressly refrained, as I understand it, from offering the report of the German commission. And you . . .

DR. STAHMER: Mr. President, that is a mistake. I did not refrain from doing so. I was not permitted to submit the *White Book*, but I was permitted to submit the report of 30 April 1943. However, I could not submit it immediately, for it was contained in the *White Book* and I was to have copies made. These copies were made and submitted. I used some of the passages from the protocol, with the express approval of the High Tribunal.

THE PRESIDENT: I know you did, and of course if you want to offer it there will be no objection to your offering it; but certainly I understood that you were only offering in evidence the parts which you read to the witness. That, I think, was put to you at the time you were cross-examining the witnesses on behalf of the Prosecution.

That is what I understood, but if you say that your interpretation was different and that you want to offer the whole of the report, then the matter will be considered by the Tribunal, if the Tribunal has not already considered it.

Are you saying that the Tribunal has already allowed the whole of that report to be offered in evidence?

DR. STAHLER: Mr. President, unfortunately the book...

THE PRESIDENT: Dr. Stahlmer, what you are desiring to offer in evidence is the conclusion of the report or the protocol or whatever it is called, is that right? That, I take it, is not a very long document, is it?

DR. STAHLER: No, Mr. President. May I explain again. I am sorry but I have not received the transcript of the session. Therefore, I do not know just what is contained in this protocol; but I do recall—and one of my colleagues confirmed this to me just now—that at the time I was permitted to submit the entire so-called report of the commission, and I quoted certain passages not only from the conclusion but from the whole report, and with the permission of the High Tribunal I proposed to submit the entire report later.

THE PRESIDENT: Well, I do not know what you mean by the whole report or what you mean by the protocol.

DR. STAHLER: Mr. President, may I describe it once more.

This was a rather comprehensive protocol which described the findings of the investigations. It contained the entire facts of the case and it concluded with a joint expert opinion. It is composed, as I have stated, of facts and reasons. It contains, first of all, a very comprehensive statement in which the facts as they appeared to the experts are described individually. For instance, that they interrogated the Russian population on the spot, checked over the site of the graves, held a post mortem—all of these things were presented by me from the record with the permission of the High Tribunal.

Mr. President, may I be permitted to make another remark to clarify these matters? I remember this incident quite particularly because you, Mr. President, first mentioned it and asked whether I had another copy of this protocol. I answered, "No, I have only the *White Book*." Then that was submitted to the witness, whereupon I suggested that the other witness be called so that in the

meantime I could have a copy made of this protocol. Then you, Mr. President, thought it had better not be so but that I should take the book and then submit a copy afterward.

THE PRESIDENT: Well, the Tribunal will look at the record to see exactly what happened.

DR. STAHLER: As I said, I did not see the transcript myself. If it was not taken down like that, then the record is not complete. However, I do remember quite clearly that that is what took place.

THE PRESIDENT: We will continue then.

DR. STAHLER: The statement of the witness is subject to considerable doubt. The witness could give no plausible explanation as to why, in view of his attitude concerning the form of the protocol of 30 April 1943, he did not lodge an immediate protest and refuse to sign it or why he did not at a later date at least acquaint the other experts who participated with his true scientific conviction.

Through this testimony the German experts' opinion cannot lose its weight and become weakened, especially since the other 11 experts obviously endorsed the statements set forth in this report.

Considering this state of affairs it will not be necessary to set forth the individual reasons which speak for the correctness of the statements contained in the German *White Book* of 30 April 1943.

The time given by the Russian experts for the shooting, that is, the autumn of 1941, is determined arbitrarily; and it cannot be true in any case for the corpses wore winter clothing, as the witness Markov noticed on the corpse upon which he performed an autopsy. The fact that ammunition for pistols of German make was found in the graves does not permit the conclusion that this shooting was necessarily carried out by Germans. In the German *White Book* it has already been pointed out that the German factory which produced this ammunition delivered a great deal to other countries, especially to the East.

In conclusion, it can be said that the task of this proceeding is solely to determine whether the 11,000 Polish officers were shot after the capture of Smolensk by the Germans, in other words, that this deed could have been committed by Germans. The Prosecution have not succeeded in proving this fact and therefore this accusation will have to be struck from the Indictment.

Mr. President, I come now to my closing sentences, my conclusion. I imagine it will take me roughly a little more than 10 minutes and think it would be best to give this conclusion in unbroken continuity. Either I will have to speak until after one o'clock; or, if I may be permitted to make a suggestion, the Tribunal might recess now.

Shall I continue now?

THE PRESIDENT: If you can finish in 10 minutes we will go on until you finish, Dr. Stahmer.

DR. STAHMER: I will not quite have finished in 10 minutes, and I should like to point out particularly that I would not like to have to interrupt my concluding remarks.

THE PRESIDENT: Perhaps if it would be more convenient to you—we will do whichever you like; we will recess now, if you like. It is a very hot day and we will recess now if you prefer.

DR. STAHMER: I would prefer to have the recess now. I do feel the heat a little today, Mr. President.

THE PRESIDENT: Very well.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

DR. STAHLER: I come now to the summary.

In reviewing the personality and life of the Defendant Göring, the following points must be considered for the appreciation of his actions:

Provided at home with a good educational background and training in character, he was moulded decisively as a young officer and combat airman during the first World War, in which he proved his outstanding worth, receiving the highest award for bravery, the decoration *Pour le Mérite*. He experienced the collapse of the German war effort as a consequence of, as he saw it, German treachery from within.

After the rule of the Kaiser had been overthrown, the German people wanted to give themselves a new constitution on a democratic basis and then hoped to be able to work their way up again by industry and perseverance. In this, the confidence in the far-sightedness of the victor powers of that time, and especially in the 14 points of Wilson, played a great part. But when the Treaty of Versailles utterly frustrated these hopes, the Weimar democracy fell into a serious crisis from which it was not to recover. This, together with the subsequent world economic crisis, formed the undeniable prerequisite for the fact that Hitler was able to seize power.

First, the "fight against Versailles" made his rise as a Party leader possible. Göring, as a witness, described how he agreed with Hitler at their first meeting that nothing could be achieved by written protests.

The powerlessness of the German democracy had by then become apparent to the entire world. Göring like Hitler was convinced that Germany inevitably must become a victim of Bolshevism unless it was possible to muster against it sufficient defensive strength by the re-establishment of German self-confidence at home. That Germany was also forced to take a firm stand against the Versailles powers was a matter of course. In this Hitler unquestioningly seized upon the fact that Germany belonged to the West—culturally, economically, and also politically. He believed that the Bolshevik danger, which in the first place was directed against Germany, would ultimately also threaten the Western countries. Therefore he was of the opinion that he would be able gradually to gain their recognition and support if he took up the ideological struggle against the East.

From this basic attitude alone is it possible to explain his entire policy until the actual collapse. One may rightly condemn it today as having been a failure from the outset, but one cannot ignore the

fact that initially certain things in the development clearly seemed to justify it. And this explains how Hitler succeeded in making an ever-increasing part of the Germans his followers.

Göring firmly believed that salvation could come only through Hitler. He recognized in him the born national leader who knew how to influence and to guide the masses and whose hypnotic will power shrank before no obstacle. He realized that under a democratic constitution only such a man of demoniacal demagogic talent was able to prevail. And therefore he joined him.

Because Göring was a true and honest German, inspired only by love for the fatherland, he did not even think of using Hitler only as a tool for his own advancement. On the contrary, he took it upon himself from the beginning to recognize in him the man who alone decides, in other words, the Führer, and to be satisfied with a subordinate role. Therefore the famous Air Force captain and holder of the order *Pour le Mérite* did not hesitate to swear the oath of allegiance to the then still unknown Hitler, an oath which was to hold good for the rest of his life and actually did so. It is tragic that a struggle such as that led by Göring and Hitler could be so completely misunderstood as to be considered from the very outset as a conspiracy for the purpose of committing crimes.

His aim was at first directed towards freeing Germany from the shackles of the Treaty of Versailles. It is true that the Weimar Government had made repeated attempts to be released from the most onerous obligations of this treaty. However, Germany was not successful in her endeavors for a revision. No progress was made by negotiating. Did not international law appear to be only an instrument in the hands of the victors of Versailles to keep Germany down permanently? Was it not still true in the world that might came before right and that the Germans would achieve something only if they had the courage to shake their fists?

Such considerations appear absolutely understandable from the situation of that time. To construe from them a proof for the conspiracy alleged by the Prosecution would mean a complete misunderstanding of the facts. Actually, the development after 1933 seemed at first to prove Hitler completely right. He easily achieved with his methods much more than—if given voluntarily—would have kept the Weimar Government in power.

From the willingness of the foreign countries not only to conclude treaties with Hitler—such as the Naval Agreement of 1935 and the Munich Pact of September 1938—but also to participate to the end in the Party rallies, the German people could only conclude that Hitler had chosen the correct road for reaching international understanding. This impression and this judgment were absolutely correct until the fall of 1938. Had Hitler afterwards observed loyally

the Munich Agreement, then he would probably have stayed the arguments for the "stop" policy which was initiated against him. Not only would peace have been maintained, but Hitler could also have harvested the fruits of his domestic and foreign policy pursued until then and recognized by all powers.

Basically, the argument today centers only on the question of whether the developments since then and their catastrophic consequences should be charged solely to him or to others. All Germans who followed Hitler at any time and in any way are accused. For the prosecutors maintain—above all those who put no trust in him from the outset and who denied the legitimacy of his government from the beginning—"It was to be foreseen that he would end as he did!" Therefore, everyone who supported him at any time and in any way also shares in the guilt.

To this accusation it must be objected that retrospectively it invests the sad results with an inevitability which would destroy all belief not only in freedom, but also in the wisdom of man. Of course Hitler himself did not desire the end as it came. He often enough announced at the beginning that he was not out for the laurels of war but that he would like to devote the rest of his life to peaceful constructive work. From a truly objective point of view, one can reproach him only for not having limited his aims when he could no longer believe in their achievement by peaceful and humane means.

If by such means only those are to be understood which renounce force of any kind, then there would have been no need for him to go his own way and seek a new solution. A certain play with force, as long as it did not get out of hand, will, therefore, have to be conceded to him. Where it got out of hand can only be determined, for lack of other proof, by the results which he actually caused with his policy. He certainly did not foresee and intend the bad results. However, it must be considered his fault that he did not accept the lesson of his failures but allowed himself to be goaded to still greater extremes. But how much of this guilt can and may be charged also to his followers?

Whoever did not reject Hitler's methods, and thereby him personally, from the very beginning as illegitimate, found it difficult to recognize where the political aims set by Hitler ceased to provide justified reasons for his measures, and where beyond that the policy became a crime. The dividing line in this respect was from the standpoint of the purely German legal conception probably considerably different from that of other nations or even the world. For the latter, for example, were hardly interested in the maintenance of the Weimar constitution and the basic rights granted by it to the individual German. Its violation, therefore, up to the second World

War has never caused other states to intervene with the German Government. On the other hand, once the war had broken out, the Germans were forced to put German interests above their sympathy for members of other, especially enemy, states. Each believed himself to be doing enough if he took care in his sphere to see that unnecessary harshness was avoided. To revolt against orders from the highest German authority would not only have been completely senseless and hopeless, but, until shortly before the bitter end, it would also have been a violation of German legality and thereby a punishable offense. Reproaches for failure to revolt can, therefore, be made only if the breach of formal legality, without consideration of the immediate practical effect and only for the sake of the principle—which is the attitude of a revolutionary—could be defined as a legal obligation.

The consequences of such a conception are so far from the point that they cannot be considered seriously at all, because hitherto existing international law was primarily based on the principle of unlimited sovereignty of the states. No country has been willing to submit vital and decisive questions to the judgment of others, no matter to how great a majority or to however independent a tribunal. And now every individual citizen of such a sovereign state was to have had not only the right but even the duty toward the other nations or humanity to rebel against the legal system of his own country because it violated the rights of man and humanity? Such an imposition, made retroactively, pronounces its own sentence. It would place the autonomy of the individual above state sovereignty. Thereby the power of the individual person would not only be immeasurably overestimated, but this would also necessarily lead to the breaking of the last ties of traditional order, to anarchy.

To this way of thinking Göring virtually represents the exact opposite pole. Just as others went to war in order to fight against war as such, he became a revolutionary in order to restore honor to the concept of loyalty. Thus, having once cast his lot with the Führer, he stood by him when he had already lost the latter's confidence, in fact, even after he had been sentenced to death by Hitler. He remained loyal until today, in spite of everything, by excusing Hitler again and again. To many this may appear incomprehensible, and many may see in it a sign more of weakness than of strength. But this loyalty reveals his whole personality. Göring has occasionally been described as a late Renaissance type; and there is something in that. Although of high intelligence, he allowed himself to be guided in his actions less by reason than by the dictates of his warm heart.

Such a man expresses himself of necessity in a way that is primarily subjective. He does not look upon the people surrounding

him and upon others impassionately as factors to be reckoned with; but he feels, above all, what effect they have on him and how they challenge his approval or disapproval so that he finally makes his personal reaction to them the basis for his over-all judgment.

But still, as can be seen from the statements of Generaloberstabsrichter Dr. Lehmann, he always endeavored to be just and to lend an ear to sensible arguments. He always kept himself free from doctrinal prejudices. As a soldier, he always endeavored to do the right thing in each case. His decisions on points of law as well as his social interest, which General Bodenschatz testified to among other things, show his earnest moral sense of responsibility. His attitude toward all criminal acts directed against the honor of women are proof of his chivalry. But in all this he is not guided by a dogma but by his spontaneous common sense, *ergo* not by intellect, but by life. From actual life he derives his ideas and the values which determine his actions.

Therefore the Führer and the oath of loyalty he had taken to him meant everything to him and were the substance of his life. Ambassador Henderson had judged Göring correctly, when he wrote about him:

"He was the perfect servant of his master, and I have never seen greater loyalty and devotion than he maintains toward Hitler. He was recognized as the second power in the country, and always gave me to understand that he was Hitler's natural successor as leader. Men in secondary places often tend to emphasize their own importance. In all the open discussions in which I engaged with Göring, he never spoke of himself or the great part which he had played in the Nazi revolution; Hitler had done everything, all confidence was confidence in Hitler, every decision was Hitler's and he himself was nothing."

This judgment still applies today. But his loyalty became his disaster. For him a world had gone to rack and ruin. He certainly recognized many a mistake of the past, but he did not show the repentance which many would have liked to see in him. He thereby remains loyal to himself as well. And this completes the picture of his character.

In a period still threatened by chaos, in which men are again searching for a firm foundation for life, the positive value of such loyalty should not be ignored.

THE PRESIDENT: Dr. Seidl, I understand that you have not had your speech translated into any of the languages. Is that so?

DR. SEIDL: Mr. President, I told the General Secretary yesterday the reasons which made it impossible to have the speech translated. However, I have given the Language Division the text in

German; and I was told that the German text would be a big help in carrying out the translation as quickly and as accurately as possible.

THE PRESIDENT: Well, the Tribunal has already pointed out to you, many days ago, that it is very inconvenient to them not to have a copy of the speech before them. If you propose to make a speech, they will do the best they can to appreciate it. It makes it very much more difficult and very much more inconvenient not to have the speech translated.

DR. SEIDL: I shall see to it that the translation is made as quickly as possible for the case of the Defendant Frank.

THE PRESIDENT: Very well; go on.

DR. SEIDL: Mr. President, Gentlemen of the Tribunal, when in 1918 the German Army, after more than 4 years of heroic struggle, laid down arms, this was done in confidence of the assurances repeatedly given by President Wilson in 1918. In his speech before Congress on 8 January 1918, the President of the United States of America, in 14 points, had demanded among other things...

THE PRESIDENT: [*Interposing.*] Dr. Seidl, the Tribunal has already intimated, as you must know, that the question of the 14 points and the question of the justice of the Treaty of Versailles is irrelevant. They do not propose to listen to it. You have been told that before, and many documents have been rejected which dealt with this subject.

DR. SEIDL: Mr. President, I do not intend to comment on the question of whether the Versailles Treaty is just or not. The point is this: The Prosecution have submitted the Versailles Treaty in evidence. They made the Versailles Treaty the main point of the Indictment especially as concerns Count One of the Indictment.

My investigation aims at the following: First, was the Versailles Treaty formed legally? Second...

THE PRESIDENT: I spoke only of the injustice of the Versailles Treaty. But it is even more irrelevant to question whether the Versailles Treaty is a legal document or not. We do not propose to listen to your contending that the Versailles Treaty is not a legal document. There are plenty of matters which are of material moment for your client which you have to discuss before us, but that is not one of them.

DR. SEIDL: Mr. President, I cannot leave the Tribunal ignorant of the fact that the Versailles Treaty and its consequences, especially the causal relationship with the seizure of power by National Socialism, form a considerable part of my speech and it will be...

THE PRESIDENT: Dr. Seidl, I have told you that the Tribunal will not listen to your contending either that the Versailles Treaty was not a legal document or that it was in any way unjust. On those topics we do not propose to hear you.

DR. SEIDL: Then I must construe the attitude of the Tribunal to mean that I will not be permitted to speak of the consequences of the Versailles Treaty, and particularly about the connection which these consequences had with the rise of the National Socialist Party and with the seizure of power by Adolf Hitler and the co-defendants.

THE PRESIDENT: Look. The Versailles Treaty is, of course, a historical fact; and the Tribunal cannot prevent you from referring to it as a historical fact. But as to its justice or as to its being a legal treaty, the treaty which Germany signed, you will not be heard.

As you have not laid your speech before us, we do not know what you are going to say. But we will not listen to that sort of argument.

DR. SEIDL: Then I shall begin on Page 6 of the German manuscript, with the second paragraph.

Thus the struggle for the revision of the peace "Dictate" of Versailles began at the moment when it was signed. In the program of the National Socialist Labor Party of Adolf Hitler, this struggle against the Versailles peace "Dictate" and for its revision assumed a place far surpassing all other demands and considerations. It was the leading thought by which the whole inner political activity of the Party was guided and which, after the seizure of power, was to form the basis for all foreign political considerations and decisions.

One of the first fellow-fighters of Adolf Hitler was the Defendant Rudolf Hess. Like Hitler, he was also a front-line soldier in the first World War. As a volunteer he joined at the outbreak of the war, and he had risen to the rank of infantry lieutenant when he was wounded in Romania. Incapacitated for the infantry through this wound, he enlisted in the Air Corps.

After the armistice, he fought with various volunteer corps. But in 1919, after the conclusion of the Versailles Peace Treaty, he had to recognize that the victors did not really desire a peace based on justice and a corresponding adjustment of interests. As could be expected, the terms of the Peace Treaty of Versailles, and especially the burden of the reparations on the already seriously affected German economy, had to have...

THE PRESIDENT: Dr. Seidl, it may be difficult for you to cut out of your speech the various references to the topics which I have

referred to; but you must kindly try to do it. For if you continue to refer to the topics to which I have referred, namely the justice or the legality of the Treaty of Versailles, the Tribunal will have to stop your speech and go on with some of the other defendants.

DR. SEIDL: Mr. President, the subject I was just dealing with was not a question of justice or legality but a question of the consequences and referred to the investigation of the causal connection. If the Prosecution, in weeks of presenting evidence, showed how the rise of the National Socialist Party came about and how the numbers of its mandates increased...

THE PRESIDENT: Dr. Seidl, those are all facts which the Prosecution is perfectly entitled to prove. What you are now referring to is an argument that certain clauses of the Versailles Treaty were unjust. And that is an argument which the Tribunal is not prepared to listen to. It is not a statement of fact; it is an argument.

DR. SEIDL: Of course, it is an argument...

THE PRESIDENT: I have said that it is an argument we are not going to listen to. If you do not understand what I mean, you will have to stop continuing your speech. Do you understand that?

DR. SEIDL: Page 8, then, if you please.

When in 1925 the Party was founded anew, Rudolf Hess was once more one of the first...

It is impossible, Mr. President, to continue my speech, because all the following statements are concerned with the question: What did the Defendant Hess do up to the seizure of power? And I must say and have said that the mainspring of his activity within the Party and the German people consisted in achieving a revision of the Versailles Treaty and its most unbearable terms. This is the very question of the whole National Socialist movement up to 1933.

THE PRESIDENT: If you confine yourself to statements of fact as to what the Defendant Hess did, there will be no objection to it at all. But as I said, if you make arguments that the Treaty of Versailles is illegal or unjust, the Tribunal will not hear you.

DR. SEIDL: I shall continue, and I ask you, Mr. President, since I do not know the exact limits which I may not transgress, to interrupt me if I should again touch upon a subject which in the opinion of the Tribunal refers to the justice of the Versailles Treaty and...

THE PRESIDENT: Dr. Seidl, you know perfectly well the limits which have been laid down by the Tribunal many weeks ago as to the question of the justice or the injustice of the Treaty of Versailles. There has been a great number of documents rejected on the ground that they dealt with the justice or the injustice of the Treaty of Versailles, and you must have known that perfectly well.

DR. SEIDL: Then I ask the Tribunal to tell me whether I am permitted to make statements to the effect that the economic deterioration, especially the great unemployment, resulted from the reparations clauses of the Versailles Treaty and the refusal of the victorious powers of 1919 to change this reparations policy.

THE PRESIDENT: You may certainly state what the condition of Germany was. That is a matter of fact.

DR. SEIDL: Then I shall again begin on Page 8.

When in 1925 the Party was founded anew...

THE PRESIDENT: Dr. Seidl, the Tribunal is perfectly familiar with this type of argument; I mean, we are not going to lose sight of the argument. We know all about the argument; we do not want to hear it. We think it is entirely irrelevant.

Can't you go on to other passages of your speech which are important for the Defendant Hess? As I have said, there are a great many matters of which evidence has been given by the Prosecution and which have been answered by the Defense; and upon those matters we desire to hear you.

DR. SEIDL: I shall then begin on Page 10, with the second paragraph.

If, therefore, the National Socialist Party achieved a great victory in the Reichstag elections of 14 September 1930, and entered the new Reichstag with no less than 107 delegates, then that is at least due to the economic crisis of the time, to the great unemployment and so directly to the reparations stipulations, contrary to all economic reason, of the Versailles Treaty and the refusal of the victorious powers, in spite of urgent warnings, to agree to a revision. It is true...

THE PRESIDENT: *[Interposing.]* Dr. Seidl, you know that is again an argumentative statement, that the Treaty of Versailles was unfair and that the victorious powers had failed to recognize the essential justice of Germany's case or something of that sort. If you can't adjust your speech to what I have laid down, we shall have to ask you to recast the whole speech.

DR. SEIDL: Then I shall turn to Page 11, second paragraph. No, I shall turn to Page 12.

When the German people, in compliance with the Peace Treaty of Versailles, had disarmed, it had a right to expect that the victorious powers would also...

THE PRESIDENT: *[Interposing.]* One moment, Dr. Seidl, as you don't appear to be capable of recasting your speech as you go along to accord to the Tribunal's ruling, the Tribunal will not hear you further at this stage. It will go on with the next defendant's case.

You will then have the opportunity of recasting your speech, and you will submit your speech for translation before it is presented, and I would explain that this is the reason why the Tribunal does not propose to hear you upon these matters. They are irrelevant to the issues that the Tribunal has to try. If they were in any way relevant to the charges which are made against the defendants in the Indictment, the Tribunal would of course hear them; but they are, in the considered opinion of the Tribunal, in no way relevant to the charges upon which the defendants are being tried and therefore the Tribunal do not propose to hear them. The justice of the Treaty of Versailles has nothing to do with whether or not the war which was made by Germany was aggressive. It has nothing to do with the war crimes with which the defendants are charged, and therefore, it is irrelevant and for that reason we don't propose to hear it. Now, as I say, as you are unable apparently to recast your speech, you will be given an opportunity of recasting it in private; and you will then submit it for translation and you can then deliver it. And now we will go on with the case against the Defendant Ribbentrop. Dr. Horn, you are ready to go on, are you?

DR. HORN: Mr. President, I have just heard that the translations are being brought up. Perhaps I may wait until the translation gets here?

THE PRESIDENT: I think you might go on. We can hear what you say and take it down.

DR. HORN: Mr. President, Gentlemen of the Tribunal: "All great upheavals in the history of the world, and especially of modern Europe, have at the same time been wars and revolutions."*

We are in the midst of such an upheaval. It is by no means concluded as yet. To select isolated events in order to submit them to a judicial appraisal is not only almost impossible but entails the danger of a premature judgment. Let us make no mistake about it; we are not judging here a local crisis the causes of which are limited to a certain part of Europe. We have to form a judgment about a catastrophe which touches upon the deepest roots of our civilization.

The Prosecution has laid down strict measures in judging certain national and international events. Germany is greatly interested in the development of law and justice if its general application leads to an improvement of international morals. This Tribunal has the high task not only of passing judgment on certain defendants, disclosing the causes of the present catastrophe, but at the same time of creating norms which are expected to be adopted universally.

* Halévy

No law should be created that is only applied to the weak. Otherwise we would foster the danger that again all national efforts would be directed to develop more fully the power of resistance and thereby make war still more merciless than the one on which judgment is to be rendered here.

In taking these thoughts as a basis I beg to present to the Tribunal the case which I represent.

Herr Von Ribbentrop is being considered among the conspirators as the man mainly responsible for the foreign political and diplomatic side of an alleged conspiracy, which is supposed to have had as its goal the preparation and execution of aggressive wars. It is my primary task to determine, on the basis of the results of the evidence, when a case constitutes an attack in the meaning of international law and in which cases aggressive wars were waged.

The concept "aggressive war" is not exhausted in the proposed formal judicial definition by the American and British prosecutors but has, above all, a material basis.

Only the knowledge of these premises permits the adoption of an attitude which can serve as a basis for the decision of the Tribunal. I am, therefore, deferring the discussion of the problematic aspects of aggression and aggressive wars until, after having described the German foreign policy and Herr Von Ribbentrop's role therein, I shall have submitted to the Tribunal the evidence for consideration.

As the Tribunal intends to consider the matter in the light of criminal law, I shall especially examine to what extent Herr Von Ribbentrop hindered or furthered the foreign political decisions during the time of his official activity.

Herr Von Ribbentrop's first step into international politics and his first move in the international game of power was successfully accomplished when he concluded the Naval Agreement between Germany and England in 1935. The circumstances under which this treaty came into existence are as significant for the political problems of those years as they are characteristic for judging the personality of Von Ribbentrop and his further political development. This treaty—as is known in informed quarters—came about under exclusion of the official German diplomacy. The then German Ambassador in London, Von Hoesch, and the Wilhelmstrasse were very skeptical toward this project. Neither Hoesch nor the Wilhelmstrasse believed that England was inclined toward concluding such a treaty, which contradicted the terms of Part V of the Versailles Treaty as well as her previous attitude as displayed at the different disarmament conferences. Furthermore they did not believe that such an agreement could materialize a few weeks after the Council of the League of Nations had declared the restoration of German

military sovereignty to be a breach of German obligations; and England, France, and Italy had met at Stresa in order to counteract this German step. And much less did they believe that a successful conclusion of such a far-reaching treaty, with its fundamental significance, could be achieved by an outsider like Herr Von Ribbentrop.

The consequences resulting from the conclusion of this treaty were as significant as they were far-reaching. Herr Von Ribbentrop, who came from the Party, rose greatly in Hitler's esteem. In turn, however, the relationship between Herr Von Ribbentrop and the conservative diplomatic corps became more and more difficult. This nominal ambassador who had managed to acquire Hitler's confidence was distrusted because his activity could not be controlled by the Foreign Office.

From the conclusion of the Naval Agreement onwards, Hitler began to see in Herr Von Ribbentrop the man who could help him in the fulfillment of his pet wish—and also, we may say, of that of the German people—to achieve a general political alliance with England. The inclination to realize these intentions had practical as well as ideal motives.

The practical motives can be condensed into the short statement that it is the misfortune of our nation and of all Europe that Germany and England were never able to understand each other, in spite of earnest attempts on the part of both countries during the last 50 years. The ideal motives were grounded in Hitler's indisputable preference for many approved internal institutions of the British Empire.

Politically the Naval Agreement represented the first important break with the Versailles policy as sanctioned by England with the final approval by France. And thus the first actual and practical armament limitations were put in effect after many years of fruitless negotiations.

Simultaneously with all these factors a generally favorable political atmosphere was created. The Naval Agreement and its effects may also have been the reason for Hitler to appoint Herr Von Ribbentrop Ambassador to the Court of St. James the following year, after the death of Hoesch.

However surprisingly fast Herr Von Ribbentrop succeeded in concluding the Naval Agreement, in offering a general alliance to England he had not the slightest success. Was it the fault of Herr Von Ribbentrop's diplomacy or the basic difference of interests?

Whoever is familiar with Anglo-Saxon psychology knows that it is not advisable to pester these people at once with proposals and requests. Germans, at first sight, may recognize many common

traits in the British, but upon closer observation profound differences will be noted. Both nations have their roots in a different soil. Their spiritual heritages have different sources. The deeper the Germans and the British penetrate, the greater will appear the difference in their faith and their mentality. The deeper the British and the French penetrate into one another's nature, the more they will find in common with each other. These harmonies between the British and the French were still further enhanced in the past 50 years through the affiliation of their political interests.

In the course of modern history England has always had the desire to ally herself with a continental military power and has sought and found the fulfillment of this interest, depending on the direction of British aims, sometimes in Vienna, sometimes in Berlin, and from the beginning of the 20th century in Paris. England's interests, at the time of Herr Von Ribbentrop's activity as Ambassador, did not demand a departure from this line. This was supported by the basic British attitude that Great Britain did not wish to commit herself on the continent. From the Thames the complications which lay dormant beneath the surface on the continent were clearly seen. Added to this was the fact that authoritative men in the Foreign Office were still thinking too much in terms of a policy conducted at the turn of the 19th and the beginning of the 20th century. This thinking was still, now as then, directed towards an alignment with France.

The voices of those who advocated closer contact with Germany were negligible, their political weight succumbed to that of the opposition. To this were added the difficulties which resulted for Herr Von Ribbentrop from Germany's participation in the Non-Intervention Committee, which at that time met in London in order to keep the powers out of the Spanish civil war.

The Prosecution raised the question of how Herr Von Ribbentrop regarded German-British relations on his departure from London as Ambassador. The answer to this will best be furnished by Document TC-75, which contains the views of Herr Von Ribbentrop on the then prevailing foreign political situation of Germany and on the future possibilities of German-British relations.

In this, Herr Von Ribbentrop presupposes that Germany does not want to bind herself to the *status quo* in Central Europe. It is his conviction that the implementation of such foreign political aims will necessarily force Germany and England "into different camps." For this reason he advises the formation of alliances, loose at first, with powers having similar interests (Italy and Japan). Through this policy he hopes to engage England at the danger points of her Empire and still to keep the door open for an understanding with Germany.

Herr Von Ribbentrop then deals with the question of Austria and the Sudetenland. According to his conviction at that time, England will not in either of these questions give her consent to a modification of the *status quo*, although she might be forced through the power of circumstances to tolerate a solution of these questions.

A change through collision with vital French interests of the *status quo* in the East will, however, always cause England to become an opponent of Germany in a conflict of such nature. Herr Von Ribbentrop held this conviction not only in 1938 when this document was penned; but, contrary to the assertions of the Prosecution, warned Hitler of this danger even before and at the outbreak of the second World War.

From this document it follows also that Herr Von Ribbentrop did not, as was asserted here, depict the British to Hitler as a degenerate nation, for he says in this document quite clearly that England would become a hard and keen opponent to the pursuance of German interests in the Mediterranean.

This conception of Germany's foreign political situation at that time, as expressed in Document TC-75, evidently agreed with Hitler's ideas inasmuch as in the course of the Fritsch crisis Herr Von Ribbentrop took over the Foreign Ministry in place of the resigning Herr Von Neurath.

According to Herr Von Ribbentrop's testimony, Hitler asked him upon entering his office to assist him in solving four problems. These were the Austrian, the Sudeten German, the Memel, and the Danzig and Corridor questions. As shown by the evidence this was not a secret understanding which was arrived at by the two statesmen.

The Party program contains, in Point 3, the demand for revision of the peace treaties of 1919. In a number of speeches Hitler repeatedly pointed out the necessity of fulfilling these German demands. Reich Marshal Göring testified here that in November 1937 he explained to Lord Halifax the necessity of solving these questions and said that they were an integral part of German foreign politics. He also clearly expounded these goals to the French Minister Bonnet. Herr Von Ribbentrop therefore put his energy into the attainment of goals which were known and which beyond that resulted, of necessity, from the dynamic situation at that time prevailing in Central Europe due to the strengthening of the Reich.

How much or how little freedom of action Herr Von Ribbentrop had as a minister in the solution of these questions, I shall explain in connection with my statement on the participation in the conspiracy of which the defendant is accused. Only this much may be said here: That, as was proven by evidence, with the dismissal of Herr Von Neurath, the decisive authority in the field of foreign

politics was also concentrated in Hitler's hands. Herr von Neurath was the last Foreign Minister who under the regime of National Socialism at first retained a decisive influence on foreign politics as a Foreign Minister, which influence, however, due to the increasing power of the regime, he had to surrender more and more to Hitler's aspirations towards totality.

In the selection of Herr Von Ribbentrop, a man of Hitler's own liking became Foreign Minister. Outside of all formalities of state law and jurisdiction, every government without a doubt has a strong component in the purely personal relations among the rulers themselves. Seen from this point of view, it is necessary for the understanding of certain actions and of recent history to look into the relations between Hitler and Herr Von Ribbentrop.

Herr Von Ribbentrop, a well-to-do man of nationalist leanings, saw that Hitler and his Party strove for goals which corresponded with his own ideas and feelings. Herr Von Ribbentrop's ideas about the foreign countries visited by him aroused Hitler's interest. Hitler's personality and political convictions developed in Herr Von Ribbentrop a form of loyalty, the final explanation of which one can perhaps find in the effects of the power of suggestion and hypnosis.

Let us not be oblivious to the fact that not only Herr Von Ribbentrop but also countless people within and beyond Germany's borders fell victims to this power. What in this courtroom is to be considered by the standards of law, after all finds its final explanation only from the point of view of mass suggestion and psychology, to say nothing of the pathological forms of these phenomena. This task may be left to the sciences concerned.

As an attorney—and only as such do I have to evaluate the results of the evidence—I shall, with the permission of the Tribunal, after clarifying this aspect, present the role of Herr Von Ribbentrop within the alleged conspiracy for the plotting of wars and acts of aggression in violation of treaties.

Herr Von Ribbentrop had not been Foreign Minister for 10 days when he was called upon by Hitler to participate in the conference with the Austrian Chancellor and his Foreign Minister on 12 and 13 February 1938 in Berchtesgaden. Evidence presented in court has confirmed the fact that questions involving Austria especially were exclusively Hitler's own concern. The then Ambassador Von Papen reported directly to the head of the State. Herr Von Ribbentrop had no influence whatever upon the activities of the Party in Austria nor in the Southeastern territory. My client alleges to have been informed only very rarely and not officially about its activities there.

The former Austrian Foreign Minister, Dr. Guido Schmidt, testified here that Herr Von Ribbentrop did not participate in the

decisive conference between Hitler and Schuschnigg. During the other conferences he did not conduct himself in the Hitlerian "style" and created the impression on the witness of not being informed, which in a certain measure was due to his late activity in London and his only recent appointment as Foreign Minister. From this inoffensive conduct of Herr Von Ribbentrop the Prosecution have drawn the conclusion that it was a maneuver agreed upon between Hitler and himself. They insist upon seeing in Herr Von Ribbentrop's conduct a typical sign of what they characterize as "double talk." Must not the indisputable dates and facts with regard to Herr Von Ribbentrop, the impression of the witness Schmidt resulting therefrom, my portrayal of Ribbentrop's position as Minister, his lack of information on the long-planned preparations with respect to Norway and Denmark, and other undeniably proven facts give cause to raise the question whether Herr Von Ribbentrop did not participate in decisions of foreign policy to a far lesser degree than is contended by the Prosecution?

In the question of the Anschluss, at any rate, he did not, as the evidence proves conclusively, play a decisive part. To him Austria was a country, mutilated by the Treaty of St. Germain, which on sound principles could hardly subsist and which once shared a common destiny in history with a greater Germany. The National Socialists were not the first to awaken Austria to the thought of a union with Germany. This thought had ripened in the German element of the Hapsburg monarchy since the revolution of 1848, which aimed at a democratic Greater Germany. After the downfall of the monarchy the Social Democrats continued to fight for it for ideological and material reasons. In fact, they saw in the Weimar state their spiritual offspring. The economic distress resulting from the destruction of the Danube area as an economic entity nurtured the thought of a union with the Reich, which was in a better economic position.

In this fertile soil the National Socialists were able to cultivate the Anschluss idea. In any event the prerequisites for an Anschluss with Germany were created when support for Austria by Italy ceased, due to the rapprochement of the latter toward Germany on account of the Abyssinian conflict. The further reasons that contributed to the Anschluss and its justification will be fully presented by my colleague Dr. Steinbauer.

Reich Marshal Göring testified here that the Anschluss in its close form, as laid down in the Law of 13 March 1938, Wiedervereinigungsgesetz, which was signed also by Herr Von Ribbentrop, did not originally even correspond with Hitler's intentions, but was put through by him.

As a further violation of treaties with regard to the Austrian question the Prosecution quote the violation of Article 80 of the Treaty of Versailles and the corresponding article of the Treaty of St. Germain, as well as the violation of the treaty between Austria and Germany of 11 July 1936.

THE PRESIDENT: The translation came through to me, I think, as though you had said, "... the union did not even correspond with the intentions of Hitler, but was put through"—it should have been "by Göring himself."

DR. HORN: Yes, I forgot that.

THE PRESIDENT: Go on.

DR. HORN: In justification of these violations one could point out that the articles concerned constituted a violation of the right of self-determination, on which the peace treaties were based. The outcome of the vote after the annexation at any rate clearly confirms the Austrian attitude of that time.

The *clausula rebus sic stantibus* could be considered as a further justification for the violation. One could refer to the statement of Under Secretary of State Butler in the House of Commons who, in reply to a question after the Anschluss, stated that England had given no special guarantee for the independence of Austria as laid down in the Treaty of St. Germain.

These legal evaluations would hardly do justice to the facts. Statute law always lags behind the ideal of justice. That does not only apply to domestic law but also to international law. Events show that if treaties fail to make provision for changes, time and events pass them by in order to rebuild them upon a new base. The question of whether the participation in such events can be legally evaluated must definitely be disputed. I shall refer later on to the general aspects of the adaption of the law to the strength of bare facts.

An Englishman once asserted the following: "We have to face the stubborn fact that Central Europe is populated by an almost solid block of 80 million people who are highly gifted, highly organized, and who are conscious of these achievements in the highest degree. The majority of these people have the strong and evidently incredible desire to be united in one state."

The Anschluss of Austria and the nationalist theories of National Socialism had set in motion this artificially split-up block created by the peace treaties of 1919. No attentive observer could fail to notice the effect of the Anschluss upon the neighboring states.

It is not my intention to take up the time of the Tribunal with the particulars of the subsequent efforts by the various groups of Germans in the neighboring states for incorporation into the Reich.

The facts which have now become history are only too well known. My task here is to examine whether these events are the results of a premeditated plan of one person or a group of persons, or whether not rather a long and artificially suppressed force was instrumental in accomplishing the objectives which were assigned to Herr Von Ribbentrop by Hitler at the time of his appointment.

The Anschluss of Austria was the signal for the Sudeten German Party to force the issue of an Anschluss now on their part too.

Herr Von Ribbentrop has been accused by the Prosecution of having, in his capacity as Foreign Minister, engaged in creating difficulties in collaboration with the Sudeten German Henlein. They further accuse him of having induced the Sudeten German Party to increase their demands step by step rather than enter the Czechoslovak Government and of thus having prevented a solution of the whole problem without making it appear that the German Government was setting the pace.

Document 3060-PS submitted by the Prosecution shows just the contrary. It is true that Herr Von Ribbentrop knew that the Anschluss efforts of the Sudeten Germans were encouraged by the Party. But he had no influence on this Party policy nor any thorough knowledge of it. Due to the difficulties which had arisen with the Czech Government on account of the separation efforts of the Sudeten Germans and their partly uncontrollable policy, Herr Von Ribbentrop considered it necessary to see to it that the realization of the Sudeten German aims was carried out within the limits of a responsible policy.

THE PRESIDENT: Dr. Horn, wouldn't that be a convenient time to break off?

[A recess was taken.]

DR. HORN: The Munich Agreement brought a temporary calm in the situation with reference to foreign policy. The situation was again complicated only by Hitler's invitation to Hacha to come to Berlin and by the events resulting from this visit. This step with its far-reaching importance came as a complete surprise to Herr Von Ribbentrop. Reich Marshal Göring has testified that after the Slovakian question had been settled Hitler had, in spite of all warnings, decided upon setting up the Protectorate of Bohemia and Moravia. On the basis of the available material it will be difficult to ascertain the final reasons for Hitler's step. According to the testimony of the Defendant Göring they sprang from Hitler's constant fear that through connections of the Czech officer corps with Russia another complication of the situation in the southeastern area might develop. This assumption and the resulting strategical

and historical reasons may have induced Hitler to take this step of 13 March 1939, which came as a surprise to Herr Von Ribbentrop, too.

This step, which is only understandable by Hitler's tendency towards surprise decisions, completely changed the German situation as to foreign policy. Herr Von Ribbentrop had warned Hitler at that time of the reaction by the Western Powers, and especially by England, which had to be expected as a result of this step.

And the consequences became immediately apparent in the Danzig and Corridor question which had been under discussion since October 1938. Whereas up to that time the Poles, by reason of the German policy since 1934 and due to the return of the Olsa territory to Poland, had not refused discussions about this problem, a reaction to the setting up of the Protectorate became apparent immediately at the end of March. England regarded the establishing of the Protectorate as a violation of the Munich Agreement and began consultations with a number of countries. At the same time Minister Beck, instead of coming to Berlin again, went to London and returned from there with the assurance that England would resist any change of the *status quo* in the East. This declaration was also made in the House of Commons after previous consultation with the French Government.

On 26 March 1939 the Polish Ambassador Lipski called at the Wilhelmstrasse and stated to Herr Von Ribbentrop that any continuation of the revision policy toward Poland, especially as far as a return of Danzig to the Reich was concerned, would mean war.

Thereby the Polish question had become a European question. Herr Von Ribbentrop told the Polish Ambassador at that time that Germany could not acquiesce to this decision. Only the reincorporation of Danzig and an extraterritorial corridor to East Prussia could bring a final solution.

I have submitted to the Tribunal, in the form of documentary evidence, a review of the Polish crisis which then developed. I can therefore assume that the actual course of events is known, including the incorporation of the Memelland which returned to the Reich through an agreement with Lithuania.

In order not to take up the time of the Tribunal unnecessarily, I shall confine myself to stating those facts which are apt to clarify the role of Herr Von Ribbentrop.

The Prosecution accuses Herr Von Ribbentrop of mollifying Poland by pretending friendly feelings toward her during the Sudeten crisis and the setting up of the Protectorate of Bohemia and Moravia. May I, in refutation of this assertion, point out that the relations between Germany and Poland since the agreement of 1934 were good and even friendly and that this attitude became,

of course, even more favorable through the fact that Poland was indebted to German foreign policy for the acquisition of the Olsa territory.

She had, therefore, every reason to entertain friendly feelings toward Germany without it being necessary to be deceived by Herr Von Ribbentrop's behavior. As the evidence has shown, Herr Von Ribbentrop continued this friendly policy towards Poland even after the dissolution of Czechoslovakia, since there was no reason to deviate from this attitude.

The Prosecution further accuses Herr Von Ribbentrop of having known that Hitler as early as the spring of 1939 was determined to wage war against Poland and that Danzig served only as pretext for this conflict. They deduce this from Documents USA-27 and USA-30. These are Hitler's well-known speeches of 23 May and 22 August 1939. First of all I wish to point out that Herr Von Ribbentrop was not present at these conferences intended only for the military leaders.

A number of key documents have been discussed in detail here. I only wish to name the best known, such as the Hossbach Document, the two Schmundt Files, and the afore-mentioned speeches. Quite a number of statements about these documents have been submitted in evidence. People who knew Hitler well stated that they had become accustomed to his extravagant ideas expounded in sudden speeches, in which he often repeated himself, and that they did not take them seriously in view of his singularity.

It is possible to counter these documents with quite a number of speeches in which Hitler has asserted the contrary. Here, conversely, it might be pointed out that Hitler pursued some definite purpose with his utterances. That may be quite true. But it is just as true that even the few key documents which were submitted as proof of aggressive war contain so many contradictions, with regard to the aggressive intentions deduced from them, that at best a critic judging retrospectively could recognize such intentions. Besides, the contents of these documents, in accordance with the strict regulations for secrecy, became known only to those who took part in the conferences. This might explain why Herr Von Ribbentrop learned about them only here in the courtroom.

The guiding principles as to foreign policy which Hitler laid down for him at that time covered merely the reincorporation of Danzig and the establishment of an extraterritorial road through the Corridor, in order to open a direct land route to East Prussia.

As the Tribunal will remember, Hitler had told Herr Von Ribbentrop already at the time of his appointment as Foreign Minister that it was desirable to achieve these aims. This demand was just as much historically justified as some solution in the case

of earlier incorporations of areas inhabited by Germans, which had become inevitable.

The statute of the purely German city of Danzig, which was created by the Treaty of Versailles in the course of the establishment of a Polish state, had always been the cause of friction between Germany and Poland. Poland had achieved this solution at Versailles through the argument that it needed an outlet to the sea. For the same reason the Corridor was established against all ethnological needs. Clemenceau in his memorandum already referred to this artificial creation as a source of danger, especially due to the fact that the peoples living in this area had been separated through long years of bitter enmity. It was not difficult to foresee that as a result of this fact the League of Nations and the International Court at The Hague were constantly going to be occupied with complaints about Polish violations of the agreement on minorities. The same cause gave rise to the large-scale confiscation of up to a million hectares of German estates and the expulsion of far more than a million Germans in the course of 20 years. Not without reason did Lord d'Abernon speak of the Danzig-Corridor problem as the "powder magazine of Europe." When finally a solution of this question was sought under recognition of the Polish claim to the preservation of an outlet to the sea, such an endeavor appeared both sensible and historically justified.

The evidence has produced nothing to support the claim that this question served merely as a pretext, which Herr Von Ribbentrop could not but have known. It has produced no proof that Herr Von Ribbentrop was acquainted with those of Hitler's aims which went far beyond these demands. Nor has it been proved that Herr Von Ribbentrop, as has been asserted by the Prosecution, before 1 September 1939, did all he possibly could to prevent peace with Poland, although he knew that a war with Poland would draw Great Britain and France into the conflict. The Prosecution base this statement on Document TC-73. This is a report by the Polish Ambassador to Berlin, Lipski, to his Foreign Minister. The document contains nothing whatsoever to substantiate this assertion.

Moreover, I do not believe that, according to the result of the evidence, Lipski can be valued as a particularly reliable witness. May I recall that it was Lipski who, during the decisive stage of the negotiations before the outbreak of the war, remarked that he had not the least cause to be interested in notes or propositions from the German side and that he knew the situation in Germany quite well after a period of 5½ years as Ambassador. He was convinced that in case of war riots would break out in Germany and that the Polish Army would march victoriously into Berlin.

According to the testimony of the witness Dahlerus it was none other than Lipski who, during the decisive discussion at the Polish Embassy, created the impression among the Swedes that Poland was sabotaging every possibility for negotiations.

Further results of the evidence also speak against the above allegations presented by the Prosecution, as for instance the fact that Herr Von Ribbentrop, after he had learned that the Polish-English guarantee pact had been signed, intervened with Hitler to cancel the order for the Armed Forces to march because a conflict with Poland would also, in his opinion, have drawn in the Western Powers. This opinion coincides with the conclusions to which Herr Von Ribbentrop had come in his review of the European situation and laid down in Document TC-75, which has already been mentioned.

Minister Schmidt has testified here that it was Herr Von Ribbentrop who, on 25 August 1939, after the Hitler-Henderson meeting, sent him to Sir Nevile Henderson with the verbal communiqué, presented as TC-72/69, in which the contents of Hitler's proposals were summarized. At the same time Herr Von Ribbentrop adjured Henderson to submit Hitler's proposals personally to the British Government for favorable consideration. According to the *British Blue Book*, Sir Nevile Henderson could not refrain from calling these and subsequent proposals exceptionally reasonable and sincere. They were not the customary Hitler proposals, but pure "League of Nations" proposals.

No one studying the negotiations of the subsequent fateful days can deny that everything was done on the German side at least to get negotiations under way on a workable basis. The opposite side did not let it come to that, because they were determined to take action this time. The good services of England ended with the breaking-off of all mediation without having been able to bring Poland to the conference table.

Herr Von Ribbentrop has been blamed for having practically defeated the purpose of the last decisive discussion with the British Ambassador, Henderson, by having read the German proposals to Poland so fast, contrary to all diplomatic custom and international courtesy, that Sir Nevile Henderson could not understand them and, hence, could not pass them on. The interpreter, Minister Schmidt, was present at this decisive discussion. He has testified here under oath that this statement is not true. One may consider Hitler's order to acquaint Sir Nevile Henderson only with the substance of the memorandum as unwise. The fact is that not only did Herr Von Ribbentrop read the entire contents at a normal speed to the British Ambassador; but he also, by having the interpreter present, made it possible for Sir Nevile Henderson to become

familiar with the entire contents and, moreover, to have explanations given on it. Besides, upon the initiative of Reich Marshal Göring, it was transmitted to the British Embassy during the same night by telephone to the Counsellor of the Embassy, Mr. Forbes. Thus the British Government should have been able to render the good services offered for opening negotiations based on positive proposals.

By reason of these facts here deposed, one must rightly doubt the truth of the allegation that the defendant had done everything to prevent peace with Poland.

At the beginning of my defense speech I stressed that legal considerations concerning aggressive war are not possible without knowledge of the circumstances leading to an armed conflict. Before I proceed to the legal aspects of the conflict with Poland, may I make some additional statements concerning the causes that led to the war.

The period between two World Wars is characterized by the conflicting reactions of those powers which were satisfied and those which were dissatisfied. It seems to be an inevitable law that after great war repercussions, the victorious states tend as far as possible toward the re-establishment of the prewar status and prewar mentality, whereas the vanquished are forced to find a way out of the consequences of their defeat by new means and methods. Thus after the Napoleonic wars there came about the Holy Alliance which under Metternich's leadership, using legitimacy as an authorization, tried to ignore the effects of the French Revolution.

What the Holy Alliance did not achieve, the League of Nations equally failed to achieve.

Created in an atmosphere of fervent belief in human progress, it was quickly transformed into a tool of the satisfied states. Every effort to strengthen the League of Nations meant a new bulwark for the maintenance of the *status quo*. Under cover of the elegant diction of juridical formalities power politics continued. Besides, the obsession by the idea of *sécurité* soon deprived the newly-created body of any breath of freshness and life.

In this fashion, naturally, a solution of the problems created by the end of the first World War could never be found. In international relations a coalition of interests of the conservative powers content with the *status quo* and of the revolutionary powers trying to do away with it, became increasingly apparent. It could only be a question of time until under those circumstances the political initiative would pass to the dissatisfied powers. The formation of this front depended exclusively on the force of the revolutionary spirit

which was crystallizing in opposition to the political self-complacency and hankering after the past. In this fertile soil grew the doctrines of National Socialism, Fascism, and Bolshevism, obscure in many parts of their programs, elastic and incoherent in others. Their power of attraction was based not so much on their programs but on the fact that they admittedly offered something new and that they did not exhort their followers to worship a political ideal that had failed in the past.

The economic crisis of the postwar period, the controversies about reparations and the occupation of the Ruhr, the inability of democratic governments to obtain anything for their distressed peoples from the other democracies, unavoidably led to a test of the doctrines which had not yet been tried out. The practical results of this revolution, as we experienced them in Germany after 1933, could, aside from the social program, consist only in abolishing the peace settlement of 1919, which constitutes a classical example of failure to understand the revolutionary character of a world crisis. For this revolution these tasks were not legal questions but doctrines, exactly as it had long become a doctrine of the satisfied states to maintain the *status quo* at all costs, even at the price of a new world war.

Only he who does not shut his eyes before these facts can judge the political crisis of the past decade.

Every revolution has but two possibilities; either it meets so little resistance that eventually conservative tendencies develop and an amalgamation with the old order is formed, or the antagonistic forces are so strong that finally the revolution breaks up through overstraining its own means and methods.

National Socialism went the second way, which began without bloodshed and partly with a remarkable leaning upon tradition. But this method, too, could not escape the inherent laws of history. The aims were too high for one generation, the revolutionary essence too strong. The initial successes were startling, but they also resulted in lack of criticism as to the methods and aims. The process of uniting all larger German groups in the Central European space would most probably have succeeded, if at the end—I am referring to the setting up of the Protectorate of Bohemia and Moravia and the pursuit of the Danzig-Corridor question—the revolutionary tempo and methods had not been overstrained by reason of previous successes. No person capable of sober judgment will dispute the need for a solution of the Danzig-Corridor question, delicate as it was.

The Prosecution may assert that in reality Danzig was but a pretext, but seen from the state of affairs in 1939 this can hardly be

proved. But it is certain that the opposite side was concerned about other things than the maintenance of the *status quo* in the East. National Socialism, and with it, in its newly gained strength, the German Reich, had become such a danger in the eyes of the others that after Prague it was determined to make any further German advance a "test case," wherever it should happen.

I have already said that the revolutionary protest in Central Europe was chiefly due to economic causes brought about by Versailles where a peace treaty was imposed on Germany of which it was well-known that its economic provisions could not be carried out by the vanquished.

THE PRESIDENT: Dr. Horn, the Tribunal thinks that sentence, at any rate, is objectionable on the ground that I have already stated.

DR. HORN: Mr. President, I did not mean to emphasize how the Versailles Treaty came about; I only wanted to stress certain necessary consequences which are generally known facts. But I have completed this part and have nothing further to say with reference to it.

THE PRESIDENT: Go on, Dr. Horn.

DR. HORN: Much has been said here about the slogan Lebensraum. I am convinced that this word would never have become a political program, if after the first World War Germany had been given the possibility of linking up with the world markets, instead of being strangled economically. By systematically cutting her off from all raw material bases of the world—all this for reasons of *sécurité*—the tendency towards autarchy, the inevitable way out from the barring from the world markets was fostered; and, at the same time, with the progressively deteriorating economic situation, the cry for Lebensraum could find receptive ears.

Thus, Stalin is right when he says:

"It would be erroneous to believe that the second World War came about accidentally or as a result from mistakes of one or the other of the statesmen, even though such mistakes were made without doubt. Actually the war came about as an inevitable result of the development of international economic and political forces based on modern monopolistic capitalism."*

Professor Jahrreiss has already fully explained, in his basic arguments concerning the legal and the actual significance of the Kellogg Pact, that the meaning given to this project for the

* Speech by Stalin on the eve of the Soviet elections in February 1946.

prevention of war by the Prosecution cannot be recognized by the Defense.*

Even though war has been previously declared an international crime, especially at the 8th League of Nations Assembly of 1927, it became quite clear in preliminary conversations, as has been proved by documents already submitted to the Tribunal, that this declaration was not meant to make war a crime in the legal sense but that it was an expression of the wish to prevent future international catastrophes of the scale of the first World War. Moreover, neither the United States nor Russia participated in the League of Nations resolution of 1927.

All further plans for outlawing war during the period between the first and second World Wars remained mere drafts, as the British Prosecutor had to acknowledge in his significant argumentation, because practical politics could not follow these moral postulates.

All these experiments—and they are by no means few—clearly show that the problem of finding a definition lies in the difficulty of condensing a political process, dependent upon a host of components, into a legal concept which will cover all the varying cases occurring in practice. The failure to formulate a definition which could be used in international law has led to the fact that, instead of working out general standards and measures applicable in each case, the designation of the aggressor was left to the decision of an organ dominating all the contending parties. In such a way, the question of defining the aggressor became the question: "*Quis iudicavit?*" that is, "Who shall designate the aggressor?" From this decision follows a new difficulty, namely, what is to be done against the aggressor?

Previous to the attempt of settling in a general way the concept of aggression and the sanctions against the aggressor, political alliances determined the obligations of the parties to wage war. In order to improve this unsatisfactory and anarchic situation, the United States, under Secretary of State Bryan...

THE PRESIDENT: [*Interposing.*] Isn't this really arguing the same questions that Dr. Jahrreiss has already argued?

* Mr. Justice Jackson is trying in this connection to invoke Article 4 of the Weimar Constitution of 1919. According to this, the universally recognized rules of international law are regarded as binding components of German Reich law. Owing to the differing legal appreciation of the Kellogg Pact on the part of the Great Powers the interpretation advanced by the Prosecution cannot be looked upon as German Reich law.

Cf. Reich Supreme Court Decisions in Litigation Procedures, Vol. 103, Page 276.

Anschütz: The Constitution of the German Reich (*Die Verfassung des Deutschen Reiches*); 10th ed., Page 58 et sequentes.

DR. HORN: Mr. President, I have tried to omit the matters set forth by Professor Jahrreiss. Professor Jahrreiss confined his arguments chiefly to the Kellogg Pact. I am only dealing with the questions pertaining to the legal aspect of wars of aggression.

THE PRESIDENT: Yes, but the Tribunal only granted the right to have an additional counsel deal with the general questions of law on the understanding that the other counsel were not going to deal with the same questions of law. Of course, you are not using the words of Dr. Jahrreiss—I should not expect you to do that—but you are arguing the very same topics.

DR. HORN: Mr. President, it had been agreed originally, as the professor as an expert had stated, that every counsel is entitled to take a different attitude toward the problem argued by him. Professor Jahrreiss concentrated chiefly on the Kellogg Pact and its consequences. I personally am turning my attention to aggressive war, and, as you, Mr. President, emphasized . . .

THE PRESIDENT: Just a moment. What is involved, then, is that the Tribunal is going to hear 20 arguments upon the general questions of law; and surely it can scarcely have been thought by defendants' counsel that the Tribunal proposed to hear 20 arguments on the general questions of law and also hear Dr. Jahrreiss on it. The only purpose of hearing one counsel was to have the general questions of law dealt with by one counsel alone, and that the others should not speak upon it.

DR. HORN: Mr. President, may I emphasize once more . . .

THE PRESIDENT: Just a moment. The Tribunal will adjourn.

[A recess was taken.]

DR. RUDOLF DIX (Counsel for Defendant Schacht): My Lord, may I ask the Tribunal to accept a short explanation to the matter which has just taken up the attention of the Tribunal and which for most counsel is of general and fundamental importance. I should like to remind you of the fact that the suggestion and initiative to take up certain legal topics and have them dealt with by Professor Jahrreiss came from the Defense and that this suggestion was made for the sole reason of complying with the Tribunal's wish to expedite the proceedings. I must earnestly request the Tribunal to protect us from letting this suggestion, made to and granted by the Tribunal at the time, become our own pitfall in that a resolution which has been made is interpreted too strictly. I do not have the resolution before me and I do not intend to deal with it and discuss it, but I should like to say this: Professor Jahrreiss did speak and was to

speak on but two topics which, it is true, were of a general nature; that is, (a) the punishment of individuals for a war of aggression, in other words, *nulla poena sine lege*, and (b) the legal nature of the Führer decrees. Only these two problems were to be dealt with by Dr. Jahrreiss and these were the two topics that he actually did deal with. But besides that, these proceedings entail a series of legal problems which are of a general nature and more or less affect each of the defendants. I only recall to you the interpretation of the conspiracy charges, the various questions dealing with international law, the questions of hostages and forced labor, and the legal question concerning distress at sea through naval warfare, and other general questions. There are a host of general questions, and above all the matter on which my colleague, Dr. Horn, was stopped, concerning the question: "What is an aggressive war?" There exist fundamental differences between a military war of aggression, a political war of aggression, and a juridical war of aggression, *et cetera*, about which Dr. Jahrreiss did not say a single word, nor was he supposed to do so. And please—I trust you do not mind my saying so, but that is the way I understood Dr. Horn—that is really the basis of his argument.

I do not propose to argue and to refer to a resolution; but I ask the Tribunal not to put us in a most delicate situation, namely, that we, in order to expedite the proceedings by having Professor Jahrreiss deal with a number of legal questions, be put in a position for which we cannot take responsibility, in that we are prevented from dealing with certain questions which in our opinion are of decisive legal importance to the defendants and about which Jahrreiss himself did not speak at all.

Only a word or two more. I believe the Tribunal will agree with me that one can have an entirely different opinion on the subject with which Professor Jahrreiss has dealt. I do not have it; nor shall I contradict Dr. Jahrreiss. But from a purely theoretical point of view that might be possible. Should it happen, just because in such an important matter a speaker has dealt with this question, although in a sense which possibly one of the counsel considers entirely improper and harmful to his case, that that counsel is forced to keep silent on such a matter? That cannot have been the intention of the Tribunal. Well, all I wanted to say was this: This speech by Jahrreiss served the purpose of expediting the Trial. Well and good. But we ask—I think I may say "we"; I believe that none of my colleagues is of a different opinion—we ask that it should not be interpreted too formally; and if one of us for some good reason says, "I have to discuss this, it is important for this or that reason," to give us that possibility wherever Jahrreiss has dealt with the subject in a sense which we do not approve, and not to prevent the

discussion of some general legal question if it should be raised by any of the counsel.

THE PRESIDENT: The Tribunal has been considering this matter and they are fully aware, of course, of the difficulties which may possibly arise if there were differences of opinion among the defendants' counsel upon questions which had been dealt with by Dr. Jahrreiss. They did anticipate when they made the order which specifies that Dr. Jahrreiss should speak on legal issues arising out of the Indictment and Charter which are common to all the defendants—those are the words of the order—that he would deal with all the issues which were common to all the defendants, and in the absence of some difference of opinion, that the other defendants would be prepared to adopt his argument; but the Tribunal think that the questions of law may be to some extent quite various and difficult and that the only rule which is possible for them to lay down at this stage is that there must be no real repetition by defendants' counsel. The Tribunal apprehends that defendants' counsel will see the necessity for such a rule as that. It cannot be in the interests of an expeditious trial that argument should be repeated over and over again, and this Tribunal desires to point out to the defendants' counsel that such repetition upon general matters only tends to distract the attention of the Tribunal from the real defenses of the clients whom they represent, and therefore the Tribunal hopes that the defendants' counsel will try to co-operate in this matter and confine such legal arguments as they think it right to present to the Tribunal to arguments which had not been addressed to the Tribunal by counsel who preceded them—either Dr. Jahrreiss or any other counsel. That is all that I need to say, I think, at this stage; and as it is now 5 o'clock the Tribunal will adjourn.

[The Tribunal adjourned until 8 July 1946 at 1000 hours.]

ONE HUNDRED AND SEVENTY-THIRD DAY

Monday, 8 July 1946

Morning Session

MARSHAL: May it please the Tribunal, Defendant Fritzsche is reported absent.

DR. HORN: With the permission of the High Tribunal I shall continue with my final presentation, beginning with Page 34. The English text page number corresponds with the German text page number.

Previous to the attempt to settle, in a general way, the concept of aggression and sanctions against aggressors, political alliances determined the obligations of the parties to wage war. In order to improve this unsatisfactory and anarchic situation, the United States, under Secretary of State Bryan, took the initiative in a series of separate treaties in order to reach an agreement for periods of respite, which were meant to delay the outbreak of hostilities and to allow the passions to cool down.

The Covenant of the League of Nations took up this point of view but went one decisive step further by determining a procedure by which the League organs should determine the permissibility or nonpermissibility of war. The decision indicated whether war was permitted or not according to the Covenant. The aim of this regulated procedure was to hit the disturber of international order, who was not necessarily identical with the aggressor. The state which went to war in accordance with the decision of the League of Nations organs behaved in a lawful way, even when it undertook preliminary hostilities and thereby was the aggressor in the military sense.

It was therefore apparent that the distinction between aggressor and attacked was not adequate enough to guarantee a just settlement of international relations.

Although these Covenant regulations and the procedure based thereon showed that the relation of lawful to unlawful, permitted to prohibited, aggressor to attacked, was unsatisfactory, efforts were still made to brand as an aggressor anyone who offended against international order. As the essential decision miscarried owing to the difficulties just mentioned, there was an attempt to make out

of this legal concept, which did not allow a concise definition, a political decision by those organs of the League of Nations which were qualified for maintaining international order. Such was the case in the draft of a mutual assistance agreement elaborated in 1923 by order of the League of Nations Assembly. The Geneva Protocol, which was meant to supplement the Covenant inadequacies concerning the question of the settlement of disputes, also transferred to the League of Nations Council the decision of determining who had violated the agreement and was therefore the aggressor.

All other attempts to outlaw war and settle conflicts, mentioned by the British Chief Prosecutor, have remained drafts, excepting the Kellogg Pact.

It can probably be put down to this fact that the idea of a legal definition of the aggressor was once more taken up at the Disarmament Conference. In this way the definition was established in the year 1933 by the committee for questions of security, presided over by the Greek, Politis, of the general Disarmament Conference committee. Owing to the failure of this conference, the definition was made the object of a series of separate treaties at the London conferences in the same year. The only great power participating was the Soviet Union, which had taken the initiative to obtain the definition at the disarmament conference. This definition has also been adopted by the United States Chief Prosecutor, who has based thereon the Indictment before this Tribunal for a Crime against Peace. This definition is no more than a proposal of the Prosecution within the limits of the Charter, which does not give further details about the concept of a war of aggression. It must be emphasized that Mr. Justice Jackson cannot invoke in this matter any universally acknowledged principle of international law.

The report of the 1933 commission did not become the object of a general treaty, as projected, but was merely agreed upon between a number of individual parties in agreements binding only those concerned. As a matter of fact, the only agreements were those between the Soviet Union and a number of states around her. No other great power accepted the definition. In particular, Great Britain kept aloof, notwithstanding the fact that the individual agreements mentioned were actually signed in London. At least the participation of the great powers would have been required for the constitution of a principle of international law of such far-reaching importance for the reorganization of international relations.

Quite apart from this legal consideration, the utterances of the British and the American Chief Prosecutors show that, as far as facts are concerned, the proposal is equally unsatisfactory. In the important question of Point 4 of the definition, the British Prosecution differs from the American. The old conflict of interests

between *mare liberum* and *mare clausum* had led the Prosecution to the point that Sir Hartley Shawcross did not mention the naval blockade of the coasts and ports of a state as aggressive action.

The definition of 1933 may offer valuable characteristics for establishing the aggressor, but one does not get around the fact that a formal legal definition shows the impossibility of doing justice to all actual political cases.

With the attempt to set down a new regulation for creating order in the world in the Charter of the United Nations, one returned, having obviously recognized this truth, to the idea of a decision by an international organ without wanting to force its judgment into the inconvenient form of a rigid definition. The Charter of Peace of San Francisco shows, in Chapter VII, Article 39:

“The Security Council shall determine the existence of any threat to world peace and security or breach of the peace or act of aggression and shall make recommendations or decide what measures shall be taken to maintain or restore international peace and security.”

In the year 1939 there was neither a recognized definition of the term aggressor nor an institution authorized to designate the aggressor.

The League of Nations as an instrument for the settlement of disputes had completely failed. This was expressed outwardly already by the fact that three great powers had left it. How little the mutilated League of Nations was taken notice of in international life, was shown by the attitude of the Soviet Union in the Finnish question. She did not take into consideration in any way the decision of the League of Nations with regard to this conflict but pursued her own interests in her dealings with Finland.

If now, after these statements, I make a proposal to the Court as to what should be understood by the concept of attack in Article 6(a) of the Charter, this qualification cannot be related to a definition recognized in international law. There is nothing left but adherence to the interpretation which the practice of states and the traditions of diplomacy are wont to give.

According to the conception prevailing in the year 1939, the outbreak of war, in whatever way it happened, was not legally appraised. The Kellogg Pact and the negotiations following it have not been able to abolish this fact, which was a result of centuries of development. This is deeply to be regretted, but one cannot ignore reality. The fact that this opinion, when war broke out, is in accordance with the conception of international law of the main participating powers that had signed the Charter, follows from the fact that men of international reputation in the field of international

law were of the opinion that, should the Kellogg Pact and the system of collective security fail, the traditional legal conception as to war was still valid.*

Should Herr Von Ribbentrop really have had the opinion in 1939 that his acts, measured by traditional diplomatic technique, would be considered as a crime punishable by international law?

I have already pointed out that generally, and therefore also by Herr Von Ribbentrop, the then existing frontier line in the East was considered untenable in the long run and therefore in need of adjustment. The Peace Conference at Versailles, by satisfying the Polish demands when this state was newly created, created problems which could not be solved by international co-operation in the time between the two World Wars. These frontiers could never be guaranteed within the framework of European pacts. A guarantee for the Eastern frontier created by Versailles could not be reached within the framework of the Locarno Treaties because of the opposing interests of the participating powers, whereas it was arrived at for the Western frontiers. All that was achieved after endless efforts was arbitration treaties, in connection with the Locarno system, between Germany and Poland and Germany and Czechoslovakia. They did not contain any guarantees for frontiers, but only a procedure for settling litigations. I shall deal with them when I come to the various violations of treaties of which Herr Von Ribbentrop is accused.

After Hitler had also expressed his distrust towards collective security by leaving the Disarmament Conference and the League of Nations, he went over to the system of bilateral treaties. In this connection, at the negotiations preparatory to the agreements between Germany and Poland of 1934, it was clearly stated that a solution of the problems between the two states should be found in the spirit of the treaty. We will not suppress here that only peaceful means were considered for this arbitration and a 10-year non-aggression pact was concluded. Whether Hitler believed honestly in the possibility of solving this problem or hoped to change the untenable situation in the East by means of evolution is of no importance for the forming of an opinion on Herr Von Ribbentrop's behavior. He did not take any initiative in this step but found this agreement an existing political and legal fact.

The experience made in the adjustment of interests of states teaches that agreements are durable only when they correspond to political realities. If that is not the case, the force of facts oversteps, of itself, the original intention of the contracting parties. A great statesman of the nineteenth century has expressed this truth

* Oppenheim-Lauterpacht, International Law. 5th Edition. Page 154.

by saying, "The element of political interest is an indispensable foundation of written treaties."

Thus, the Eastern question was not removed by the agreement of 1934 but continued to burden international relations. As shown by the evidence, it became more and more clear in the course of political evolution that sooner or later solutions of some kind had to be sought. Both the statute of the Free City of Danzig, which was in contradiction with ethnological, cultural, and economic facts, and the isolation of East Prussia through the creation of a corridor, had brought about causes for conflict, which a number of statesmen feared as far back as Versailles.

Taking into consideration such a state of affairs, the British Declaration of Guarantee to Poland of 21 March 1939, enlarged on 25 August 1939 into the Mutual Aid Agreement, sufficed in case of the appearance of a possibility of conflict with this country, to make the Poles averse, from the very start, to a sensible revision even on a modest scale.

This Declaration of Guarantee shows once more to how great an extent Great Britain, taking a sensible political view, drew conclusions from the decline of the collective security system and what little confidence she had in the practical results of the moral condemnation of war through the Kellogg Pact.

Herr Von Ribbentrop had, therefore, to draw the conclusion from the behavior of Great Britain that the attitude of the Polish Government, from which Germany was entitled to expect some concession, was bound to become rigidly inflexible. The developments during the following months proved this conclusion to be right.

The entry of the Soviet Union into the conflict shows, in particular, that the coming danger would develop within the compass of the traditional principles of politics and the realization by each state of its own interests. The Soviet Union, too, had in her turn left the ground of the collective security system. She looked at the approaching conflict from the viewpoint of Russian interests exclusively. In considering this state of affairs Herr Von Ribbentrop took pains at least to localize the threatening conflict, if it could not be avoided. He had every reason to hope for success in this endeavor, as both the powers mainly interested in Eastern Europe, the Soviet Union and Germany, concluded not only the Non-Aggression and Friendship Agreement previous to the outbreak of armed hostilities but simultaneously came to terms, by way of a secret agreement, concerning the future fate of the territory of Poland and the Baltic countries.

Nevertheless, the machinery of the mutual aid agreements was set going, and thereby the local Eastern European conflict became

a world conflagration. If the Prosecution want to apply a legal standard to these happenings, they cannot do so without taking into consideration the Soviet Union from the point of view of partnership.

Through the participation of Great Britain and France, the conflict in Eastern Europe grew into a European one, inevitably followed by the universal war. The entry in the war of the powers mentioned took place according to the form provided by the Third Hague Convention concerning the opening of hostilities, that is, an ultimatum with a conditional declaration of war.

At the session of 19 March 1946, Mr. Justice Jackson, interpreting the Indictment, stressed the point that the extension of the war brought about by the Western Powers did not constitute a punishable aggression on the side of Germany. This interpretation is in keeping with his general argument concerning the concept of aggression. If he wished to carry this through quite consistently, he would logically have to declare Great Britain and France aggressors against Germany for having brought about the state of war by means of the ultimatum.

I believe I am in agreement with the Prosecution when I express the supposition that such a result would not meet with its approval. The Prosecution have presented their evidence in such a way as to enter into the political-historical background of the war. They have accordingly not been satisfied with relying on the formal legal definition or any single criterion thereof. They herewith confirm my conclusion, presented by me to the Court, that the definition proposed by the Prosecution is no suitable basis for the qualification of the indeterminable concept of aggression.

May I confirm, according to events at the outbreak of the war, the following:

The Kellogg Pact and the concept of aggression, the Prosecution's pillars, do not sustain the Indictment. The Kellogg Pact had no legally conceived substance for states, much less for individuals. The attempt to put life into it afterwards by means of a formal concept of aggression was frustrated by political reality.

Herr Von Ribbentrop's share in the extension of the conflict to Scandinavia was so small that it hardly can be laid to his charge as an individual action.

The interrogations of the witnesses Grossadmiral Raeder and Field Marshal Keitel have shown beyond doubt that as a matter of fact Herr Von Ribbentrop was informed of this operation for the first time only 36 hours in advance. His contribution was solely the elaboration of notes prescribed to him in content and form.

Concerning the actual facts, namely the imminent violation of Scandinavian neutrality by the Western Powers, he was limited to

the information communicated to him. The evidence has shown, and I shall set forth later in legal argument, that he as Minister for Foreign Affairs was not competent to check this information and that he did not possess any actual means to do so. Presuming that this information was true, he could justly assume that the German Reich behaved in the intended action quite in accordance with international law. I leave more detailed argument concerning this point of law to my colleague, Dr. Siemers, well conversant with this point, whose client, Grossadmiral Raeder, had submitted to Hitler a large amount of enemy information and the proposal for a German occupation of Scandinavia.

In the case of Belgium and the Netherlands it has been proved by evidence that unlimited maintenance of the neutrality of the Belgian-Dutch territory by these countries themselves could not be guaranteed. Even previous to the war there existed between the General Staffs of the Western Powers and those of both neutral countries agreements and constant exchange of practical knowledge concerning tactics and occupation in case of a conflict with Germany. Detailed deployment plans and fortification systems built under supervision of officers detached for that purpose by the Western Powers were meant to prepare the reception of Allied forces. These projects included not only co-operation of the armies concerned, but also the assignment of certain civilian authorities to assist in the supply and the advance of the Allies.

Important about these preparations is the fact that they were made not only for the case of defense, but also for the offensive. For this reason Belgium and the Netherlands could, not or would not defend themselves against British bomber formations continuously flying over them, with the immediate aim of destroying the Ruhr district, the Achilles heel of the German war industry. This area was also the main goal of the Allies for an offensive on land.

These intentions as well as most intensive preparations for offensive measures by the Western Powers had been ascertained beyond a doubt through sources of information. The grouping of the offensive forces showed that the Belgian-Dutch territory was included in the theater of operations. As has already been described in connection with preceding cases of conflict, such information was continuously passed on to Herr Von Ribbentrop by Hitler or his deputies. Here, too, Herr Von Ribbentrop had to rely upon the accuracy of this information without having the right or the duty of checking it. In that way he, too, became convinced that in order to avert a deadly danger, namely, an Allied thrust into the Ruhr district, preventive countermeasures were necessary. On the basis of these considerations, Luxembourg could not be spared because of the extensiveness of modern military operations.

In connection with this procedure the Prosecution accuses, among other things, German foreign policy and thereby Herr Von Ribbentrop, of having committed an invasion in contradiction to the Fifth Hague Treaty concerning the rights and duties of neutral powers and persons in case of war on land.

The Prosecution overlook that this treaty does not refer to drawing a neutral into a war between other powers but deals only with the rights and duties of neutrals and belligerents as long as a state of neutrality exists. The Prosecution have made the mistake of applying their, as I have shown, erroneous interpretation of the Kellogg Pact, to the pact which had been made 20 years earlier. There remains no doubt that at the time of the Second Hague Peace Conference the outbreak of war was a fact of historical value and not subject to any law. All treaties concerning laws of war, especially the Rules of Land Warfare and the Neutrality Pact for Land and Sea Warfare, rest upon the basis of an existing state of war, hence do not regulate the *jus ad bellum*, but the *jus in bello*. This fact disposes of the Prosecution's references to the Fifth Hague Agreement in all cases of the expansion of war as concerns neutrals which have ratified this treaty.

It is, moreover, quite doubtful whether the Locarno Treaty can be referred to, as was done by the Prosecution, in connection with drawing Belgium into the war. With Germany's resignation in 1935 the Locarno system had collapsed, as will be shown by the defense counsel of Baron von Neurath. All attempts to effect a new agreement which was to take its place were based on the fact that the actual situation created by Germany must be taken as the starting point for a new agreement. This is shown especially by the British and French plans for the intended new agreement. The attempt to create a new agreement was not successful. However, the thorough and wearisome negotiations show very distinctly that none of the signatories considered the Treaties of Locarno valid any longer. On the contrary, the Western Powers proceeded to consider among themselves the effects which their obligations of guaranteeing the Western borders still had after Germany's withdrawal. Regardless of how one may judge Germany's attitude of 1935, it remains to be stated that the pact system had become untenable thereby. Hence in 1940 German commitments to the Western Pact of 1925 no longer existed.

I shall on a later occasion discuss the existing arbitration treaties and treaties by agreement with Belgium, Poland, and Czechoslovakia in connection with the Locarno Treaty when discussing in general Germany's obligation for a peaceful settlement of disputes.

As far as Luxembourg is concerned, not even the Prosecution referred to the neutralization of this country. Evidently they went

on the assumption that Germany had been forced by the Treaty of Versailles to give up the rights given to her by the London Agreement of 1867.

When, on 24 March 1941, the Yugoslav Government joined the Tripartite Pact, Herr Von Ribbentrop could not, in the light of the available news, assume that a few days later a military intervention by Germany in the Balkans would be necessary for political reasons. This situation was caused by the forcible change of government in Belgrade. The reaction to the joining of the Tripartite Pact by the Stojadinovič Government resulted in a new political change in Yugoslavia under the leadership of Simovic, which aimed at close cooperation with the Western Powers, counter to the idea of the Tripartite Pact.

In view of this uncertain situation in the interior of Yugoslavia, which on account of the mobilization of the Yugoslav Army and their deployment on the German frontier became a danger for the Reich, Hitler suddenly decided on military operations in the Balkans. He made this decision without the knowledge of Herr Von Ribbentrop, with the idea of eliminating an imminent grave danger for his Italian ally.

The testimony of the witness Generaloberst Jodl has shown beyond a doubt that Herr Von Ribbentrop, after Hitler's decision and after the Simovic Putsch, earnestly endeavored to be allowed to exhaust all diplomatic possibilities prior to the beginning of military operations. Generaloberst Jodl has confirmed here that Herr Von Ribbentrop's endeavors were rejected in so rude a manner that, taking into consideration Hitler's nature and the prevailing methods, any influence on him was practically out of the question.

In view of the fact that ever since 4 March 1941 strong British forces were pushing to the north from Southern Greece, a further localization of the Italian-Greek conflict was no longer possible. Although this war had begun in the autumn of 1940 against German wishes, Hitler, with a view to the general situation, certainly could not tolerate the imminent defeat of his Italian ally.

When Herr Von Ribbentrop on 23 August 1939 signed at Moscow the treaties between Germany and the Soviet Union, including the secret agreement concerning the partition of Poland and the surrender to Russia of the Baltic States, the sometimes very vehement ideological discussions between National Socialism and Bolshevism were for the time being eliminated from the international sphere as an element of danger. This system of treaties, which was supplemented in the course of the next month, had a favorable influence on the opinion concerning Hitler's foreign policy held by large circles of the German people who were alarmed by the ideological contrasts.

Ever since Bismarck signed the treaty of benevolent neutrality with Russia there was a general conviction in Germany that the maintenance of friendly relations with Russia must always be the goal of our foreign policy. For the traditional reasons just mentioned, Herr Von Ribbentrop at that time considered these pacts a strong pillar of German foreign policy. Because of this opinion, in the winter of 1940 he invited the Foreign Commissar of the Soviet Union, Molotov, to visit Berlin to clear up problems which had arisen in the meantime. Unfortunately this second conference did not bring about the desired results.

Hitler became very much alarmed at the results of this conference and through secret information as to the future attitude of the Soviet Union toward Germany. Especially the attitude of Russia in the Baltic countries, as well as the Soviet march into Bessarabia and into Bukovina, were considered by Hitler as actions which were apt to endanger the German interests in the Baltic border states and in the Romanian oil district. He saw, furthermore, in the attitude of the Soviet Union the possibility of exercising influence on Bulgaria. He found his suspicions confirmed by the conclusion of the Friendship Pact with Yugoslavia on 5 April 1941, at a time when Yugoslavia, after a change of government, threatened to join the Western Powers.

In spite of these misgivings of Hitler's, of which he frequently informed Herr Von Ribbentrop, the defendant tried to avoid tensions. The Tribunal has permitted me to submit an affidavit which confirms that Herr Von Ribbentrop, in December 1940 in detailed discussion, still tried to induce Hitler once more to give him authority to include Russia in the Tripartite Pact. This documentary evidence confirms that Herr Von Ribbentrop, after his conference, was justified in the opinion that he would succeed in this step with the approval of Hitler. Subsequently, however, Hitler returned again and again to his misgivings, which were strengthened by the information of his own secret service about military operations on the other side of the Eastern border. In the spring of 1941 Herr Von Ribbentrop tried to bring to Hitler, at Berchtesgaden, the German Ambassador in Moscow and one of his subordinates. Neither of the diplomats was admitted. This ended the attempts possible for Herr Von Ribbentrop within the scope of his position under the regime. Afterwards he also believed that he could no longer shut his eyes to the information which was brought to his knowledge.

As Generaloberst Jodl has testified, he and all the commanders who took part in the beginning of the Russian campaign were convinced that they had pushed right into the midst of an offensive concentration of troops. This is proved, among other things, by

maps which were found covering the territory beyond the German-Russian line of interests. Is it really to be assumed that such conduct by the Soviet Union is in agreement with the Non-Aggression Pact?

Around that time the danger of a spreading of the European war into a world war began to loom more and more threateningly. The United States entered the arena of war under a neutrality law, by which they subjected themselves in advance to clearly defined rules in case of a future war. The mechanism of the neutrality law was set in motion by a proclamation of the President. It designated at the same time the danger zone within which American ships could not count upon the protection of their government.

This attitude at the beginning of the war confirms that the United States, the author of the Kellogg Pact, was not of the opinion that the traditional law of neutrality had in any way been modified by it.

The United States, however, during the course of the spreading and the aggravation of the European war, deviated more and more from the original line, without the German Reich furnishing any cause for conflict with them.

After the experiences of the first World War, German general opinion, and consequently that of Herr Von Ribbentrop, was that an intervention on the part of the United States should be prevented by all means. Since the "quarantine" speech of President Roosevelt in 1937 strong contrasts could, however, be noticed more and more in the ideological-political train of thought of the world's public opinion. The situation was aggravated by the incidents of November 1938 in Germany, which were the reason for the recall of the Berlin Ambassador to Washington to report, from whence he did not return to his post.

If, in spite of that, the neutrality policy was further prepared by legislative acts and became effective at the beginning of the war, the German Foreign Office, and thus Herr Von Ribbentrop, could conclude that the existing differences of opinion as to the internal political development of the State would not change the neutral attitude of the United States. Considering this expectation, not only everything that could produce an unfavorable effect in the United States was avoided from the outbreak of the war; but we also quietly put up with quite a number of actions by the United States which were weakening Germany and which were incompatible with strict neutrality.

The world public was informed of the agreement on the political aims of neutral America and belligerent Great Britain when the leading men of the two states proclaimed in August 1941 the Atlantic Charter as the program for the new order of relations between

the nations. It had a character obviously hostile to the Axis Powers and left them in no doubt that the United States espoused the cause of the other side.

There followed the incidents on the high seas which, as the evidence has shown, can be credited to the account of the material support of Great Britain by the United States.

By occupying Iceland and Greenland in the summer and autumn of 1941 the U.S.A. took over the protection of the most important line of communications of the then sorely struggling British Empire. This amounted to military intervention even before the outbreak of the officially declared war. The so-called "shooting order" of the President brought about a dangerous situation which might have resulted any day in the outbreak of armed conflict. Even several months before 11 December 1941, the United States took measures which were usually taken only during a war. The outbreak of the war was only a link in the chain of successive incidents, perhaps not even the most important. It was started by the Japanese attack on Pearl Harbor, which, as the evidence has shown, was neither instigated nor foreseen by Germany.

According to the formal definition of aggression, the declaration of war is one of the criteria for the determination of the aggressor. As I have already pointed out in connection with the spreading of the war in Europe, this criterion alone without the factual background is no positive proof for an act of aggression. As a reaction to the numerous violations of neutrality by the United States, which really represented actions of war, the German Reich would have been justified long before in replying on her part with military actions. Whether this right was exercised after the preceding announcement—that is, a declaration of war—or not is immaterial.

So far, I have thrown some light upon aggressive acts as enumerated by the Prosecution from the beginning of the Polish campaign to the entry into the war of the United States. It remains for me to take up a juridical position regarding the treaties concluded by Germany, which provided for a pacific settlement of political conflicts.

Herr Von Ribbentrop is charged not only with having been a party to aggressive acts, but also with failing in his duty to put into play the mechanism of the aforesaid treaties previous to an armed conflict. From the fact that the means for pacific settlement as provided by the treaties had not been used, the Prosecution draws the conclusion that these omissions can be attributed in a criminal sense to Herr Von Ribbentrop. This interpretation however would be erroneous from a legal aspect.

If we begin by sharing the Prosecution's point of view, we shall see that even so the conclusions drawn by the Prosecution cannot

be upheld. Assuming that an individual minister were criminally responsible for the nonfunctioning of a series of treaties, even the Prosecution would have to put the question whether the minister was actually in a position to obtain through his actions a result of any legal consequence. According to a principle embodied by nature into every system of criminal law on earth, a defendant is punishable for an omission only if he was actually in a position, and legally liable, to act. I shall demonstrate at length, within the compass of my arguments concerning the conspiracy, how small in fact Herr Von Ribbentrop's possibilities of influence were. The decisive point at issue is the fact that he was not legally in a position to make any declarations to foreign powers binding the German Reich other than those he was empowered to by the head of the State. As head of the State, Hitler was the representative of the German Reich from the point of view of international law. He alone was in a position to make binding declarations to foreign powers. Any other persons could legally bind the German State only if authorized by the head of the State, unless the treaty in question explicitly provided otherwise.

It is a characteristic not only of the German Führer State that the Foreign Minister cannot independently enter into binding commitments toward foreign powers. Rather it is a general principle of international relations that only the organ empowered to represent the state is able to act for it. The difference between German conditions and those of democratic constitutions merely lies in the fact that in the former the Foreign Minister usually has a larger influence on the intentions of the head of the State. The defendant, therefore, could not have obtained any legitimate results if he had tried, against the Führer's wish, to have recourse to the possibilities of a settlement of conflict as provided by the numerous treaties of arbitration and conciliation. No one but Hitler could have put in motion such a procedure. The defendant could have been in a position to do so by Hitler's order only. He had not even the right to have his advice listened to if Hitler chose to ignore it.

These points of view apply for example to the following treaties enumerated by the Prosecution: The Convention for Peaceful Settlement of International Disputes of 1899 and 1907 and the Treaty of Arbitration of 1929 between Germany and Luxembourg. It should be mentioned, moreover, that these agreements by no means provided an obligatory settlement of political disputes.

As to treaties of arbitration and conciliation with Poland, Czechoslovakia, and Belgium, concluded in connection with the Locarno Treaty, the further point applies, quite apart from the legal argument just mentioned, that they and the Western pact

form a political unit. Even externally, this is expressed in the fact that these agreements and the Locarno Pact are all of them annexed to the general final protocol of the powers participating in the Locarno Conference. The question could, therefore, be asked whether the conciliation treaties share the fate of the principal treaty, that is, the Western Pact.

I should particularly like to point out that the procedure laid down in these treaties ended in case of nonsettlement with the League of Nations Council, in which, at the time of the Western pact, the four participating great powers had, or—this applies to Germany—were to have, permanent seats. The withdrawal of Italy and Germany from this political body deeply affected the political basis upon which the settlement treaties were based. Moreover, the grouping of the powers had shifted so much that a part of the Locarno great powers, namely Great Britain and France, had in the year 1939, through agreements with Poland, already taken sides in advance in case of a possible conflict.

Concerning the treaties of arbitration and conciliation with Denmark and the Netherlands of 1926, may I be allowed to point out that the proceedings provided therein could not be applied at all, as there were no conflicts between Germany and aforesaid countries; quite to the contrary, Germany took steps which were aimed at the enemy belligerents she wished to anticipate in the occupation of these countries.

The Prosecution mentions, moreover, a number of assurances given by Hitler to countries with which Germany subsequently waged war. Since Herr Von Ribbentrop did not give such assurances in person, but rather the Führer, his participation could form a point of argument only if he had given advice to Hitler in this respect. No evidence has been produced to sustain such a suggestion. A large part of these so-called assurances is contained in speeches made by Hitler before the German public, either in mass meetings or at the Reichstag. It is doubtful indeed whether such declarations, addressed in the first place to the German public, could have any binding results in the field of international law.

Whereas up to now I have spoken about the actions that led to the outbreak of the war and its spread, I shall now proceed to the second large complex of the Indictment, which deals with crimes committed during the war.

The Charter, in Article 6(b), declares violations of the laws or customs of war to be punishable. This conception is illustrated by a number of examples such as deportation, shooting of hostages, *et cetera*. But these examples fail to complete this conception in full. We are therefore obliged, in the same way as with Article 6(a),

to propose to the Court a qualification which it can use as a basis for its decisions.

My conception agrees with the procedure proposed by the French Prosecution. They have declared that they should be free to qualify definitions of punishable offenses not fully defined by the Charter. What is good for the Prosecution is good for the Defense.

The use of the expression "laws and usages of war," as well as the enumeration of examples, forces one to believe that the Charter aims at violations of the classical *jus in bello*. I therefore qualify war crimes as offenses against binding law established between belligerents by agreement, or against binding and generally recognized prescriptive law. The individual facts which range under the collective conception of War Crimes, therefore, must each be examined as to whether they are to be regarded as such according to the traditional rules applying to armed conflicts between states. Whereas, in general, classical international law holds responsible the state as a unit only, there always existed in the usage of war the exception that also acting individuals were liable to be held responsible. How far this responsibility of the individual can be followed by criminal proceedings after the war has been the subject of many discussions. It can be ascertained that the prevailing practice of states is that the belligerent who has been injured by a war crime may also, after the war, call the offender to account. If several states, which have fought shoulder to shoulder in the war, form a common court against the war criminals of the conquered adversary, this court has the collective competency of all the states that form the court or have joined its charter.

When speaking of the liability of individuals to be punished for crimes committed during the war against the adversary, who thereafter sits in judgment upon him, one thinks in the first place of former members of the armed forces. Already at Versailles there were difficulties in answering the question as to what extent military chiefs were to be made responsible. The idea of having a minister of a department held responsible under criminal law has so far never emerged. In Versailles, too, the War Criminals Committee was occupied with the question of making nonmilitary personalities responsible from a purely political point of view. This committee discriminated clearly between war criminals, which were to be judged by the Allied court, and guilt with regard to the outbreak of war, for the examination and judging of which a special international political court was to be created.

The customary conception is therefore that a minister cannot be held responsible for violations of the *jus in bello*. The Prosecution can achieve this only by going the roundabout way via a conspiracy. If we follow the interpretation given to this conception,

the Foreign Minister of the Reich would, for example, be responsible for the destruction of the village of Oradour. He would have to take responsibility for actions which have nothing in the least to do with the Reich's foreign policy and are merely isolated actions by some office or other.

As the hearing of evidence has shown, the Reich Foreign Minister was not only not competent for the conduct of war, but had in fact not the slightest possibility of influencing military measures as far as either curbing or furthering them was concerned.

If one wished to regard the various cabinet ministers as a clique of conspirators also with regard to War Crimes, it would have to be proved that the military offices competent to conduct the war acted in agreement with the ministers or at least after having given them the necessary information.

The concentration of military authorities and ministers into a unity of purpose, directed toward the perpetration of such criminal acts abominated by all decent people, is an artificial subsequent construction of the Prosecution. The unity, which did not exist at the time when it is supposed to have been effective, has only now been drawn up as a conception. The facts are now subsequently to fit the conception. It is obvious that criminal proceedings cannot be built up on such a method.

Herr Von Ribbentrop cannot therefore be punished without discrimination for all war crimes committed during the war by the German side. Such a responsibility for the results would be absolutely grotesque. He could only be held responsible for individual acts if he himself participated in certain concrete individual actions.

Herr Von Ribbentrop is accused by the Prosecution, according to the testimony of General Lahousen, of having issued "directives" to Admiral Canaris to have Ukrainian villages set afire and to massacre the Jews living there. First I wish to establish the fact that even a Foreign Minister cannot issue directives of any sort to a military agency. Furthermore, it would have been wholly nonsensical to issue such directives for the setting afire of Ukrainian villages. Ukrainians supported the German fight against the Poles. Thus hardly anyone will believe that Herr Von Ribbentrop at that time advised the destruction of his own allies. My client further insists categorically that not one word was mentioned about the massacre of Jews in that particular conference, the less so, since there was no reason for it at all.

I beg the Tribunal to base their decision regarding charges of War Crimes and Crimes against Humanity raised against Herr Von Ribbentrop, on the general attitude of the accused with respect

to questions of humanity. As was proved beyond doubt by the evidence, Herr Von Ribbentrop saved the lives of 10,000 Allied prisoners of war through vigorous personal intervention. As I will further show, within the framework of the conspiracy he was instrumental in the unfettering of British prisoners of war and he used his influence for the observance of the rules of the Geneva Convention. He was opposed to the branding of Russian prisoners of war. These are instances upon which the Tribunal may base their decision with respect to questions of humanity.

This may also be an appropriate gauge for the general behavior of the accused as concerns questions of humanity in problems where he was not actively involved.

Furthermore, his attitude in the question of the treatment of terrorist airmen is charged as a war crime to Herr Von Ribbentrop.

My client, as well as the Defendant Göring, deny that the conference at Schloss Klessheim mentioned in Document 735-PS ever took place. I should like to emphasize that General Warlimont, who made these notes, did not personally participate in the conference. Furthermore, the opinion allegedly voiced by Herr Von Ribbentrop, according to the document, stands in contradiction to his usual demeanor in this question. State Secretary Steengracht deposed here that Herr Von Ribbentrop, after the publication of the notorious article about lynch law in *Das Reich*, at once vigorously protested against it.

Further evidence concerning the problem of terrorist airmen, through examination of the witnesses Generaloberst Jodl and Field Marshal Keitel, proves that not only the Foreign Office but Herr Von Ribbentrop personally made every effort in principle to uphold the Geneva Convention and that Herr Von Ribbentrop together with other leading personalities took pains to assure the retention of at least the basic human principles, even approaching Hitler at times when he lost all control of himself. In spite of all that happened, the fact that in consequence of these steps the Geneva Convention was not renounced must be called a success. Especially with regard to terrorist airmen it must not be overlooked that terror attacks in the form of air bombardments undeniably constitute a war crime if they are undertaken indiscriminately on cities and not on military and armament objectives only. It must be taken into account in the reaction throughout Germany toward the conduct of the air warfare of the Western Powers that, according to established and traditional conceptions in armed conflict between nations, attacks on the civilian population are prohibited. This thought is not only expressed in the Hague Convention concerning land warfare but constitutes a binding stipulation of general international law, binding for all and not applicable to the theater

of operations on land only. Acknowledging this, the Hague Rules of Air Warfare of 1923, although permitting air attacks on military objectives in undefended cities, do not permit the bombing of the dwellings of the civilian population. Although the Hague rules were not ratified, they were in practice followed by all belligerents and acknowledged as prescriptive law.

These measures became especially acute after complete air superiority had been achieved by the Allies and when the resulting constant low-level attacks on the civilian population took place. These particular events led for the first time to the discussion whether, in the face of a warfare which was undeniably violating international law, it was still of any use to uphold the Geneva Convention in its substance. These considerations and corresponding reflections led to the drafting of documents which have become the object of evidence in the proceedings and which constituted, as shown by the evidence, drafts but not decisions on this question. They can therefore not form the basis of a judgment, since surely a state is entitled to ask for the opinion of the competent authorities on this question.

With the permission of the Tribunal I have presented the role of Herr Von Ribbentrop before the war, at its outbreak, and through its duration.

Beyond this the Prosecution holds all defendants responsible for every crime presented here. The idea of a conspiracy is being used as a basis for this common liability. If the logical inferences were to be drawn from this unlimited accusation, then each defense counsel would have to deal with all the details presented by the Prosecution. The obvious impossibility of taking up so much of the Tribunal's time shows how questionable the basis of the accusation is. Therefore I have to confine myself to examining the participation in the conspiracy only from the viewpoint of the actual and legal position of the Foreign Minister in the Third Reich.

Conspiracy in the sense of the Charter and of the Indictment means a sort or form of participation in a punishable act. This kind of offense was, until now, unknown to German and continental legal conception. It exists only in Anglo-Saxon law. In this realm of law by conspiracy is understood participation in a punishable act which requires, at the very least, a common intent to commit a crime. A further prerequisite is that the mutual plan leads to the perpetration of a definite punishable offense.

The Charter proceeds from this form of participation in a crime in declaring punishable all offenses stated in Paragraph 6, assuming the existence of a conspiracy or a common plan, as a special form of participation in these crimes. The Charter then stipulates, in

Paragraph 6 (a), another special form of conspiracy declaring punishable the participation in a Common Plan or Conspiracy to carry out offensive wars or wars violating international treaties.

By the conception "common plan" the Charter and the Indictment obviously understand something that reaches beyond the sphere of conspiracy. Mr. Justice Jackson himself admitted that it went beyond the punishable facts of a conspiracy according to Anglo-Saxon law and thereby created a conception which is not yet juridically formulated. Both forms of conspiracy constitute a liability for all acts committed by any one person carrying out both these forms of conspiracy.

The Indictment uses piracy as an example in order to make the participants in this alleged conspiracy appear as a single body. The conspirators are all on board of a pirate ship which, contrary to the laws and justice of all nations, engages in robbery and therefore is outlawed. Anyone who punishes the crew helps to restore justice.

At first glance this picture appears somewhat *à propos*. However, on closer inspection, it becomes obvious that it is only a matter of a catchword which tries to compare the community of the ship's crew, united with the ship for better or worse, to the dissimilar, complicated conditions of a modern state organization. The ships of all nations are, according to established, commonly recognized, and uncontested conception, authorized to combat piracy on the high seas upon encountering a pirate. The criminal law of almost all nations knows explicit regulations for combating piracy. The peculiarity of this offense in distinction from other acts punishable in every country, whether committed against native or foreign citizens—for example white slave traffic acts, counterfeiting of coins, and so forth—lies in the fact that jurisdiction is carried out on the high seas. Therefore, the mistaken idea may arise that a crime in the sphere of international law is concerned. This, however, is not the case. Piracy is a common offense, the prosecution of which is, by international law, permitted not only in coastal waters but also on the high seas belonging to all nations. The basis for this conception was laid in the United States in the beginning of the last century by decisions given by Chief Justice Marshall.

The acts with which Herr Von Ribbentrop is charged were committed at a time during which the German Reich and its opponents confronted one another first in peace and then in war on the stage of international relations. An example taken from the sphere of common criminal law as practiced inside a country is not suitable to convey a plastic representation of a conspiracy of an entire state apparatus. In the first place, the idea of the state, which according to the conception of traditional international law is the only bearer of rights and duties, is systematically destroyed so that the persons

standing behind it and acting on its behalf may separately be made liable to criminal prosecution. Since as a rule only a few persons acted directly as participants in the acts charged, the multitude of these people is then again compressed into an artificial whole, in order to hold them responsible also for those acts which were not committed by them.

Here the criticism of the jurist must start. According to our perception of law and that of all civilized nations, criminal responsibility is bound to basic rules showing but few divergences. Thus, according to continental law, only such persons can be held responsible for a punishable act who deliberately or through negligence contribute to a definite act. According to unanimous agreement the perpetrator, therefore, must know the plan to which he allegedly contributed, foresee the acts committed in executing it, and approve of them.

Participation in the form of conspiracy was until now known as an offense only to a limited legal circle. Therefore it is familiar only to that part of the legal systems which are represented by the nations who are conducting or have joined in the present proceedings. It was completely unknown to the German conception of law and, therefore, to Herr Von Ribbentrop at the time of his political activity. This form of complicity marks a much wider range of actions as criminal than Herr Von Ribbentrop could have anticipated at the time of his activities in the field of foreign policy.

But even if this form of complicity is assumed as a basis for legal findings according to the Charter, neither the official position as Reich Foreign Minister held by Herr Von Ribbentrop nor the individual acts committed by him in this capacity can make him appear as a member of a conspiracy.

The case of Von Ribbentrop shows in particular how, through the introduction of the concept of a conspiracy, responsibilities become interlocked which, taking into account the official position and authority as well as the personal attitude of the individual conspirators, have nothing whatever to do with each other.

The Prosecution, however, in order to achieve its aim, compresses into a subsequently fabricated unity a number of actions and individuals, chosen at random, which have nothing at all to do with one another. If one followed the Charter and the Indictment, the result—wholly alien to any actual and legal thought—would be that Herr Von Ribbentrop, while personally and actually completely eliminated from any influence over the Occupied Eastern Territories, as thoroughly proved by the evidence, would have to bear the responsibility for all War Crimes and Crimes against Humanity committed there, whereas, for instance, the Defendant Streicher,

although he headed his own special department, would be answerable for the foreign policy.

If one confirms the existence of a conspiracy to commit War Crimes and Crimes against Humanity it would practically result in making, for example, Herr Von Ribbentrop and the Foreign Office responsible for such crimes, whereas evidence has shown that this very office always tried to observe the rules of warfare according to international law and to adhere to the Geneva Convention even when this involved a severe struggle with Hitler.

The conspiracy to commit War Crimes and Crimes against Humanity can refer only to actual offenses against rules of war, either individual actions, as, for example, the execution of escaped British Air Force officers or certain measures incompatible with the accepted rules of war. In any case, the unity of conspirators must relate to a specific act or to specific groups of acts of the same nature. It is impossible to hold a defendant responsible for actions not approved by him or which he has tried to prevent.

I think the Prosecution will agree that there simply cannot exist any conspiracy to commit crimes against the usages and customs of war. This concept is so controversial and is so undetermined in the practice of the states and in the theory of international law that individual acts, which in the course of a war may be considered as war crimes, could not form a part of the plans of the conspirators. It must also be considered that the development of means and methods of war modified also the contents of the concept of war crimes. Therefore there can be only a conspiracy to commit specific or similar war crimes. Not every one of the so-called conspirators can be held responsible for each and every action which an objective judgment must define afterwards as a war crime. Particularly, it would not meet the purpose of chastising the guilty if the defendants were to be punished according to the general and artificial concept of conspiracy even for such war crimes which they tried to prevent with all their efforts.

PRESIDENT: The Tribunal will recess now.

[A recess was taken.]

DR. HORN: With permission of the Tribunal, I shall continue on Page 79 of my final plea.

The point of view just mentioned applies particularly to Herr Von Ribbentrop. Not only did the military conduct of war have nothing to do with his department; but he was, as was proved by evidence, expressly excluded from it by repeated orders of Hitler. His department was only affected by War Crimes insofar as they led to negotiations with foreign powers. Moreover the fact, for instance, that after the terrible air raid on Dresden the execution of over 10,000 Allied prisoners of war was prevented through Herr Von Ribbentrop's intervention with Hitler proves that, when informed of imminent War Crimes, he did what was in his power to do within his sphere of influence. These arguments and the result

of evidence show how unjust it would be to share the point of view held by the Prosecution, that is, to hold a Foreign Minister with limited authority responsible for War Crimes and Crimes against Humanity, the more so as it has been conclusively proved that he was excluded from any influence on the conduct of war.

With the Court's permission I shall now deal with the alleged conspiracy for the planning and preparation of aggressive wars and the violation of treaties. Within the framework of such a conspiracy, the defendant is apparently to be held responsible in his capacity as Minister for Foreign Affairs and the offices formerly held by him in the diplomatic service.

This kind of conspiracy apparently deals with any act or plan which has any connection with war, its preparation, outbreak, and course. As the individual acts within this enormous range are irrelevant themselves as regards criminality and until now have never been conceived from the point of view of criminality under "outbreak of war," this kind of conspiracy does not contain any facts so far known by any system of criminal law in the world. Therefore I can investigate this complex only from the point of view of Von Ribbentrop's ministerial position and his relation to the German Reich which waged the various wars.

Herr Von Ribbentrop, from 4 February 1938, held the position of a Minister of Foreign Affairs of the German Reich. As shown by the evidence, Herr Von Ribbentrop was called to his office on 4 February 1938 at a time when the actual leadership of foreign policy had already passed to Hitler in his double capacity of Reich Chancellor and head of the State. I have submitted as a document Hitler's speech of 19 July 1940 delivered at the Kroll Opera House in which he emphasized that Herr Von Ribbentrop had had to handle foreign policy for years according to Hitler's political directives. Herr Von Ribbentrop, therefore, did not hold the position of a minister as understood by modern political constitutions. As shown in the above-mentioned speech, he did not hold it either in fact or in law. This is shown by an examination of the public law of the Third Reich.

According to constitutional law, as it has developed in modern states in the course of the nineteenth and in the beginning of the twentieth century, the department of the Minister of Foreign Affairs belongs to the executive departments. The Minister for Foreign Affairs has to share with the Prime Minister the responsibility of conducting foreign policy. In a parliamentary democracy this involves responsibility towards the representatives of the people; in a monarchical or presidential constitution responsibility toward the head of the state. Such responsibility is actually of political importance only and results in the resignation of a minister from his

office when he no longer enjoys the confidence of parliament or of the head of the state. Most constitutions make provisions for the indictment of a minister by the representatives of the people in case of violation of official duties. But even when convicted by a constitutional court, through some kind of criminal procedure, the minister is not punished; but his conduct is merely declared to have been wrong.

Both possibilities to call ministers to account were provided by the German constitution of the Weimar Republic. The indicting of a minister was however never put into practice.

The state law of the Third Reich brought a complete change in these matters. A short time after Hitler had come to power parliament was asked, with reference to existing internal difficulties, to give its consent to an Enabling Act. The German people and its representatives expected at the time that this authorization was to be used temporarily and merely for the removal of actual distress. This law became, however, the foundation of a complete readjustment of the constitution.

The possibility of parliamentary responsibility no longer existed. It changed into responsibility towards the Führer and Reich Chancellor, in whose person the authority relinquished by parliament now rested. Now there remained but one responsibility: that toward the head of the State. Starting from this parliamentary authorization, all functions deriving from the authority of the State were concentrated more and more in Hitler personally. The traditional division of power, the result of a struggle for constitutional rights lasting more than a century, became, by the fusion of all means of power, an empty shell and thereby obsolete. Full powers were concentrated in the hands of the Führer, who made use of them separately through his plenipotentiaries. The constitutional jurisprudence of the Third Reich designated this as change from the actual to the functional division of power.

The individual minister, after this change had taken place, did not act any longer on his own responsibility but only on the order he had received from the head of the State. What applied to the individual also applied to the former Reich Cabinet. It had no longer any influence on state leadership but constituted merely a collective term for various branches of the administration which were technically separated. As the political tasks no longer existed with which normally the ministers as a group—that is, the Cabinet—had to deal, the tasks of the council of ministers were automatically settled by the very weight of the facts themselves. Therefore, as the hearing of witnesses has shown, it never met during Von Ribbentrop's period of office.

Even the designation "minister" did not signify any longer the head of a government department but became a mere title expressing a rank.

The result of this reform was that the Minister for Foreign Affairs also no longer had the right to determine the outline of foreign policy. Evidence has shown this fact also in the form of speeches and utterances of Hitler, in which, for instance after the occupation of the Rhineland and the Anschluss of Austria, he said that he had brought about these—as he called them—"great decisions" against the will of his advisers on his own resolve, referring to his responsibility toward the German people and to history. Seen from the point of view of constitutional law, this means that no minister had any possibility of preventing the decisions. Neither had he constitutionally any authority to examine the legality of the Führer's decisions. For the above-mentioned concentration of all functions of state power in Hitler's person, shows that he had both legislative and executive authority. Any pattern for the acts of legislation was no longer provided for in the Third Reich. Also there was no measure by which one could gauge from the tenor of the Führer's decision whether he acted in his capacity as legislator or as head of the executive authority. The conception of material law, which in Germany as in all continental states was well established up to the assumption of power, completely lost its meaning. Even individual directives were given in the form of laws.

In all constitutions the authorities whose task it is to apply laws are not allowed to examine their purport. This applies even to jurisdiction, and all the more so to the administrative authorities. The application of a law that was made in the regular way provided for by the constitution may not be refused by any office of the state. Examination even by courts of law is limited to the question of determining whether the way laid down by the constitution has been followed. This is also the case in Great Britain and the United States, where decrees issued by the executive authorities, but not laws passed by Parliament, may be subject to examination with regard to their content.

In the constitution of the Third Reich there was only one authority for all expressions of the will of the State—the Führer. Often it could not be perceived in what capacity he acted, owing to the destruction of the concept of constitutional law. The doctrine of constitutional law of the Third Reich therefore was debased to a theology of revelations of the Führer. The former discriminations no longer existed for the ministers. The only question that could arise in the constitutional law of the Third Reich was whether the will of the Führer was expressed in such a concrete way as to reflect the will of the State.

This constitutional practice was unmistakably the result of having transferred the pseudo-military way of thinking to the sphere of politics. The conceptions of obedience and discipline were transferred to a sphere in which they were out of place.

In connection with the elimination of the traditional division of power, one fact must be pointed out which is just as characteristic for this *despotia sui generis*, as it speaks against the existence of a Conspiracy or a Common Plan. The evidence given shows no kind of advisory council or any organ of control over the head of the State. Neither the Cabinet nor the Reich Defense Council nor any other advisory committee had any influence on Hitler's decisions. The key documents and the statements of witnesses show only monologues by Hitler before an ever-increasing audience. Everything that has the appearance of a council is in reality a reunion for the receipt of orders. The evidence presented has definitely shown that efforts to influence Hitler at best led to unexpected reactions.

Herr Von Ribbentrop and several of the other defendants without doubt had considerable power in their own spheres, which did not interest Hitler. They were, however, completely denied participation in the great decisions on war or peace, armistice, peace offers, *et cetera*.

In the position of Foreign Minister, as held by Herr Von Ribbentrop, an independent personality was not tolerated. Herr Von Ribbentrop was aware of this, as State Secretary Steengracht has testified here. He stated that Hitler at the most had use for a secretary for foreign affairs but not for a Foreign Minister.

This development in the practice of constitution and government can hardly be reconciled with the thought of a Common Plan or Conspiracy. The conspiracy demands, as we have seen, a unanimity or correspondence in aims in which the participants form their will freely. The political practice of the Third Reich knew only acclamation.

So far, my examinations have been based on the norms of actual criminal law as laid down in Article 6. I should not like to close my statement without drawing the Court's attention to the relation between politics and law.

The essence of politics is and remains, in the life of sovereign states, the defense of the interests of one's own people. In order not to let this interpretation of politics degenerate into unscrupulousness, international life has established the principles of the settlement of interests and diplomacy as representative of this principle. It is diplomacy which has had an essential influence in establishing the principles of international relations and, therefore, of international law. The imperfection of international law is

caused by the coexistence of many countries confronting one another on a level of equal rights. Its weak spot was the lack of any superior authority which would have been in a position to insure the existence of legal order in the same way as the authority of a state is able to within its own borders. Therefore at all times the unrestrained display of force has been allowed a wider range in the international sphere. Statesmen are in duty bound to take care of their own people's interests. If their politics are a failure, the countries they act for have to bear the consequences. They themselves are judged by the judgment of history. But in a legal sense they were responsible only to their own state for acts with which their state was charged by others as infringing international law. The foreign country injured by the action in question could not indict the acting individual. The barrier erected by international law, respectful of national sovereignty, between the acting individual and foreign powers was only removed in the case of war crimes whereof I have spoken. At any rate, at the beginning of the second World War this conception was, despite all attempts to the contrary, the unshaken concept of international law.

The French chief prosecutor gave, as a reason for the indictment of leading men of the late regime, the fact that a German Government, which might have been able to take legal proceedings in these cases, no longer existed. With the greatest esteem for this polished argument, it cannot remain hidden to a critical observer that such sharp logic is subject to false conclusions.

Any organized resistance headed by a national government came to an end when the German Armed Forces were utterly defeated and the whole of the German territory occupied by the Allies. The four principal victorious powers, which form this Tribunal, acquired by their might a legal right recognized by international law to decide the fate of the German national territory. They could have divided Germany up. But they chose another way. In the Berlin Declaration of 5 June 1945, they assumed "supreme authority within Germany, including all the powers possessed by the German Government, the High Command of the Armed Forces, and any state, municipal, or local government or authority." But this was all. The declaration expressly emphasized that the transfer of the authority did not mean the annexation of Germany. The exercise of the claimed rights was transferred to the Control Commission, composed of the commanders-in-chief of the four occupation zones.

Since the Berlin Declaration, Germany has been in a provisional state which is still prevailing. At the Potsdam Conference held in July 1945 the four powers among themselves made further agreements, of which we were informed by the communiqué of 2 August

1945. The Potsdam Agreement for the establishing of a Council of Foreign Ministers transfers to the said Council the preparation of a peace settlement, which is to be accepted by a German government "when a government suitable for this purpose has been organized." A second agreement provides regulations concerning Germany while under Allied control.

This wording makes it clear that Germany is to remain a national state, that it is being placed under Allied control, and that the establishment of a German government is intended. This government is thereupon to accept peace conditions. This involves a government which is in a position to enter into commitments toward foreign powers as a partner qualified in international law.

The victors have accordingly chosen to exercise the right of decision given to them by conquest in such a way that the German State will not be destroyed. During the transition period they themselves exercise the functions of the temporarily non-existing German Government. We are, therefore, entitled to take the Potsdam Declaration as a conjecture for the legal review of Germany's position.

The German State, accordingly, has not been annihilated. It would therefore be wrong, juridically speaking, and we would incur the reproach of lack of historical understanding, if we considered as new that state the direction of which is envisaged under its own government. Germany is burdened with obligations which arose from her past. This is possible only if the state, upon whose behavior the obligation was based and who one day must answer for it, is regarded as the same legal body. Though the German State, at the moment, is not in position to act according to international law through its own organs, it has not vanished from the sphere of the international legal order.

Thus, in view of the fact that M. de Menthon's premise is untenable, his final deductions cannot be accepted. Therefore the jurisdiction of the victorious powers over German subjects with regard to their acts connected with politics cannot be based on current international law. Thus the Charter abandons the international legal code. Furthermore, it contradicts fundamental principles of criminal law. If the French prosecutor is of the opinion that the Tribunal exercises the penal authority of the German State, a state which according to his opinion does not exist at this time, then he must logically apply the sentence *nullum crimen sine lege* to the criminal law existing in Germany. An act could therefore be punishable only if at the time of its commission it was punishable according to the German law. This does not apply either to personal criminal responsibility for the violation of international

treaties and assurances or to the participation in the Conspiracy or Common Plan.

In recognition of this, the Control Council for Germany in its Proclamation Number 3 has reinstated in the system of German criminal law two constitutional principles from which the Hitler regime had deviated, namely, prohibition of retroaction and analogy.

The political criminal concepts of the Charter set a standard of new legal principles which must be considered as the embryo of a code of world law. Herr Von Ribbentrop, at the time when the incriminating events took place, lacked the apperception that there might be such a code of world law.

One can dispense with the necessity for ruling in advance that an act is criminal only in the very few cases where the cruelty of the act is so evident that there can be no doubt as to its deserving punishment. This could hold good for acts which were not punished in Germany during the last years solely in consequence of certain measures of the abnormal amorality of the Hitler regime.

I have heretofore presented the evidence from the point of view of valid international law and the Charter which you, Mr. President, in the session of 20 June 1946, again stressed as the basis for legal findings in these proceedings. Up to now, the code of international law has been unable to solve the problems which are to be decided here. On the basis of this inadequacy the second World War broke out.

The effects of this catastrophe, which this legal code could not prevent, cannot yet be perceived today. To prevent its recurrence in the future is the high aim of humanity, which forms the basis of the London Agreement of 8 August 1945. That this could not yet be achieved is shown with alarming certainty by the fact that, on the very day on which the Charter of this Court was proclaimed to the world as a new law, the war between the Soviet Union and Japan broke out. Its realization had been promised to the Allies by the Soviet Union 6 months prior to that. To justify it, it was pointed out, among other things, that Russia had to settle an old account with Japan. In other words, this typifies a case of an unprovoked attack.

I have illustrated that the attack and the attacker cannot be dealt with by a general definition covering every act of reality. The attacker can only be branded by a world authority. This supreme organ of mankind must possess not only an actual but also a moral authority. Universal trust must be put in its impartial judgment. It must be a tribunal standing high above the conflicting parties, before which these parties appear only as seekers of justice but may have no place in it as judges.

We live in a period of transition, from an old law under whose rule the ruins around us were created, to a new code of world law, which while taking shape, is not yet morally and effectively consolidated.

To judge and punish the acts which were committed by the former Foreign Minister, Herr Von Ribbentrop, his share in the happenings, the extent of his inadequacies, and his own personal guilt, is a difficult task almost beyond human strength in this period of decadence and revival.

THE PRESIDENT: We will call on Dr. Nelte, counsel for the Defendant Keitel.

DR. NELTE: "We must approach our task with so much inner deliberation and mental integrity that this Trial will later appear to posterity as the fulfillment of human longing for justice."

These words of Justice Jackson in his opening speech for the Prosecution must be the guiding principle for all those who have been entrusted with the noble task of contributing to the search for truth in this Trial. That this truth cannot be absolute has already been stated by the Prosecutors Justice Jackson and M. Dubost. The purpose of the Indictment is not to determine the historical aspect, let alone the historical development of this short but so tragically important period, but instead to find out whether, and to what extent, the defendants sitting on this bench participated in the events which have affected the entire world by their consequences and which have brought such indescribable misery upon it, and not least upon the German people.

In this Trial the Prosecution once stated through one of their qualified spokesmen that it was their task to submit material that would incriminate the defendants and submit only such incriminating evidence. Thus, in contrast to the principle of objective accusation which dominates the German criminal proceedings, they made clear their definitely one-sided standpoint in an Indictment which obliges the Defense to...

THE PRESIDENT: [*Interposing.*] I have already corrected this misstatement which you have made in your speech here, in dealing with one of the other speeches for the Defense. It is not the practice of the Prosecution to conceal any evidence which tends in favor of the accused.

DR. NELTE: I am afraid I cannot hear.

THE PRESIDENT: What I said was that I had already corrected the erroneous view, which is expressed in this paragraph in your speech, that it is the practice of the Prosecution to conceal anything they know which may tend in favor of the accused.

DR. NELTE: Mr. President, on this very spot Mr. Justice Jackson stated, "We cannot serve two masters," when he replied to the statement that according to German criminal law the Prosecution would also have to produce material in favor of the defendants. What I am stating here is not said in order to raise any type of accusation against the Prosecution. On the contrary, from the point of view for which they stood they have done everything that was possible. I merely wanted to clarify my point of view as defendant's counsel and say why...

THE PRESIDENT: The only reason I interrupted you was because of the sentence in your speech, "They made clear their definitely one-sided standpoint." In the second paragraph, the second sentence of that paragraph, you say,

"Thus, in contrast to the principle of objective accusation which dominates the German criminal proceedings, they made clear"—that is, the Prosecution made clear—"their definitely one-sided standpoint in an Indictment..."

DR. NELTE: I said "one-sided"—that contrary to the governing principle of German criminal procedure, which is objective indictment, it has made clear its definitely one-sided standpoint of indictment which obliges the Defense to submit all circumstances and considerations which are indispensable for an objective administration of justice.

THE PRESIDENT: Go on. It may be a different translation.

DR. NELTE: For this purpose, it is first necessary to clarify certain concepts which are needed for the perception of responsibility and guilt. As far as concepts of international and constitutional law are concerned, they have been examined and presented by Professor Dr. Jahrreiss.

With regard to the sphere of the soldier I should like to make some fundamental statements. There have been repeated references here to the concepts of soldierly conduct, obedience, loyalty, performance of duty, and patriotism. It is my belief that all men recognize these concepts to be good. But it is permissible to say that not all of these concepts are unequivocal. Thus are opposed: "best soldierly conduct" and "militarism," "natural obedience" and "contemptible blind subservience," "the categorical imperative of the performance of duty" and "the exaggerated sense of responsibility," "the deep love for one's country" and "chauvinism."

We see that all these concepts can run through the scale of good and evil. The origin and the essence of these concepts are everywhere the same, but the forms they take on through tradition and education and by the effects thereof vary greatly. However, if this is the case, who then should differentiate and decide whether the

feeling is still in the realm of good or has already reached the sphere of evil?

We are all of us living in a world whose century-old striving has aimed at the creation of order. Order is certainly a relative concept, too, but it is everywhere the establishment of the relationship of human beings to each other which guarantees the best possible means of living peacefully side by side in view of the intrinsic character of each country.

This holds true both for the state and for the relationship between nations. Who should determine in this order what is right and what is wrong? The criterion for this might be, according to the traditional conception, only a constitutional, that is, a national one. The drawing closer of the nations by world traffic and general civilization resulted in the various national concepts becoming adjusted to each other in spite of many differences. It must be admitted that this process of adjustment suffered a harmful set-back through certain National Socialist doctrines and their methods. Nevertheless, the principle remains inviolable that the criterion of right or wrong must be a national one, if order is not to be dissolved. The only thing worth striving for is the adjustment of nations and national fundamental concepts to each other as is now being attempted through world organization.

Although the national criterion, that is, the national judgment of good and bad, right and wrong, had been well established in any case up to now, the concepts never have been deprived of their relativity, especially when national differences existed for other reasons. A convincing example of this is the opinion expressed about the resistance movement.

All countries extol what is considered to be the highest form of patriotism: When someone risks his life for his country under the utmost danger. However, according to the Hague Rules of Land Warfare such resistance movement is forbidden. We have here a clear example of the contrast between ethical and legal evaluation. This proves that there are no absolute concepts of good and bad or right and wrong and that beyond all written laws there are unwritten laws which acquit the culprit when he obeys those higher laws. Those higher laws, however, also depend on subjective and national, that is, collectively subjective considerations. If anybody believes something to be good or right, such faith may come into existence out of an actually higher law, a truly higher idea; but it may also grow out of misled faith, out of a false idea. Who would or who could judge whether a faith or an idea was or was not right? History teaches that usually the successful idea is recognized as right, to a certain extent because it is a divine judgment. I do not

wish to decide whether that is always true. The question here, however, is whether the people whose guilt is to be judged acted in good faith, in accordance with such an idea and such a faith. If the ordeal has demonstrated this faith to be wrong, the question remains open whether the people could believe the idea to be good for comprehensible or explainable reasons.

This question constitutes the problem which concerns not only Defendant Keitel but also the entire German nation. According to the speech of the French Prosecution not only the defendants in this Trial are the really guilty ones, but the entire German nation. The extent and importance of this thesis are tremendous. Should the Tribunal—if only on the grounds for its decision—come to the conclusion that the entire German nation is guilty, every German for incalculable time will bear the brand of Cain which finally must lead to the destruction of this people and its dissolution.

It has been stated most authoritatively that there is no intention here of accusing the entire German people. Through unconditional surrender we are left entirely to the mercy of the victorious powers for better or worse. It was said, however, that the verdict of this Tribunal is to be just. Here in this Court it is not clemency or inclemency which are to be the guiding principle but justice. Justice does not mean mildness. A verdict, however, will only be just if it takes into consideration all the circumstances which underlie the actions and conduct of the defendants. There is no excuse for what has happened and for what forms the subject of this Indictment. I can only try to give an analysis.

The misery, the misfortune that has fallen on the entire human race is so great that words do not suffice to express it. The German people, especially after having learned the catastrophe that has befallen the nations in the West and East and the Jews, is shaken by horror and pity for the victims. The German nation knows what this misfortune means; for it is stricken as hardly any other nation is, not only in the military field but through the sinister consequences of air attacks, through the loss of millions of its youth in the field, through evacuations and escapes in ice and snow. We know, therefore, what it means to be in misery and to have to suffer. But while other nations are able to look upon all this misery and all this misfortune as a chapter of the past, and in the protection of constitutional order have the comforting hope of returning to an orderly existence and a happy future, there still rests upon this nation the gloom of despair. By affirming the guilt of the entire nation the verdict of this Tribunal would perpetuate this despair. The German people does not expect to be acquitted. It does not expect the cloak of Christian charity and oblivion to be spread over all that has happened. The German nation is ready to the last to

take the consequences upon itself. It is willing to accept it as its fate and do everything to participate in removing the consequences. It hopes, however, that the soul and hearts of the rest of mankind will not be so hardened that the existing tension, in fact the existing hatred, between this nation and the rest of mankind will remain.

Your task, Your Honors, is a terribly hard one. We not only speak different languages, each of us feels with the soul of his own country. Much of what has happened in this country will seem incomprehensible to you. The feelings of the German people in its different categories are not your feelings. One of the most essential points, especially in the case of the soldier, seems to me the way of judging what freedom is felt to be. In this country, too, the ideal of freedom was proclaimed. All of us know that the most extreme form of freedom is anarchy. No state desires anarchy, because it means surrender of its own existence. If therefore, all countries agree that the absolute concept of freedom is never worth striving for and can never be sanctioned, there results, perforce, relativity of the concept of freedom. No concept has been so misused as the concept of freedom, and yet every political system proclaims freedom as the greatest of all blessings.

By that, I by no means wish to say that the concept of freedom as proclaimed by National Socialism was the right solution. What I do wish to say, however, is that National Socialism also knew the concept of freedom and made it clear to the people through propaganda that its conception of freedom was the right one. National Socialism was aided in this by the fact that under the effects of the Treaty of Versailles Germany could indeed make no claim to be really free. The limitations of its sovereignty were so pronounced and so evident that it was easy for National Socialism to proclaim the fight for the freedom of the fatherland.

As long as the fatherland is recognized in the world as the highest worldly possession, endeavors to keep this possession must be understood and will not be disapproved of even when it is an adversary who makes them. One may be of a different opinion as to the method which should be used for the realization of these endeavors and as to how freedom is to be attained. This, however, is not decided by the individual but by that person or those persons who hold the power in a state.

Every human being wants something to hold on to in life; he must have it if he is not to sink into anarchy. Public order at the side of moral order is a firm support and the foundation of his existence, and this gives him a feeling of security in his life and professional activities. It is the deep longing of all civilized men for order which finds its highest fulfillment in the institutions of the state. On the other hand, the citizen must have confidence that the

state, that is, its official agencies, will safeguard law and order. In this respect it should not matter which party provides the guardians of its inviolable principles. That is just where the confidence of a nation as a whole expresses itself, namely, by leaving leadership to the prevailing majority. National Socialism undoubtedly aimed at and succeeded in rousing the belief in wide circles of the German people that its endeavors were supported by the majority of the people. It thereby procured for itself the alibi of legality.

Far from all political considerations, as all the generals and admirals have testified here, the leaders of the Armed Forces believed in the legitimacy of Hitler's Government. It looked upon itself as the instrument of a legal government, as it did when the Kaiser, Ebert, and Von Hindenburg were Germany's representatives.

Like all tendencies, all forms of expression of feeling, the feeling of patriotism and of a soldierly attitude bears in itself a tendency to become more radical and thereby to degenerate, if external circumstances create an actual basis for it. We have experienced the exaggeration of sound national ideas into national chauvinism, and we can observe retrospectively how the sound soldierly idea was exaggerated by influences foreign to its nature into the militaristic form of expression. All these developments are not desultory, which would make them easily recognizable and regulated. The driving forces are mostly not apparent to those whom they concern. They are like a poison which acts slowly and unnoticed and the effect of which results one day in a horrible eruption. It needs no special explanation that a component part of the soldierly and military person who is being geared to a possible war is ruggedness, and in its intensification it turns into brutality. One often finds on the part of famous—and not only German—war leaders the view that the brutal war is frequently the kindest if it leads to a quick ending. This, of course, is desired by every war leader. Once peaceful restraint is removed by war, all that remains is brutality. It reveals the causes of total war and the source of the terrible disaster which resulted from it.

The Defense has a difficult task in this Trial. The German people look to Nuremberg, disunited in themselves. Some are skeptical and partly hostile toward the Defense because they believe the Defense is favoring those whom they consider as war criminals and believe that the Defense wishes to prevent that just punishment be meted out to the defendants. Others say the Trial is just a show, at which the Defense Counsel act as dummies to give the Trial the appearance of a judicial procedure. Accordingly, in the view of these Germans we would make ourselves guilty of favoring the enemy.

We have no reason to justify our actions because by our participation at this Trial we are fulfilling a task in line with the precept of our calling, the importance of which needs no justification. It consists of co-ordinating our efforts in the interest of clarifying the truth—the importance and effects of which is today incalculable for our German people—of getting to the bottom of the causes and of answering the question as to how all this could have happened.

Only the clear recognition of the cause, the forces, and the people which brought about the disaster which has come over this world will create the possibility for the future of our people to find the way back again to the rest of the world.

The task of this Tribunal is not to search for the political, economic, and metaphysical reasons for this second World War and not even to examine the course of events in its entirety, but rather only to determine whether and what part these defendants played in that which the victor nations made the object of these proceedings.

The task of the Defense, within the framework of their co-operation in finding the truth, consists of examining which factual and legal points could be stated in favor of the defendants. It should be said here that with all the co-operation on the part of the Tribunal shown to the Defense in producing their evidence, the actual possibility of producing defense material for the defendants was limited. Justice Jackson said in his basic prosecuting speech...

THE PRESIDENT: You seem to be coming back to further attacks upon the way in which this case has been tried and that is not what you are here to do now. What you are here to do now is to present the case on behalf of the Defendant Keitel.

I see that further on here you go on to complain about alleged noncommunication to you of various documents and you refer to a discussion on the subject which took place as long ago as February of 1946. On that occasion I expressed the view on behalf of the Tribunal that the French Prosecution might properly show to you or give you the opportunity to look at their documents. From that day to this, that is to say from February until July, you have made no application to the Tribunal or made any complaint to the Tribunal that that has not been done; and now, in your final speech, you make this complaint that you have not been allowed to see the documents in spite of the fact that in February I expressed, on behalf of the Tribunal, the opinion that you might see such documents.

Well, it seems to me that it is a waste of time, a waste of our time now to make these complaints after all these months, apart

from the fact that you have already spent time which has been involved in reading 11 pages of your speech without coming to anything which really affects the Defendant Keitel.

DR. NELTE: Mr. President, I believe that in February you told the Prosecution, according to the record, that they should place these documents at my disposal. The Prosecution, unfortunately, have not placed these documents at my disposal.

THE PRESIDENT: Why did you not come back to the Tribunal? You knew perfectly well that I had expressed my opinion on behalf of the Tribunal; and if there was anything to complain about, you had full access to the Tribunal from February until today. It seems to me that it is a frivolous complaint to come now.

DR. NELTE: I hope, Mr. President, that nevertheless the facts which I am putting to you in my manuscript will be considered by the Tribunal. You will notice that I shall refer to this matter at a later stage. On 1 February the session took place during which this affair came up, and on 11 February I went to the French Delegation.

THE PRESIDENT: That is what I have stated, Dr. Nelte. I have already pointed that out to you.

DR. NELTE: And the French Prosecution did not give it to me.

THE PRESIDENT: Why did you not come back to the Tribunal if you had any complaint to make? I have said—and I repeat—that I think to make a complaint now after not having made it for all these months is a frivolous complaint and an attempt to create prejudice, and I should be glad of your explanation.

DR. NELTE: Mr. President, it is merely an attempt to show you that I did not wish to raise a complaint about the Prosecution, recognizing as I did that the Prosecution did not want to help me. I have never been inclined to raise complaints about higher authorities, and I did not want to do it in this case either.

THE PRESIDENT: Dr. Nelte, I think that is a most unfair and a most improper thing for a responsible counsel to say. I think the mention of such a complaint is, as I have said, simply an effort on your part to create prejudice against the French Prosecution and against the fair conduct of this Trial.

DR. NELTE: Mr. President, in my view it was merely meant to show how difficult it was for us to find material in favor of our clients.

THE PRESIDENT: Well, perhaps you will try and get on to something that is really material for the Tribunal to consider.

DR. NELTE: May I ask you to turn to Page 15 where, under Figure 3, I am dealing with the documents.

The document governs the hearing of evidence before this Tribunal. Against that the witnesses remain in the background. More important is the examination of these documents to ascertain the possibility of their utilization and their probative value.

The Prosecution has submitted as evidence to a large extent official reports which are admitted according to Article 21 of the Charter. I intended to show with respect to a number of these documents the conditional value of such reports as evidence. But I shall limit myself to a few fundamental arguments in this connection, trusting that you, Your Honors, in examining this kind of evidence will take my statements into consideration.

These numerous official reports submitted contain factual statements which to a great extent are based on witnesses' testimony. These testimonies are not always related in the form of protocols but as summarizing reports. I do not want to dispute that these testimonies of witnesses are made as deposed in the reports. However, I will not do injustice to any of the witnesses who are not known by the Tribunal and whose testimony is hard to verify for lack of a personal impression, when I say that it concerns mostly very subjective attestations. There are a number of documents in which this is clearly recognizable, and in fact stated, and even documents in which hatred finds its clear expression. I can understand the hatred of these hard-hit people. The suffering they had to endure was so great that one cannot expect impartiality from them. I may, however, say too that such personal feelings are not conducive to rendering the testimony of these sorely afflicted ones a suitable basis for finding the real truth. I am thinking of the form of oath so often heard here on the part of the witnesses: "Swear that you will tell without hatred or fear..." And these official reports often contain not only factual statements, but final conclusions and judgments. To this extent, the probative value of these official reports cannot be recognized. In part these judgments go so far that outside the sphere of those directly involved they level reproaches against authorities, that is, the OKW and Keitel, without it being possible to recognize from the document itself on what the conclusion drawn rests. As long as it is a question of the indictment of an individual like the Defendant Keitel, a document used in evidence must give a proof which yields concrete facts for responsibility or which at least reveals causal connection. Above all, it cannot suffice, in order to consider Keitel's responsibility as proved, if in such reports crimes committed by soldiers and officers of the Army or of the Armed Forces are alleged in order to derive responsibility

on the part of the Defendant Keitel from this fact alone, because he was the Chief of Staff of the OKW.

It must be added that in these reports military agencies have often been erroneously named and confused; for example, when the Defendant Keitel is spoken of as the "High Commander (Oberkommandierender) of the Wehrmacht," which is called "OKW" instead of "OKH." It is not always possible to decide to what extent it is a question of an erroneous conception on the part of the Prosecution or whether it comes from a translation which is not in accordance with the meaning.

In order to examine the responsibility of the Defendant Keitel, I wish to make clear to the Tribunal, in a manner which excludes any doubt, what the channels of command and competence were and to this end I have submitted two affidavits to the Court: a) "The Channels of Command in the East" (Document Book 2, Keitel-10); b) "The Development of the Situation in France 1940-1945 and the Military Authorities" (Document Book 2, Keitel-13). The latter affidavit has also been signed by the Codefendant Jodl. I refer to these affidavits and make them the contents of my argument without reading from them.

Finally I would like to direct the attention of the Tribunal toward other circumstances which may well impair the probative value of the documents which the Prosecution has submitted and you have accepted—for example, when documents do not bear any signatures, and it is impossible to decide whether it is a question of copies of documents which have actually been issued. As an example I will refer to Document 081-PS, which was submitted by the Prosecution for Keitel's Indictment during the question of the treatment of prisoners of war. As far as its contents are concerned it is a fabulous document. Keitel does not remember ever having seen this report or ever having knowledge of the details contained in it. From all appearances one must consider this document as the draft of a report which was not issued, for:

- a) it bears neither a signature nor an initial as is usual in copies,
- b) if this letter had been sent out, it would have a blank journal number; and
- c) the letter was not found at the addressee's. In such cases mere knowledge of the addressee—in this case the Defendant Keitel—and the consequent deduction of his guilt in omitting to take measures to change conditions cannot be considered as proved.

I come to the Indictment against Field Marshal Keitel. I shall shorten the reading of Pages 19 to 21. The reading of the general Indictment and the special Indictment in the trial briefs can be omitted here since, with the exception of the Jewish problem and the persecution of the Church, there is no part of the Indictment which the Prosecution has not raised against the Defendant Keitel.

I should wish merely to point out that the original general Indictment holds Keitel responsible only for the period after 1938 and secondly, that at the beginning of the Indictment, Keitel is described as Chief of Army Command. According to the evidence submitted by the Prosecution, Keitel was also held responsible

for the period after 1933, although the American, British, and French Prosecutions seem to have dropped the allegation that Keitel was Chief of Army Command. The Indictment of Field Marshal Keitel is split, therefore, between the periods 1933 to 1938—that is, 4 February 1938—and from 4 February 1938 until the end.

I shall now continue on Page 21, the last paragraph.

Herewith the defendant is not only indicted as a member of the conspiracy but is also accused of personally participating in all the crimes in the Indictment. The space which the Prosecution has devoted to the defendant in its statements corresponds with the comprehensive Indictments. The name of no other defendant has been mentioned so often by the Prosecution as that of the Defendant Keitel. Again and again we hear the words "Keitel order," "Keitel's decree," and just as often "order of the OKW," "directives of the OKW," along with Keitel's name as "Chief, OKW" after 4 February 1938.

From this is derived the very substance of the Indictment, namely, the position the Defendant Keitel occupied after 4 February 1938. But from it is also derived the scope of the justification. Here it is not a question of examining to what extent the defendant participated in the individual facts of the case, which in the long run arose from the so-called "Keitel orders" or "OKW instructions"; but what matters is the position he occupied—whether he took part and what part he took in the planning and execution of those orders and instructions, and finally and most important of all, whether his part in it was causal and culpable in the sense of the law which is to be applied here.

It seems to be of importance to stress from the outset several points of view which are important for the treatment of the case and for its judgment.

THE PRESIDENT: Would that be a convenient time to break off?

[The Tribunal recessed until 1400 hours.]

Afternoon Session

DR. NELTE: The defendant has declared that he admits the objective, that is, the factual contents of the general Indictment to have been proved (that is to say, not every individual point), taking into consideration the law of procedure governing this Trial. It would therefore be senseless, despite the possibility of refuting various documents or individual facts, to attempt to shake the Indictment as a whole. Therefore, I shall confine myself mainly to the questions concerning the subjective facts and the conspiracy, and I will treat only these individual points which require treatment because of their special importance concerning the personal participation of the Defendant Keitel.

The disproportion between the import of past events and the defendant's fate as an individual is so great that the Defendant Keitel, even if not impelled by conscience, must have known after reflection that such a course on my part would lay him open to the suspicion that he was fighting here for his life. But the defendant has already made it quite clear in his argument that he is not fighting to save his head, but fighting to save face.

The defendant belongs to those men who came into the public eye through Adolf Hitler's death. From 1938 onward he was in his closest circle and was his almost constant companion. It is clear to him what that means for this Trial. It has often been alleged by the Prosecution that by referring to the dead the defendants desired to unload their own responsibility upon them. If it is the purpose of this Trial to obtain the most faithful picture possible of events and connections, it is not fair to start out by discrediting any mention of those who are dead, and who—as the Prosecution also know—are the major culprits. This is especially true of the Defendant Keitel, whose position, influence, and actions cannot possibly be judged correctly without throwing light upon the person of Adolf Hitler and upon his relationship with Keitel.

As can already be seen from Mr. Justice Jackson's opening statement, we are dealing here with an indictment against the National Socialist system. Actually, the Indictment is a global indictment against this system, split up into 21 individual indictments. The individual defendants are, to a certain extent, mere symbolic figures of the spheres of authority of the State which was ruled by this system: namely, Party, Government, and Armed Forces. If I understand Mr. Justice Jackson correctly, he goes even further in saying:

"Above all personal forces are nameless and impersonal forces; their conflict with each other makes up much of

humanity's history.... What are the real forces which are battling here in front of you?"

This statement raises a problem which, Gentlemen of the Tribunal, cannot be left unmentioned at this Trial, a problem which M. de Menthon also pointed out: The importance and influence of those forces which shape fate. Fate and guilt are not two poles which exclude each other from their respective spheres; they are areas which overlap so that there are spheres of life and spheres of activity in which the interplay of these two forces make the world move. One can only hint briefly here as to what forces are at work which shape fate, that is to say, what forces cannot be considered as originating in the conscious will of the individual defendants: The sense of national unity, historic events, opinions which are rooted in tradition and environment. Therefore, I will have to go into this background insofar as it is relevant to the Defendant Keitel, as a person and as a type of one of the groups under the Indictment, because thus only will you be given the possibility of obtaining a correct picture of the share which the Defendant Keitel had in what has happened.

I also want to state that everything I am about to say is said with the full agreement of the Defendant Keitel; and insofar as aspects and facts are stated which might exonerate the Defendant Keitel, they should be taken as a contribution toward the clarification of what has happened, and as an answer to the question of how things could have reached that point. He does not wish to have his position or the part which he played in this drama minimized, but he is anxious at the same time to avoid giving a distorted picture of his character. The defendant has already stated on the witness stand that he was grateful for the opportunity this Trial afforded him to give an account to the world public and the German people of what he did and why he did it. He wishes to help in ascertaining the historical truth of what happened.

I consider it my obligation to express this opinion of the Defendant Keitel because this attitude, based on such reasons, made it considerably easier for me to conduct his defense. It was, and is, clear to the Defendant Keitel that if one considers the horrible consequences and monstrous deeds which—without here raising the question of guilt—undoubtedly were committed by German people, and which can indisputably be traced back to orders and directives with which Keitel came into contact in some form, then one will experience a feeling of guilt, without considering whether this is guilt in the legal sense or the tragic feeling of being linked by fate with the causes and thereby also the consequences.

The Prosecution has maintained that:

"At one time all the defendants had banded together with the Nazi Party for a plan which they well knew could be realized only by the outbreak of a war in Europe."

With regard to the Defendant Keitel, it is said that from 1933 on he took active part in this conspiracy.

To prove its thesis the Prosecution stated:

(a) that the National Socialist program in itself, according to its wording and meaning, could be realized only by using force;

(b) that the Defendant Keitel recognized, or should have recognized this;

(c) that recognizing this he, together with the others, especially the codefendants, planned and prepared aggressive wars.

As regards these statements, I would like to call the Tribunal's attention, first of all, to the principal part of Mr. Justice Jackson's bill of Indictment, in which he deals with the program of the Party. He mentions there a number of points of the program, about which he says:

"Naturally, these were all aims which were legally unimpeachable."

At a different point he says:

"I do not criticize this policy; I wish it were generally recognized. Naturally, this acknowledging criticism is subject to the one limitation: As long as these aims would be achieved without an aggressive war."

According to that, the Prosecution itself do not assume that the wording and meaning of the Party program were such that normal persons would recognize that these Party political aims could be realized by use of force only. I do not wish to repeat what in this connection was said by the individual defendants at their hearings in court. Especially convincing appeared to me what Dr. Schacht stated on this subject. He concludes his critical examination of the important points of the Party program with these words:

"These are essentially the contents of the National Socialist Party Program, and I cannot find that anything criminal lies therein."

I quote this statement especially because it shows how this program and its recognizable objectives affected a person who may be characterized as intelligent, realistic, free from emotional impulses in politics, and possessing economic penetration and judgment. If that person did not recognize that the Party aims were to be realized by use of force, how was the soldier Keitel to come to such a realization?

Keitel was a professional officer. As such he could not be a member of the Party. Officers were prohibited from any political and Party political activity. The Armed Forces command was intent on keeping the influence of Party politics away from the Armed Forces. This was true both for the time before 1933 and afterward. Hitler himself confirmed this principle because he clearly recognized that the time was not yet ripe for giving the corps of officers, let alone the senior officers, a political character. According to the tradition and conception of their profession, those senior officers had a "national attitude," as one used to say, and they welcomed the national points of the program which were placed in the foreground by Hitler; they were glad about the co-operation of the Armed Forces and without hesitation placed themselves behind the Government led by Hitler when it proclaimed the fight against the Treaty of Versailles, especially against its military political clauses. An agreement going beyond these aims, or possibly a union with a political object in view, did not exist. The generals, among them also Keitel, thought no differently from millions of Germans who were not Party members or who were opponents, but who regarded the national aims as being a matter of course.

Now, one cannot fail to see that it is somewhat different if millions of Germans, who had no influence, supported that part of the program relating to the national aims, or if the senior officers, who led the Armed Forces, support it. Furthermore, it cannot be overlooked that the realization of these national aims carried with it the danger of a war. But the state of things seems to me to be such that the generals saw the danger of war not so much in the fact that Hitler wanted to realize these national aims by an aggressive war, but rather in the fact that the realization of these aims would entail sanctions by the former enemy powers. The idea of a realization by aggressive, warlike means was far from the generals' minds for the absolutely compelling reason of military impotency. I shall later deal more in detail with this problem, which is closely connected with the rearmament. Here it is only important that the circles to which Keitel belonged—and I should like to add, between 1933 and 1938—

- (1) had no contact with the Party program;
- (2) had no relationship with Party circles;
- (3) sympathized with a part of the Party program because it corresponded to their national attitude;
- (4) did not think of realizing these national points by an aggressive war, because it would have been hopeless from the military point of view.

Now one could argue that although the generals themselves did not think of waging an aggressive war, they certainly recognized,

or should have recognized, that Hitler had the intention, if not now, then in the near future, of waging an aggressive war.

The Prosecution believes it can be presumed that the Defendant Keitel had this knowledge from 1933 on. The argument of the Prosecution that this knowledge is equivalent to knowledge of the National Socialist program has been refuted; the same holds true of the knowledge of the book *Mein Kampf*—assuming he possessed the book. Therefore, the question is only whether Keitel had knowledge of Hitler's intentions regarding an aggression for other reasons. For the period up to 1938 Keitel could not have obtained knowledge from Hitler himself because Keitel spoke with him late in January 1938 for the first time. The speeches which Hitler made before that time, just as those of the other Party leaders, were unambiguously aimed at preserving peace. Looking back, one might call it propagandistic camouflage of opposite intentions. If that were the case, then this camouflage successfully deceived not only many millions of Germans, but also the foreign countries which were partly critical and partly hostile toward National Socialism.

Keitel believed the protestations of peaceful intentions, and saw their honesty confirmed also by official proposals of disarmament and treaties with England and Poland. He believed them all the more because, as has already been said, an aggressive war appeared to him an impossibility.

The Codefendant Von Neurath too, frequently declared here that all his information and knowledge of Hitler's policy up to 5 November 1937 justified his firm conviction that Hitler did not want to realize his political aims by force or aggressive wars. It was only by the speech of 5 November 1937 that this conviction of Von Neurath's was shaken.

In the arguments in Dr. Schacht's defense to which I referred, those facts were presented which show a contradiction between the former conduct of the victorious powers and the thesis which the Prosecution advances on this question.

Through their official relations and beyond these, the victorious powers showed that, despite their knowledge of all the circumstances of which the defendants are now being accused, they, that is, the victors, did not believe in Hitler's intentions, or did not recognize these intentions of realizing his aims by aggressive war.

The Prosecution now makes the accusation against the defendant that he knew, or ought to have known, such intentions of Hitler. This is not convincing, and I can leave it to the Tribunal to judge who—if all contingencies are taken into consideration—had better possibilities of obtaining information on Hitler's true intentions. I believe the Defendant Keitel may claim for himself the same good

faith and the same ignorance, unless such knowledge or participation itself results from other circumstances.

Such circumstances during the years 1933 through 1938 may have concerned Keitel's activity in connection with rearmament and in the Reich Defense Committee. The charge of illegal rearmament includes two facts which have been summed up by the Prosecution:

- (1) Secret rearmament by circumventing the Treaty of Versailles;
- (2) Rearmament with the purpose of planning wars of aggression.

For a judicial consideration, however, these facts must be kept strictly apart; for they are different with respect to cause and effect, and they must also be legally assessed from different points of view.

The time between 1933 and 1938 is the fateful period, a period of development and conversion. The forces of the hitherto existing order are struggling against the new which have not yet taken definite shape. Everything is in fermentation. The aims remain obscure. They are camouflaged by the adoption of existing nationalistic tendencies. By clever propagandistic utilization of these tendencies, the psychological basis for the aims pursued by the new rulers is being created without being noticed by those whom it concerned. Here lies the problem of the Armed Forces leadership and of the Defendant Keitel during this period with which I am going to deal now.

This problem cannot be solved without taking into consideration Germany's military position. In judging the then Colonel Keitel another consideration enters the picture: how the special sphere to which he belonged was affected by this situation. Keitel considered the Treaty of Versailles, and especially the military clauses, as a humiliation for Germany. He considered it a duty toward his country to collaborate in putting an end to this situation. He was convinced that the Treaty of Versailles, because of its impossible military and territorial stipulations, would have to be revised some day. Such a revision appeared to him imperative, in the interest of justice as well as of reason, if a lasting world peace was to be preserved. On the basis of this conviction he believed that as a German and a soldier, he was entitled, in the official capacities in which he acted during this period, to interpret the military stipulations of the Versailles Treaty literally, even if this was in contradiction to the spirit of the stipulation. His justification for this was that the stipulations limited the possibilities of development in an unbearable manner, that is, in a manner altogether insufficient for an effective defense. Though he did not participate personally,

he did not consider it wrong for Germany, under the given circumstances, to construct submarines in Finland, not for herself, but for the purpose of gathering experience and training specialists; or to maintain construction and designing offices in Amsterdam in order to observe the progress achieved in the field of aeronautics and to make use of it without actually building planes. Symptomatic of the way democratic Germany of that time thought—without consideration of position and party—was Dr. Brüning's statement which on 15 February 1932 was broadcast over all U.S.A. radio stations on the occasion of the meeting of the disarmament conference. I am going to quote some passages from that speech:

“The inner-political fights in Germany are very bitter in their outward forms, to be sure; but this must not lead one to overlook the fact that despite many differences there exist indisputably many things in common also. On the two decisive foreign-political questions of today, the questions of disarmament and reparations, uniform opinions prevail among the German people. The demand for equal rights and equal security is shared by the entire German people. Every German Government will have to uphold these demands. That the fight of the parties as to the road which our politics must take is perhaps more bitter in Germany today than in some other countries, is a result of the deep misery which weighs heavily upon Germany and greatly burdens the people's soul.”

In connection with this point I also refer to the testimony which the Codefendant Von Neurath gave on 22 June 1946. These words which Brüning spoke prove that there was a demand which was upheld by the entire people irrespective of the difference in parties: The demand for equal rights and equal security. The objection to that is: A demand, even if upheld by the entire people, does not in itself create the right to violate or circumvent established regulations. In principle, one can accept that. However, things were not as simple as that. I do not wish to harp upon a fundamental law applying to all countries and giving every nation the right to create for itself a certain state of defense. But even if one is not prepared to recognize such a fundamental law, one will still perhaps understand the state of emergency which actually exists when a country is so limited in its military potential that it is not only liable to military attack by any neighbor but also condemned to political impotency.

In the course of the hearing of evidence the Tribunal has had occasion to recognize that this was true with regard to the situation in which Germany found herself in the year 1933. I want to call your attention to the following passages of the Field Marshal's

report which was submitted to the Tribunal. The following passages, written by this outstanding soldier, summarize as follows the experience of a patriotic and military life as regards the point discussed here under the title "Rearmament":

"Nature is inclined to pass over weak people. The law that only the strong survive is generally recognized..."

I quote further:

"The world does not take seriously the wishes of the weak. Weakness is too great a temptation for the strong."

And finally I quote:

"Above all, it seems to me, we must correct the tragic misunderstanding that a policy directed at security is a war policy."

The best witness with regard to this question, which is so important for the Defendant Keitel, is the book by a British Major General, A. C. Temperley, (Publishers Collins, 1938) *The Whispering-Gallery of Europe*, for which the British Foreign Secretary of the second World War, Mr. Anthony Eden, wrote a very friendly, concurring preface.

THE PRESIDENT: Dr. Nelte, wouldn't it be possible for you to pass over the reading of these passages which come from the book of Major General Temperley? The Tribunal will take notice of them. There are quite a number of long speeches from the book.

DR. NELTE: I intended to ask the Tribunal whether it would kindly take judicial notice of these passages if I submit them.

They carry particular weight because Temperley reports and judges retrospectively from the year of 1938.

The statements made by Temperley, who witnessed the disarmament conference, the official negotiations and the negotiations behind the scenes, are deeply moving because they reveal the tragic—I must use the word—fateful—and primary conflict: fateful because the thesis presented by the representatives of the different countries—which was derived from the national, given conditions and from traditionally bound conceptions—proved that the difficulties could not be overcome and thus formed the origin of the confusion the last consequences of which we have just experienced. Temperley says:

1) (Page 50) "The French had studied the question of disarmament much more thoroughly than any other nation, and some of their best brains of the General Staff and Naval Staff had examined the problem for months ... To characterize their problem roughly, it was their goal to disarm themselves as little as possible although they were the strongest power of the world, but at the same time to keep Germany in a state of disarmament down to the minutest detail according to the conditions of the peace treaty ...

(Page 71) "In the report which I gave, I spared neither the French nor us. We had made big mistakes, but at that time I came to recognize that in reality the French never thought of disarming at all ... M. Paul Boncour certainly was honest and worked intensively in order to achieve success, but the pressure of the French General Staff upon the Government was too great ...

2) (Page 126) "Mr. Stresemann knew his people best. It was a race against time. How long could he keep his people in an atmosphere of co-operative acquiescence without any tangible success in the form of concessions on the part of the Allies? Ought the Allied Governments to have given faster and more willingly what they were ready to give? Would this gesture have prevented the catastrophe? . . . Doubtless, history will provide the answer. I do not know what kind of an answer it is going to be, but it seems certain to me that the most important period, when Germany turned away from the road of peace, will be found to be the period of co-operation between 1929 and 1930 . . . Would a less hesitating policy as regards the cancellation of the debts, economic reconstruction, and concessions in the treaties have prevented Hitlerism and all its consequences? Who knows? . . . In his Review of International Affairs, 1930, Professor Arnold Toynbee writes: 'For the foreign observer who visited Germany at that time it was a terrible and strange drama to see a whole nation—one of the greatest and most civilized nations of the world—engaged in a heroic struggle against fate, half paralyzed already in titanic battle, driven by the conviction that its steps had already irresistibly been led on to the path of destruction.' (Pages 128 and 129) "The German people had lost hope . . . The French had always contended that Germany would maintain a pretext of modesty as long as the Rhineland was occupied, and that when the occupation ceased the true color would show . . . This has proved to be a good prediction, yet it was a concurrence of circumstances and the expression of a people taking its last gasp rather than premeditated planning . . .

3) (Page 151) "I was present at the session and was profoundly moved in the face of the attitude of the French delegation and that of the Little Entente. They believed that they now had Germany financially by the throat and that her utter ruin was only a question of weeks. Our Foreign Office recognized the situation. Yet after a discussion with Henderson I ask myself whether he really did recognize the abyss which was gaping before us . . ."

Perhaps one certain passage might be of interest, on Page 38, under (4):

"I also name the general staffs, because there is no greater illusion than that they, taken as a whole, are in favor of war. I know the general staffs of many countries very well, and have never known any general staff which would have glorified war or would have wished for war. They knew too much about it. If they advocated strength, it was because they believed in the idea that armed strength can prevent war.

"In opposition to the bloodthirsty pacifists who reject modern weapons, but who immediately clamor for their presence on the battlefield when one must resist attackers . . . This leads to the conclusion that armaments are not the main reason for wars. The history of the years 1926 to 1931 is not that of a race for rearmament, but that of a slowly developing deterioration of the international situation because of the economic and political chaos, which made disarmament impossible and rearmament unavoidable . . . (Page 222) "The Germans actually repeated their successful tactics in circumventing treaties, the very tactics they had used in Napoleon's time. And yet, one wonders what other honor-loving nation in the same circumstances would not also have done its utmost to circumvent a treaty which had been forced upon it at the point of the bayonet . . .

(Page 232) "The following 6 months brought Germany's return, Hoover's failure and that of the French plans, and the complete change in the atmosphere through Hitler's seizure of power. However dreadful this was for the peace of the world—the other powers, above all France, have only themselves to blame for it . . . We should have exerted more pressure upon the French and made greater efforts to keep a moderate government in office in Germany.

(Page 256) "... they felt they were still being treated as outlaws . . ."

I would like to ask that these opinions of the British general which, as I already said, had the approval of the Foreign Secretary, Mr. Anthony Eden, be taken into consideration. In this connection I want to refer also to the statements by the following statesmen: Paul Boncour, Henderson, Briand, and Cecil; these statements were submitted by Dr. Schacht's defense (Schacht Document Book Number 3, Exhibit Schacht-12) on the same subject matter and were accepted by the Tribunal; I also want to refer to the book by Viscount Rothermere: *Warnings and Predictions* (Page 100).

In examining and deciding whether the Defendant Keitel knowingly violated the military clauses of the Treaty of Versailles in the meaning of the Indictment, the Tribunal will have to consider the facts which have been presented. Individual charges against him on this point have not been made.

It is unquestionable that from 1933 on rearmament took place in the Reich. The Defendant Keitel has admitted that, and he stated that in the official positions he held up to 30 September 1934 and from 1 October 1935 on he participated in this rearmament in accordance with the functions incumbent on him. Like everything the Germans do, the rearmament too was well thought out and organized. The Prosecution collected data for that; especially Document Number 2353-PS and the transcripts of the sessions of the Reich Defense Committee.

During the hearing of evidence the total picture of this period from 1935 to 1938 was not clearly defined. The Prosecution arranged its presentation of evidence retrospectively and drew a conclusion from the results of the war as to the motive for the rearmament, but at the same time it deduced from the fact, which cannot be denied and has not been denied, that this rearmament could not have been planned and carried out by any one man, that it constituted a joint plot for the purpose of aggressive war.

Now, where is the decisive criterion: in military armament or in other preparations for war from which the conclusion may be drawn that these measures have an aggressive character, that is to say, that they aim at an aggressive war? In principle, from armament itself nothing can be deduced as to the alleged intentions; armament may, in fact it must, look just the same if carried out for security and defense as it would if applied to aggressive war. Therefore, if the intention of rearmament for the purpose of a plot is to be determined, distinction must be made between:

(a) Armament and preventive measures which must be taken in case a mobilization should become necessary for defense at any time;

(b) Rearmament and enacting of measures which exceed, in quantity or quality, the volume under (a) to such an extent that the intention of the political leadership to begin a war will be recognized by those concerned, in which case the political question of whether an aggressive, defensive, or preventive war is intended

may be disregarded. Therefore, in the end, the decisive question will be whether in connection with these measures the intention of planning for an aggressive war was expressed or had become otherwise noticeable, or whether the measures, because of their nature and volume, demand the conclusive deduction that an aggressive war was being prepared.

In retrospect, the events are presented as the logical chain of a development according to plan. In reality, not only Hitler's far-reaching intentions and his planning were subject to an actual course of events in which, objectively viewed, a certain causality seems to be inherent, but the knowledge and approving support of co-operating circles were equally subject to this. There can be no dispute over the statement that the economic capacity of a country, which in its totality must be regarded as armament for the case of war, will eventually get to a point which must be considered of decisive importance in solving the question of when the rearmament, that is, the status of the entire industry essential for war, exceeds the capacity of armament for defense.

While considering this, it must be taken into account, especially for the Defendant Keitel as a soldier, that until he took over the office of Chief of OKW on 4 February he had not held an important position.

Now, what part did the Defendant Keitel play at that time,

(a) in the field of rearmament with regard to material and personnel;

(b) in the field of administrative and—as charged by the Prosecution—military-political rearmament as dealt with under the heading of the Reich Defense Council?

I shall now skip Pages 43 to 46, since they contain the historical development of the organizational principles, and I beg the Tribunal, if it can make use of this information, to consider it in reaching a verdict. I shall continue on Page 47.

When on 1 October 1935 the Defendant Keitel became the Chief of the High Command of the German Armed Forces in the Reich Ministry of Von Blomberg, there was a Military Economy Branch headed by Colonel Thomas. He was appointed by Von Blomberg as an expert adviser for the organization.

This Military Economy Branch, later called the Military Economy Staff, as a ministerial service post had to represent the Reich Minister of War with the competent and authoritative economy posts, later also with the Plenipotentiary General for Economy (GB), nominated in 1935. The Minister of War, Von Blomberg, generally communicated directly with Thomas at the time when Field Marshal Keitel was Chief of the Armed Forces Department.

To clarify the part Keitel had in the organizational development of rearmament in this period, I would explain the following:

I. The position at the start in 1933 (for the period 1933-38) was as follows: Lack of any kind of basis for production as a consequence of the destruction of the armament industry following the Treaty of Versailles.

Consequence: no capacity for production, no motor vehicles, no mechanical equipment, no offices for construction, no experience.

Thus, the first stage for rearmament: the restoration of a basis for production, and equipment and reconversion of factories.

II. Basic initial factors to procure armaments:

(a) Branches of the Armed Forces, in issuing orders to firms through their ordnance offices as purchasing agents, were handicapped by budget means and their incorporation in the budget year.

Consequence: Subsidizing of firms for lack of long term orders and through the impossibility of calculation.

(b) War Economy Office in the OKW as the central organizer and representative of the producer firms through War Economy (later Armament) Inspectorates as intermediary offices in the military area, to serve the branches of the Armed Forces as executive. Duties of the organization, which was run by a military staff:

- (1) To gain information about and recommend firms to the military branches.
 - (2) To adjust the orders of the military branches to the capacity.
 - (3) To provide for the allotment of raw materials, machinery, and manpower.
 - (4) To further the extension and capacity of industrial plants.
 - (5) To protect the plants from bad investments, air raids, espionage, et cetera.
- (c) The Plenipotentiary for Economy, GBW, as from the autumn of 1935 was the declared organizer of the entire German economy for its mobilization in case of war and its prospective leader during a war.

His duties in peacetime were preparatory only:

1. Statistical co-ordination of the individual industrial and economic branches, including the armament authorities connected with the OKW, and the War Economy office under Thomas.
2. Provision and storing of raw materials obtainable by importation only.
3. Procurement of foreign currencies for importation.
4. Financing of domestic rearmament.
5. Planning of reconversion of the entire economy to war needs, and extension of the special armament industry.
6. Duties as mentioned already under II (b), (3), and (4), together with the War Economy office in the OKW.

In addition to this, but planned to take effect only in case of mobilization, there was collaboration with the following subordinate ministries: a) Ministry of Economics, b) Ministry of Food, c) Ministry of Labor, d) Ministry of Finance, for foreign exchange and purchase of raw materials, e) Ministry of Forestry.

This necessitated, from December 1935 onward, the participation of a GBW deputy for purposes of information in the Reich Defense Commission.

After Dr. Schacht's retirement from the Reich Ministry of Economics, the GBW became only fiction, because the full powers had been transferred to the Four Year Plan, that is to say, Göring. Only when the powers of the ministry of armament and munitions were extended in August 1943, when it became known as the Ministry for Armament and War Production, was there a revival of the originally planned position of the GBW entailing full powers in time of war, but he remained subordinate as regards organization to the Four Year Plan, with the Führer as the general authority in reality at the top, owing to the failure of the Four Year Plan.

III. In collaboration of the GBW with the War Economy Office in the OKW the "Mobilization Plan for Rearmament" had been set up, with General Thomas presiding. This "Mobilization Plan for Rearmament" acted on behalf of the Armed Forces and the GBW who supplied particulars of the industrial plants to be assigned from general production for reconversion to armament production in time of war. It was to attend to:

- (a) labor requirements, (b) raw material requirements, and (c) industrial equipment (special machinery for weapons, et cetera).

The prerequisite of modern warfare is not so much the exploitation and organization of the manpower of a country into military formations, but it is essentially a problem of industrial capacity

and of its appropriate utilization for the production of all necessary raw materials. This process must of necessity precede any rearmament, and requires expenditure of money and, even more, of time.

When Germany proclaimed her equal rights as regards defense—that is, military sovereignty—she did not possess the necessary resources for a material rearmament, as they had been taken away in the execution and recognition of the disarmament plan. It has been confirmed here during the Trial by various sources that first 10, then 7 to 8 years were allowed and anticipated for providing material equipment in the form of hitherto prohibited modern weapons and supplies, especially including munitions, for the peacetime Armed Forces which had been announced to the world with the proclamation of liberty for national defense in 1935. This becomes comprehensible if one considers that even the U.S.A. with its unlimited means, which were not impaired by the effects of war, required 4 to 5 years for the necessary conversion and rearmament in this war. Thus we see that rearmament, if it is intended to exceed the limits of defensive armament, can only be achieved gradually in the case of nations, which—like Germany in 1934—had no armaments.

First stage: Procuring of essentials with regard to industries and raw materials for the production of war supplies.

Second stage: Placing of orders with the armament industry for the first equipment of the peacetime strength of the Armed Forces and execution of these orders within the framework of the means provided by the annual budgets.

Third stage: Procurement of the munition and weapon supplies to be stored for the equipment of a mobile Armed Forces which would be developed, in the case of war, from the permanent peacetime strength in accordance with the manpower capacity of a nation. Those supplies would include the necessary replacements during the war.

If one considers that in 1934 Germany had no modern weapons, no submarines, and no military aircraft at her disposal, it can well be believed that any reasonable soldier had to assume under the given circumstances there could be no thought of a war, let alone a war of aggression.

Accordingly, the tasks which the Defendant Keitel assumed in his official capacity of Chief of Staff of the Armed Forces Department must be considered as purely preparatory and organizational. Keitel, of course, bears the responsibility for General Thomas, Chief of the Defense Economy Staff. The technical details and the

extent of his activity can be seen from Document 2353-PS, which is correct in essence despite the fact that Thomas, in the declaration prefixed to this historical document, now wants it to look as if he had presented his original notes in an exaggerated way and given them a more favorable turn to please Hitler and avoid arrest. This does not correspond to the facts. What Thomas wrote proves, according to the Defendant Keitel's opinion, that a "war armament" with mobilization of the industrial capacity and its conversion to war economy did not begin until early in October 1939. It further proves that the statements of the defendants who were examined here, as far as they were connected with this rearmament, and especially those of Dr. Schacht until 1937, are in complete agreement on the following point: At this period wars of aggression were not avowedly desired, and that in the light of the state of actual armament they must have appeared impossible.

But rearmament in manpower also shows the same picture during this period. The evidence has demonstrated that up to the spring of 1938 only 27 peacetime divisions were scantily equipped and that 10 or 12 reserve divisions were in preparation; at that time the Wehrmacht had no other supplies or armaments at its disposal. If despite this fact, and operating without general mobilization, it succeeded by the autumn of 1938 in preparing an army of almost 40 divisions for the aggression against Czechoslovakia, at a time when it had the poorest protection on its western border, one can see what the maximum war potential was in those days.

Under such circumstances, and with knowledge of the armament situation and war potentials of neighboring countries which were mutually united by alliances and assistance pacts, none of the generals of the old school could ever think of bringing about a war. The fact that already one year later, in 1939, the state of German armaments was substantially improved, must primarily be attributed to the occupation of Czechoslovakia. Finally it must be pointed out that during this period there was no strategic plan for any aggression whatsoever. General Jodl has declared on the witness stand that when in 1935 he came to the Armed Forces Department, no plan nor anything similar was in existence, except what was provided for in case of internal unrest. The occupation of the demilitarized Rhineland zone was not planned, but was improvised by Hitler. The *Initial Assembly and Combat Directives* of June 1937 is a general instruction for possible military conflicts.

For the sake of completeness I must also call attention to Document EC-194. This is an order issued by the Commander-in-Chief of the Armed Forces, Von Blomberg, on the subject of aerial reconnaissance and the observation of submarine movements during the

occupation of the Rhine. Keitel signed and forwarded this order. It is the only existent document of that period.

The Reichswehr had a permanent force of 100,000 men, as had been laid down by the Treaty of Versailles. It is indisputable that in view of the size of the Reich, its unprotected borders and the way East Prussia was cut off, this figure was absolutely inadequate for creating a feeling of internal security and the possibility of defense in the face of an attack from the outside world—an elementary right for any country and nation. This state of inadequacy, which had been created by the military clauses of the Treaty of Versailles, was the subject of reflection even before 1933 with a view to improving it without actually making use of soldiers for the purpose. An examination was made and it was found that in case of mobilization a series of tasks could be taken over by the civil ministries. Here tasks of a purely defensive nature were concerned, which cannot be considered aggressive. They were tasks of national defense, and principally the following: I have enumerated them in my manuscript and, without reading them, I would like the High Tribunal to take judicial notice of these points. As it is quite clear these are matters for defense only.

- (1) Protection of the frontiers by reinforcement of the customs service;
- (2) Postal security by Reichspost agencies (repeater offices);
- (3) Railroad protection by Reichsbahn personnel;
- (4) Laying of cables instead of overhead telegraph lines;
- (5) Construction of railroad viaducts and elimination of level crossings on main traffic roads;
- (6) Construction of frontier fortifications in the East, Oder-Warthe line, Pomeranian line, Oder line (terrain expropriation);
- (7) Improvement of maritime traffic with East Prussia and of rail transit through the Corridor;
- (8) Fortifications in East Prussia;
- (9) Reinforcement of frontier protection in East Prussia;
- (10) Preparation by the Reichsbahn of mobile loading ramps;
- (11) Reinforcement of the coastal customs service;
- (12) Development by the Reichspost of the radio network (amplified transmitters and receivers);
- (13) Manning of permanent army signal stations with Reichspost personnel;
- (14) Relieving the Reichswehr from the charge of detaching soldiers for duties which can be carried out by civilian personnel;
- (15) Protection of frontier crossings by the local authorities (Landräte);
- (16) Co-ordination of motor vehicles, et cetera.

The advisory body for these tasks and their execution was, up to 1933; the Committee of Experts. It consisted of experts coming from the different civil ministries, who after being accepted by the Minister of the Interior—Severing, up to the end of 1933—met for conferences at the Reich Defense Ministry. The Reichswehr Minister charged the then Colonel Keitel to direct these meetings. At these meetings the experts received and discussed the desires of the Reich Defense Ministry as regards the afore-mentioned tasks, which the individual ministers could take over in case of a mobilization.

During Minister Severing's time this co-operation worked without friction with the idea of satisfying as far as possible the wishes of the Reichswehr Minister, and it continued in the same way after 30 January 1933. The scope and content of the tasks remained the same. When, on 4 April 1933, a Reich Defense Council was established by a resolution of Hitler's new Reich Government, the committee was retained and only its name was changed: The Committee of Experts became the Reich Defense Committee. However, it did not change its field of action and was not given any new jurisdiction. It only grew in size as it went on developing, especially after the introduction of compulsory military service. Now, as before, the Reich Defense Committee was a body which had to give advice about those tasks of national defense concerning the civilian sector which had to be prepared and also partly taken over by the civil ministries. For this Count of the Indictment it must be made quite clear that after 4 April 1933 Keitel's position did not change either, and especially that he was not a member of the Reich Defense Council.

The Reich Defense Council, which has taken up a lot of space in the statements of the Prosecution, may be considered as virtually nonexistent in the light of the evidence produced—later on I will come back to the time after 1938. In any case the Prosecution could not prove that there was any session of the Reich Defense Council during this period. The minutes submitted dealt without exception with the sessions of the Reich Defense Committee, and the members of this committee reported to their competent ministries, who in turn had an opportunity, within the framework of the cabinet, to translate into concrete form the suggestions and proposals discussed in the Reich Defense Committee. Thus there were never any sessions of the Reich Defense Council whose existence was merely formal, so that witnesses could rightly say that the Reich Defense Council existed only on paper.

Keitel, up to 30 September 1933, as colonel and section chief in the Reich Defense Ministry, and later from October 1935 as major general and Chief of Staff of the Armed Forces Department in the Reich War Ministry, was a member of the Reich Defense Committee. Therefore, from 30 September 1933 to 30 September 1935 he was not in the War Ministry, and thus had no function connected with this Count of the Indictment. Neither did he during this time participate in sessions of the Reich Defense Committee, the minutes of which have been presented by the Prosecution as having special probative value. The session of 22 May 1933, described as the second session of the working Committee of Experts, was the last session in which Keitel participated before being transferred to serve with the troops. The first session after his transfer to the Reich

War Ministry was held on 6 September 1935. It is put down as the 11th session of the Reich Defense Committee. Although in the examination of Keitel's responsibility one has to exclude the work done by the Reich Defense Committee during the two years between sessions 3 and 10, I will nevertheless make it the subject of my statements, as it is from these very minutes that one can see what the Reich Defense Committee was doing.

Only the knowledge of these minutes makes it clear why an institution, which in this or some other form exists in every country and which serves the purpose of national defense as deemed legitimate by every country, has now been presented as an important factor in submitting evidence on plans and preparations for aggression.

The minutes of the sessions of the Reich Defense Committee in 1933, 1934, and 1935 reveal the character of the work as that of preparations for the event of war. But it is likewise evident that it is a question of preparations intended to bring about a more perfect degree of readiness in national defense in case of mobilization. If the "political situation" is twice mentioned, these allusions indicate the fear of military sanctions from neighboring states. (Reference is made to the case of Abyssinia, which led to sanctions against Italy.) Everything is rooted in the thought of overcoming that state of military impotency which made it impossible to safeguard the open frontiers of the Reich.

The recurring idea of obligation to secrecy can only be attributed to fear arising from the situation at the time lest the revelation of measures, however defensive, might produce preventive measures on the part of the victorious powers.

That these suspicions were well-founded is shown by the intransigent attitude of certain states after the complete disarmament of Germany, and this question is important for Keitel's attitude, for he affirms that the conclusion drawn from the obligation to secrecy, namely, that secrecy is a proof of bad conscience, and bad conscience is a proof of knowledge of illegality, is erroneous.

The Reich Defense Committee never passed resolutions; it was an advisory body on matters of national defense insofar as the civilian sector was concerned with mobilization. At no time did it ever indulge in deliberations concerning rearmament as regards manpower or material, or concerning plans of aggression. The Prosecution has tried in one instance to show that the Reich Defense Committee was involved in plans for aggression.

I do not wish to read the next few sentences. Here we deal with the well-known event of freeing the River Rhine for traffic, a

question which was designated as the technical liberation of the Rhine River. This came up in Göring's testimony.

They pointed out Document Number EC-405, the minutes of the Committee for Reich Defense, session of 26 June 1934, in which there is mention of "participation in preparing mobilization." In these minutes under (c) can be found: "Preparation for the liberation of the Rhine." From this the prosecuting authorities have drawn the conclusion that already on 26 June 1934 the Reich Defense Committee was contemplating the "liberation of the Rhine." The witness Reich Marshal Göring has stated during his hearing that, given the unequivocal wording of the German text, it is a question here of the technical freeing of the river Rhine, but not of any strategic or political matter. I am mentioning this manifest error by the prosecuting authorities, which can only have occurred through a gross mistake in translation, because it has led to an erroneous conception of the prosecution as to the competence of the Reich Defense Committee, and because it is the only case which has come up in connection with this complex.

The true nature of the Reich Defense Committee's activities is set out quite simply and clearly in the *Manual of Mobilization for the Civilian Administration*; Documents 1639-PS and 1639a-PS. It refers to the result of discussions between all the experts of the Reich Defense Committee, and is an appendix to the mobilization plan of the Armed Forces as well as to that of armaments.

These three mobilization plans all taken together form the basis of your decision. You may see from them whether the Prosecution is right in its assumption of a total planning for aggressive war, or whether the Defendant Keitel was right when he stated during his hearing:

"What has been discussed and planned here is what every country is entitled to do and what the responsible agencies are bound to do, if they do not wish to violate their most sacred duty, namely the safeguarding of the security of their country."

The decision of 4 February 1938 was fateful for General Keitel as well as for the German Wehrmacht: for Keitel who could not yet form an opinion on the newly-created office of the "High Command of the Armed Forces" (OKW); for the Armed Forces which on that day lost its relative independence.

Hitler broke down the last barriers between himself and the Armed Forces—the nation in arms—by removing both the Commander-in-Chief of the Armed Forces and the constitutionally responsible Reich War Minister. This truly portentous decision was fatal for Keitel and the German nation, though at the time of its occurrence this was not realized by the participants. That they must be blamed for not realizing it is easy to say now, in retrospect.

At the time everybody who was not an inveterate skeptic or pessimist had to base his judgment on the development of things in general and on the strength of the personalities involved. Neither the one nor the other could be clearly appreciated on 4 February 1938.

It was not a personal decision of the Defendant Keitel who did not know Hitler personally in these days and who met him for the first time man to man in the preliminary discussions. Hitler assigned him to the newly-created office of Commander-in-Chief of the Armed Forces and Keitel accepted it. Even if we disregard entirely the human emotions connected with such a brilliant promotion there was no reasonable ground for the then Chief of the Armed Forces Department in the Reich War Ministry to decline the offer, since Von Blomberg himself had recommended him. Hitler's ideas about this office could not be discerned by Keitel. I shall pass to the next page...

The decree gave Keitel a wonderfully impressive office name as "Chief of the High Command of the Armed Forces." The historical foundation is the elimination of the commanding authority over the entire Armed Forces, which up to 4 February 1938 was in the hands of Field Marshal Von Blomberg, and on that day was taken over by Hitler himself. Hitler created at the same time the responsible Ministry of War, which up to that time had also been administrated by Field Marshal Von Blomberg. Dr. Lammers says the following about the origin of the Führer's Decree of 4 February 1938: (Morning Session of 8 April 1946; Volume XI, Page 29.)

"The Führer informed me that the Reich Minister of War, Von Blomberg, is resigning his office and that he avails himself of this opportunity to make some other changes in the Reich Government, particularly since the Foreign Minister, Von Neurath, is going to retire, which will make a change; there is also a change in the High Command of the Army. In this connection the Führer gave orders for a decree to be worked out regarding the Command of the Armed Forces. It was to be merged with the Ministry of War. As a directive the Führer gave me the following instruction:

"In the future I shall not have any War Minister; neither will I have in the future a Commander-in-Chief of the Armed Forces to stand between me, as the Supreme Commander, and the other commanders-in-chief within the Armed Forces.

"In accordance with this instruction the decree was formulated, by which the High Command of the Armed Forces was established as an Army Staff directly subordinate to the command of the Führer. The Führer did not want any independent office in this function, inserted between himself and the commanders-in-chief of the Armed Forces branches. In consequence, General Keitel, now appointed Chief of the High Command of the Armed Forces, had no independent commanding authority over the different branches of the Armed Forces. Such authority would not have been considered for other reasons as well."

Field Marshal Von Blomberg declares in the affidavit I have submitted: To Question 24:

"At our last discussion Hitler pointed out that he presumably would not fill my position again, and that he would thereby become himself the real Supreme Commander of the German Army..."

"He asked for a suggestion for the assignment of a *Chef du Bureau* who would direct and carry out current tasks under him and thus under Hitler's responsibility.

"I named Keitel, who, under me, had administered this office very capably."

In answer to Question 27:

"I proposed Keitel as *Chef du Bureau*, believing that I had put him in the right job."

In such a position he would not be a military adviser to Hitler. Whether and in how far Hitler ever asked for his advice, I do not know. Even so, Keitel's responsibility, in my opinion, would not thereby be established.

Question 29:

"Was it not Hitler's intention to create a tool for himself in the person of Keitel, whose capacity for organization and hard work seemed to him valuable, as an executive organ for his decisions and orders?

"Answer: This question is emphatically confirmed by me. Hitler's original intention at that time was most certainly to have at his disposal a trustworthy subordinate organ, and in no way an adviser endowed with any responsibility."

The decree of 4 February 1938 regarding leadership in the Armed Forces is known to the Tribunal. Therefore, I do not need to read it to you. One sees from this and from the hearing of witnesses regarding the position of the Defendant Keitel and questions of his competence and responsibility, that:

(1) Hitler did not want either a responsible War Ministry or any other person but himself to exercise the commanding authority over the entire Armed Forces. He united in his own person both these institutions by declaring that, in regard to the commanding authority, he would from now on exercise this directly and personally, as well as the functions of the Reich War Ministry which were to be administered by Keitel under his instructions.

(2) Hitler thus created a military staff for a military-technical program. He designated it the High Command of the Armed Forces. This "Oberkommando der Wehrmacht" was therefore nothing more—and, I may add, no less—than the military chancellery of the Führer and Supreme Commander. Such chancelleries already existed as Reich Chancellery, Presidential Chancellery, and Party Chancellery. The Defendant Keitel was assigned to the post of chief of the military chancellery with the title of Chief of Staff of the High Command of the Armed Forces (for short, Chief OKW).

(3) Hence it follows that the OKW was not intended to be an intermediary agency between the Supreme Commander of the Armed Forces and the three Armed Forces' sections. The assumption to the contrary held by the Prosecution, which is based on a graphic representation, is founded upon an erroneous opinion.

An independent intermediary level between the Supreme Commander and the three Commanders-in-Chief of the Army, Navy, and Air Force such as existed before 4 February 1938 no longer existed. The OKW, in which the Defendant Keitel was the Chief of Staff, was no independent military agency or authority, but exclusively Hitler's military-technical staff and his War Ministry office. The OKW had no independent authority whatsoever, neither the

power to issue orders nor the command authority. Therefore, the OKW could not issue its own orders. On the contrary, all instructions, decrees, general directions, or orders issued by the OKW were the expression of the desires of the Supreme Commander of the Armed Forces. The Commanders-in-Chief of the three Armed Forces' branches were always aware of the fact that no intermediary level existed between them and the Supreme Commander, and they never considered or recognized the OKW as such. This is confirmed by the affidavits of the Codefendants Admiral Dönitz and Admiral Raeder, as well as by the testimony of Reich Marshal Göring and Dr. Lammers.

The idea that the OKW, or the Defendant Keitel as Chief of the OKW, would have had authority to issue instructions or orders independently is therefore erroneous. All official business, oral or in writing, which went beyond an exchange of ideas with other military agencies or authorities, was subject to the exclusive decision of the Supreme Commander himself. The OKW was merely the executive staff of the Supreme Commander.

(4) Therefore, when documents issued by the Supreme Commander or by the OKW show signatures or initials of the Defendant Keitel, or of a chief of office or section chief, one must not draw the conclusion that the persons concerned had authority to issue orders independently. In each instance it was merely a case of noting, forwarding, or transmitting the orders of the Supreme Commander himself. Because of the demands made on Hitler's time in his positions as head of State, Reich Chancellor, Party Leader, and Supreme Commander of the Armed Forces, it was not always possible to obtain his personal signature, unless it concerned fundamental matters of unusual significance. It must be noted that in all cases Hitler's personal decision or approval had to be obtained.

Such being the state of affairs, we cannot accept the Prosecution's argument that because the Defendant Keitel signed or initialed documents he is co-responsible for their actual contents. It would be arbitrary to infer the responsibility of the Defendant Keitel as chief of the military chancellery because he forwarded or signed orders, instructions, and so on, a responsibility which in my opinion can be charged only to the person who promulgates the order by virtue of his authority.

A real responsibility for this could be laid upon the Defendant Keitel only in case it were proved that he willfully participated in drawing up these orders, instructions, *et cetera*.

THE PRESIDENT: Dr. Nelte, would that be a convenient time to break off?

[A recess was taken.]

M. CHARLES DUBOST (Deputy Chief Prosecutor for the French Republic): Gentlemen, Counsel for the Defense have presented a request to the French Prosecution to have certain documents communicated to them. This request is divided into two parts.

The first part concerns the Scapini incident, which arose from the publication of a document in the course of my own statement. I am able to communicate to the Defense the answer which the French Government has made to its request.

The French Government has found in the archives left behind by the German authorities the answer which was made to the protest raised at the time of the massacre of French prisoners. It is, by the way, a purely dilatory answer. The German authorities replied that the Armistice Commission was not competent; that the request must be made by the Scapini Embassy. I have handed this document to the Defense and I think that the incident is closed.

The second part of defense counsel's request concerns a statement made by my colleague, M. Edgar Faure, who at the beginning of his speech announced to the Tribunal that he had examined approximately 2,500 documents, of which he had retained only 200. I can, of course, not answer on behalf of M. Edgar Faure. I only know that the French Delegation has only a total of 800 documents in its archives, and has submitted them all to the Tribunal and to the Defense. I therefore think that it is merely oratorical hyperbole and that my colleague wished to allude to covering letters which were of no importance. In any case, I had previously informed defense counsel Dr. Nelte that all the documents of our delegation were open for him to see and that he would be able to verify that we had no other documents than those which we had published.

On the other hand, the requests which we forwarded to Paris to have complementary documents which might have been forgotten sent to us have all been in vain. We therefore conclude that we have here all the documents which we could make use of in this Trial.

DR. NELTE: Mr. President, I am grateful to the French Delegation for the explanation given now regarding the complaint I made this morning. If I had had that explanation a few days earlier, what happened this morning would not have occurred. I regret it very much indeed.

I continue on Page 64 to the effect that Keitel co-operated in drawing up orders. In order to clarify this as much as possible I would like furthermore to point out the following:

The "instructions," which were of fundamental significance for the planning of military operations, are operational orders issued to the Commanders-in-Chief of the three Armed Forces' branches by the Supreme Commander in this capacity. Before these instructions

were drawn up Hitler discussed the military-technical aspect of each order with the competent OKW experts and also with the Defendant Keitel. The instructions, aside from opinions manifested by the individual experts, were exclusively the expression of the Supreme Commander's wishes, and they were not directed to the OKW but to the Commanders-in-Chief of the three Armed Forces' branches, to whom they were forwarded through the OKW. The three Armed Forces' branches on their part ordered, on the basis of the general instructions, the details incident to their execution. Therefore, I shall not refer in this connection to the statement of the Charter according to which the carrying-out of orders is not accepted as a ground for exemption from punishment. For the transmission of the order was not an order issued by the OKW to the Armed Forces' branches, but the forwarding of the expression of the wishes of the Supreme Commander of the Armed Forces. The order directed to the OKW, if you will, referred in all cases to the elaboration of some desire expressed by the Supreme Commander and to the purely external act of transmitting the finished idea without having authority of expressing an opinion thereon. It must be assumed that the Prosecution, perhaps influenced by the defendant's rank of Field Marshal, did not appreciate correctly this position of the Defendant Keitel. This rank had no relationship to the real authority of the defendant to issue military orders. One is inclined to imagine that a Field Marshal is a military commander. However, as we have seen, the Defendant Keitel had no command authority whatsoever.

Field Marshal Von Blomberg, whose testimony has been submitted to the Tribunal by the Prosecution, defines the position of the Defendant Keitel as *Chef du Bureau*. This definition is materially correct. A *Chef du Bureau* has to see to it that the bureau which he directs operates properly; that the affairs are correctly and promptly attended to by the competent officials. But he does not participate in the final decisions deemed correct by his superior, in this case the Supreme Commander of the Armed Forces. If this principle holds true in general, it is especially true here. It is known that Hitler did not accept any advice from Keitel concerning military decisions. This has been proved by the evidence, particularly by the testimony of General Jodl.

The Defendant Keitel has clearly outlined in Affidavit Number 8, called "Coordination in the State and in the Armed Forces," his activity and that of the OKW. The affidavit gives an idea of the difficult and thankless work of the Defendant Keitel. It consisted mainly of a co-ordination of the desires and needs of the Armed Forces' branches. It consisted, furthermore, in reconciling divergencies as they arose and in the struggle against Hitler's negative

attitude toward any proper procedure, that is to say, through the competent departments.

In every branch of the Armed Forces there exist interests which differ from the interests of other branches and which cannot be entirely satisfied; sometimes they even oppose each other. This is true especially for the replacement of personnel, but also for the supply of everything that is required for special warfare.

The point of intersection of all these factual and personal differences of opinion was the OKW.

If one desires to estimate properly the incontestable fact that the Defendant Keitel was shown hostility and was personally judged unfavorably by nearly all sides, one must note that this fact occurred as a necessary result of the overlapping of factually opposing interests and personal differences of opinion, which Keitel tried to settle by means of co-ordination or mediation, that is, in nearly all cases by means of compromise. No particular personal experience is needed in order to know that the objective mediator will always incur the ingratitude of both parties. The same picture becomes evident in the relationship to the numerous offices which were endowed with special official authorities or which had Hitler's favor and special confidence for personal, mostly Party political, reasons. One must realize these differences and overlapping interests to appreciate the heavy burden involved in Keitel's position and, I might add, in order to judge correctly the significance of his position.

It is difficult to realize the special relationship between the leadership of the Armed Forces and the political sector because the functions of Supreme Commander of the Armed Forces, of Reich War Minister and of head of State were from 4 February 1938 all embodied in the person of Hitler.

Therefore, since 4 February 1938, complete accord existed between the political leadership and the highest leadership of the Armed Forces since both powers resided in one and the same person.

The assumption of the Prosecution that the chief of Hitler's military staff was closely connected with his superior Hitler and must therefore also be held responsible for political questions, if not as the perpetrator, then in some form as provided in Article 6 of the Charter, is erroneous.

In this connection there is no need to enter into the hierarchy of the Führer State and the binding character of the Führer order. The military hierarchy is older than the National Socialist ideology; moreover it must be stated and taken into consideration that the introduction of the absolute Leadership Principle into the Armed Forces signifies the final elimination of all efforts which could perhaps be regarded as democratic in a certain sense, or in any case

as a restraint on the dictatorial appetite of Hitler. In this connection I refer to the affidavit of Keitel, Document Book 2, Number 9, "The OKW and the General Staff." The rigid application of the Leadership Principle, judged retrospectively, gradually adulterated the healthy military principle of obedience into immoderate militarism. This found its expression, among other things, in the prohibition of all criticism, from the highest authorities to the lowest. I refer you to the speech made by Hitler in the Kroll Opera House in 1937 or 1936, also to the critical marginal note—statement of General Winter—in the decree prohibiting applications for release on the part of the generals in 1938, and finally to the removal of the Supreme Commander of the Armed Forces and the War Minister.

It cannot and shall not be denied that the Defendant Keitel was absolutely in favor of the Leadership Principle in the leadership of the Armed Forces and that the essay "Foundations of the Organization of the German Armed Forces" (L-211) can be regarded as a contribution to the conduct of a future war—not, however, that an actual war was anticipated at that time or that it was the reason for this essay.

What does this mean in regard to the Defendant Keitel? Anyone recognizing the Leadership Principle as being militarily correct must act accordingly. Professor Jahrreiss has stated that the Leadership Principle, like every other political system, is not absolutely good or bad, but that everything depends on the manner and methods used in applying it.

Keitel has a military background and favors the Leadership Principle for the field he knows. According to this principle the responsibility lies completely with the one who has authority to command. While the Leadership Principle in fact hardly underwent any change in the civilian areas where it was also applied, though superficially, this principle necessarily made itself felt much more strongly in the military sphere, particularly in the relationship between the commanders-in-chief and their chiefs of the General Staff.

Formerly the chiefs of the General Staff had been the really responsible commanders, now they became the operational assistants to the commanders-in-chief. In the formulation of orders they were "collaborating advisers" in the field of strategic operations, for which these officers had been especially trained. Keitel was neither a commander-in-chief nor a chief of the General Staff; he was the chief of the military chancellery under Hitler, a soldier and an administrator of war-ministerial duties, therefore a "minister," claims the Prosecution.

One should not refer in this Trial to formal distinctions when the real functions give another picture. This is particularly important in the case of Keitel. It should be determined what he actually was and how he acted in reality.

The dual position created by the decree of 4 February 1938 has led to an erroneous conception of Keitel's functions. We assume that Hitler dissolved the Reich War Ministry because he no longer wished to have a War Minister; in spite of the fact that on 4 February 1938 a considerable number of functions up to then handled by the Reich War Ministry had been assigned to the individual Armed Forces' branches, there were a number of functions which had to be retained and administered in the OKW.

But taking into account the idea of an intended strict concentration of functions pertaining to the conduct of the war, Keitel was unable to deal even with those on the basis of complete authority and according to his own judgment, but had to present the demands of the Armed Forces and co-ordinate the Armed Forces' affairs with the tasks of the other ministries.

It cannot and will not be denied that this concentration of duties in the person of Hitler was impracticable. Thus, a huge amount of preparatory and executive work rested with Hitler's military staff, whose Chief of Staff was Keitel. Hence, it was also responsible, although not with reference to important questions, especially those of a fundamental nature. It was, of course, a matter of judgment to what extent the Defendant Keitel considered matters essential and fundamental and submitted them. But the evidence showed that when in doubt about matters, after conscientious examination, Keitel was inclined to present them rather than to make his own decision about them.

The sources from which Hitler obtained his news, through Himmler, Bormann or some other way, were so intricate that Keitel had no way of knowing whether Hitler had the information that seemed to him to be important. To avoid the unavoidable discussions afterward with Hitler who, being distrustful of everyone, always took it for granted that people would intentionally conceal things from him, Keitel was anxious not to leave himself open to the reproach of having omitted anything. A characteristic example is the case of the mass escape of 80 R. A. F. officers from the POW Camp Sagan.

Here the point is simply to show that Keitel in his capacity as guardian of the actual war functions which still remained in the OKW, held no position as a minister. Here, too, he was the *Chef du Bureau*, the head of the military chancellery, a position which is also held by the chief of a ministerial office, or even a state secretary. I wish to refer again in this connection to Dr. Lammers'

statement, and to the affidavits of Admirals Raeder and Dönitz, which I have already mentioned repeatedly.

The text of the Führer decree of 4 February 1938 shows that Hitler also wished to make this clear. If Hitler had not had the definite desire to exclude everyone else from a responsible, and perhaps for him uncomfortable function in the highest military sector, he might have given Keitel at least the authority to take part in Cabinet meetings. In the Führer decree in which the Commanders-in-Chief of the Army and Navy as well as Keitel had been given the "rank" of a Reich minister, it was explicitly ordered that both commanders-in-chief should be entitled to take part in Cabinet meetings. The fact that this was decreed simultaneously is a convincing *argumentum e contrario*. It proves that Hitler did not wish to give his Chief of Staff of the OKW an opportunity to present his own opinions and possible doubts before the Cabinet. Hitler gave the Defendant Keitel the "rank" of a Reich minister for the purpose of enabling him to carry on direct negotiations with the departmental ministers. Had Keitel not had the rank of a Reich minister, he would have been limited to conferences with state secretaries and the like, and thus be very much handicapped in carrying out the Führer's orders and his tasks.

It is in error, therefore, that the Prosecution has classified Keitel as a Reich minister "without portfolio." He was not a minister, nor a member of the Reich Government. State Secretary Stuckart in a document submitted to the Prosecution has listed all members of the Reichsregierung. Keitel is not among them; he is mentioned in this document only as the holder of one of the highest offices.

Now, the Prosecution has not limited the term Reichsregierung to membership in the Reich Cabinet, but considered other committees as part of the Reichsregierung, too. It would seem, therefore, as if the Prosecution looked upon the legal structure based on German law as irrelevant. Pursuant to Appendix B to the general bill of Indictment, the Reichsregierung in the sense of the Indictment is composed of:

1. Members of the regular Cabinet after 30 January 1933, the day Hitler became Chancellor of the German Republic. The expression "regular Cabinet" used here includes: Reich ministers, that is, heads of departments of the Central Government; Reich ministers without portfolio, ministers of State with the function of Reich ministers, and other officials entitled to participate in the Cabinet meetings.

2. Members of the Ministerial Council for the Defense of the Reich.

3. Members of the Secret Cabinet Council.

Regardless of the individual responsibility of every defendant the Tribunal must examine whether the concept of a "Reich Government" as defined by the Prosecution is correct, that is, practical; whether, as to the composition of this group, the Prosecution's concept of a "Reich Government" appears justified. In any case it is not sufficient to accept as correct the assertion of the Prosecution in this respect.

I assume that my colleague Dr. Kubuschok will enlarge on this during his case.

THE PRESIDENT: Dr. Nelte, the Tribunal feels that you are taking a very long time over this question of whether Keitel was—what his exact position was.

DR. NELTE: I believe, Mr. President, that the Prosecution also took a great deal of time to make clear what position Field Marshal Keitel occupied in their opinion. He is not here as Field Marshal, but as the Chief of the OKW.

THE PRESIDENT: Well, if they have, I must confess that I have forgotten. It seems to me and the Tribunal generally that you are taking up far too long on this topic. You have got many other topics which are of very great importance to the defendant, and you have already been speaking for several hours, and you occupied a large number of pages in order to try and define what Keitel's position was. I thought you might be able to cut it down.

DR. NELTE: I shall try.

I have explained that Defendant Keitel did not belong to Group 1; that is to say, that he was not a minister.

He was neither chief of a Government department, nor a Reich minister without portfolio, nor a state minister having the functions of a Reich minister, nor an official who was entitled to attend Cabinet sessions.

In the hearing of evidence it was proved that despite the Führer Decree of 4 February 1938 there never existed a Secret Cabinet Council; that such council was never set up; that it never held a session; and that no persons involved ever received a commission. Thus, it is proved that the defendant was also never a member of the Secret Cabinet Council.

It is true that Keitel was a member of the Ministerial Council for the Defense of the Reich. Witness Dr. Lammers has confirmed that the fact of his becoming a member of the Ministerial Council for the Defense of the Reich did not change Keitel's official position, and especially did not make him a minister. In his affidavit of 25 November 1945, Codefendant Dr. Frick says that Keitel worked in the Ministerial Council for the Defense of the Reich as "liaison man."

Although he is not listed among the members of the Reich Cabinet, Keitel's capacities as a member of the so-called "Dreimänner-Kollegium" (Three Man College) and as a member of the Reich Defense Council have been mentioned by the Prosecution. I believe I may refer to the result of the hearing of evidence. It was shown that a Three Man College as a Government committee never existed, and that the Reich Defense Council, after the unpublished Reich Defense Law of 1938, never held sessions, or in any case that it never held conferences or passed resolutions.

In order to clarify the Defendant Keitel's responsibility and competence it is necessary to analyze the concept of OKW. I ask that this statement be not considered a theoretical and therefore superfluous discussion. The very fact that the Prosecution makes a sweeping and fundamental assertion...

THE PRESIDENT: Dr. Nelte, may I ask what you have been doing if you have not been analyzing the concept of the OKW?

DR. NELTE: Up to now I have explained Keitel's position as Chief of the OKW. In statements on Page 74 and the following pages I wanted to explain to you that the Prosecution, and others as well, have talked about the OKW: and "OKW" is a word which has three different types of significance.

Mr. President, if you will be good enough to permit me to submit this in its written form, and if you would consider it as having been presented in Court, then I am willing to leave out the pages up to 77 and submit them to you. In any case, it appears to me to be an important part of the explanation regarding the interpretation of the word "OKW," and the fact that this is not identical with Keitel is particularly important.

May I do that?

[The President nodded his assent.]

In that case, then, I shall continue at Page 77.

In order to clarify the Defendant Keitel's responsibility and competence it is necessary to analyze the concept of OKW. I ask that this statement be not considered a theoretical and therefore superfluous discussion. The very fact that the Prosecution makes a sweeping and fundamental assertion, and that the French Prosecution undertakes a pointedly legal examination of the question as to the office in which each defendant was active with regard to the counts he is charged with, makes it my duty to clear up a mistake made by the Prosecution. However, this mistake is all the more excusable, because not only foreign countries but large groups at home, even within the Armed Forces, did not know what OKW meant. It became a popular collective term for the supreme command of the Armed Forces without anybody taking the trouble to find out who and what was behind the three words "Oberkommando der Wehrmacht." This corresponds to the law of inertia governing the association of human beings, to the almost pathological mania to abbreviate titles of military commands. Since, furthermore, the communiqués of the High Command of the Armed Forces were published daily, and all announcements referring to war events began with the words: "The High Command of the Armed Forces announces," not only did these words become impressed upon the public's mind, but also the conception that the "High Command of the Armed Forces" was the supreme military command. The conception would be correct had the words OKW not been translated with Oberkommando der Wehrmacht (High Command of the Armed Forces) but rather as Supreme Commander (Oberkommandierender) of the Armed Forces. It was Hitler alone, as "Supreme Commander of the Armed Forces," who was the

incarnation of what everybody imagined the OKW to be, namely, the central military planning and command headquarters and thus the supreme command and executive headquarters for all military matters. In this respect the OKW was synonymous with Hitler as "Supreme Commander of the Armed Forces," which was his official title.

If, in naming the headquarters of the supreme commander, it was desired to avoid the title "Supreme Commander of the Armed Forces" which was in accordance with the prevalent Leadership Principle, the title "Oberkommando der Wehrmacht" was bound to be used. This headquarters comprises the supreme commander himself, that is, Hitler, and his assistants, his staff.

The Führer Decree of 4 February 1938 bearing the heading: "Decree concerning the Command of the Armed Forces" resulted, through the unfortunate and vague nature of its wording, in an interpretation that the "Chief OKW" mentioned therein was the chief in the sense of director, of the High Command of the Armed Forces. It is true that it follows from the decree that "Chief OKW" is to mean "Chief of Staff OKW," that is chief of Hitler's bureau in his capacity as Supreme Commander of the Armed Forces. But since then, every time that people have spoken and speak of the OKW, everybody thinks of Keitel without examining whether the expression means: OKW-Oberkommandierender (Supreme Commander) of the Armed Forces, OKW-Headquarters of the Supreme Commander of the Armed Forces, or OKW-Staff of the Headquarters of the Supreme Commander of the Armed Forces.

The Prosecution makes no distinction in this respect, just as the German agencies were unaware of the exact difference, or at any rate paid no attention to it. They, just like the Prosecution now, thought it right to claim the OKW's jurisdiction and responsibility for anything having a connection with the Armed Forces or members of the Armed Forces. From this viewpoint to claiming Keitel's personal jurisdiction by virtue of the title "Chief OKW" there is only a short step. For Germans and foreigners the recollection of the first World War was a contributing factor in forming this opinion, which was not based on an examination according to constitutional law. The relationship between Hitler and Keitel prompted the comparison with the relationship between the Kaiser and Von Hindenburg. This comparison had results for the Defendant Keitel which are shown at this Trial. Without thinking of the fundamental differences between Von Hindenburg as Chief of the Great General Staff which existed until 1918, and Keitel as the chief of Hitler's military executive staff, and without knowing the field of Keitel's jurisdiction and what possibilities Keitel had as regards Hitler's plans and measures by virtue of the functions assigned to him, comparisons were made which gave rise to doubts about him. When furthermore—after the catastrophe had set in—Keitel once again came to play an outwardly similar part as representative of the Armed Forces when he had to execute the signature for unconditional surrender, this comparison also turned out to his disadvantage. People do not ask about jurisdiction when things go badly, but look for a guilty person and the guilty person is judged by external appearances. Quite naturally the great attention paid to Keitel's person at this Trial can largely be traced to the fact that after Hitler's death Keitel came into the public eye.

In order to see clearly what part Keitel really played, and what share he had in what happened, I now wish—after investigating his legal competencies—to examine what actual influence he had upon the development and carrying-out of the measures, the effects of which constitute the subject of this Trial. From everyday experience we know that it does not matter so much what a person is supposed to be in a particular position, but what he has made of that position by virtue of his personality. I believe I may say that in the course of this Trial the personality of no other defendant has been judged in such varying and contradictory ways as that of the Defendant Keitel.

Decisive for Keitel's material responsibility is his actual position in the tug-of-war with and around Hitler, his effective influence

upon that group, and thus on those circumstances as a whole which could have influenced the operations of Hitler's headquarters in the military field.

I shall deal with this fundamental topic when taking up the charges made by the Prosecution against Keitel and other defendants on the strength of the cross-examination of Dr. Gisevius, in other words, after the presentation of evidence for Keitel has been completed.

In view of the comprehensive scope of Justice Jackson's questions and the answers given thereto by Dr. Gisevius, the testimony of Dr. Gisevius has become of tremendous importance in the case of the Defendant Keitel. Had Dr. Gisevius' statements about Keitel been true—that is, statements made by him on the basis of information, in most instances in terms of conclusive findings—the Defendant Keitel could not have told the truth during the presentation of evidence. The importance of that fact becomes evident when it is considered that a negative opinion on truthfulness would of necessity destroy Keitel's defense, which in its essence draws on the subjective aspect of facts as a whole. In view of this fact and the importance of the testimony of Dr. Gisevius also for other defendants, it becomes my duty to explain the contrast between Keitel's answers and the testimony of the witness Gisevius.

Experience teaches us that dead witnesses are the best witnesses, because their purported utterances cannot be directly refuted. Evidence on the strength of information belongs to another group of statements which almost defy refutation. The testimony of Gisevius combines both possibilities, in that he bases his testimony primarily on information obtained from witnesses who are dead. Justice Jackson used Dr. Gisevius as star witness in his comprehensive attack on the Defendant Keitel. After the completion of the presentation of evidence against Keitel, he did not bring forward one individual circumstance, but an indictment on all Counts and a general judgment on Keitel's answers.

The counterevidence is concerned with proving the objective incorrectness of facts based upon information obtained from certain individuals and further, with establishing proof of the unreliability of the information. I call to mind the words which the Defendant Keitel said under oath upon completion of his direct examination by me while in the witness box:

"One may hold it against me that I was wrong and made mistakes, that my attitude toward the Führer Adolf Hitler was wrong and weak, but it should not be said of me that I was a coward, that I was untruthful, and that I was disloyal."

I sum up in condensed form the charges made against the Defendant Keitel during interrogation by the Prosecution, as follows:

(1) Keitel built an impenetrable ring round Hitler so that the latter could be told nothing.

(2) Keitel failed to pass on to Hitler reports he had received from Canaris whenever they concerned atrocities, crimes, and the like, or he gave orders to modify them.

(3) Keitel had a tremendous influence on the OKW and the Army.

(4) Keitel threatened his subordinates, when they made political statements, that he would not protect them; he even said that he would turn them over to the Gestapo.

Dr. Gisevius says in one part of his statement that Keitel had no influence over Hitler. He exonerates Hitler by explaining that Keitel had formed a ring round Hitler, in order that the latter should be told nothing. The British and American Prosecution in their Indictment called Keitel a powerful staff officer who had exerted great influence over Hitler; the French Prosecution described Keitel as a willing tool of Hitler; the German generals called him a "yes man" who could not carry anything through; and now Keitel grows, according to the statement of Dr. Gisevius, into a real handyman and buffer for Hitler, who hid from the latter anything bad, who submitted to him only what he saw fit, and permitted no one to approach Hitler.

To assert that Keitel blocked access to Hitler, can only be maintained by somebody who did not know the conditions prevailing around Hitler. Before the war Keitel worked in Berlin in Bendler Strasse, while Hitler was in Wilhelmstrasse. Keitel came perhaps once a week to report, or on special order. At that time, on account of the distance, it was in fact impossible for Keitel to exert any influence over access to the Führer. It was equally impossible when Hitler was at the Berghof near Berchtesgaden for weeks at a time, while Keitel remained in Berlin.

At the beginning of operations, Keitel was with Jodl and the Armed Forces Operations Staff at the Führer's headquarters. Here also they were separated. Keitel did not sit in Hitler's anteroom, but rather in other buildings or barracks. He came from time to time with General Jodl to the conference on the situation, in which, besides Hitler, some 15 or 20 officers of all three branches of the Armed Forces took part. Apart from the conferences on the situation there was no personal contact. When Hitler wanted Keitel for anything he sent for him. Personally and individually there was closer contact in Berlin between Hitler and his adjutants, the Chief of the Party Chancellery, the Chief of the Presidential Chancellery,

and the Chief of the Reich Chancellery. Keitel not only could not decide who should see Hitler, he also could not possibly prevent anybody going to Hitler.

Hitler's sources of information were the responsible heads of each department; it was occasionally not clear whence Hitler obtained his information, as I have already stated. Gisevius did not know these conditions from his own experience; he himself was never near Keitel, who never saw or spoke to him and did not know his name. When he gave his opinion here, he could only base it on information given him by Canaris, Thomas, and Oster.

General Jodl has been heard regarding this question. He certainly is the best witness in this matter, since he, as well as Keitel, lived in direct proximity to Hitler and therefore could form his own judgment. He stated concerning this matter:

"Unfortunately, it was impossible to keep things from Hitler. Many channels of information led directly to Hitler."

Upon my interrogation, at the suggestion of the Tribunal, Jodl fully confirmed that what Keitel had testified was quite correct, and that what witness Gisevius stated in this respect was, in general, merely figures of speech.

The Codefendants, Admirals Raeder and Dönitz, have confirmed that the allegation of the witness Gisevius that Keitel was able to keep the commanders-in-chief of the branches of the Armed Forces away from Hitler is false. If, however, this was not the case, it follows that the way from the branches of the Armed Forces to the Führer was open at any time. Through the hearing of witnesses it was also established that apart from Jodl, the Chief of the Armed Forces Operations Staff, Canaris in particular had direct access to Hitler. Thus, the accusation of the witness Gisevius that Keitel had formed a ring round Hitler is proved false.

The witness Gisevius has declared that reports were submitted to Keitel by Canaris about atrocities in connection with deportations, extermination of Jews, concentration camps, the persecution of the Church, and the killing of insane persons, all of which Keitel withheld from Hitler. The same is alleged about the reports of General Thomas, Chief of the War Economy Office, the purpose of which was to inform Hitler about the war potential of the enemy and make him listen to reason.

Concerning Admiral Canaris' reports, it must be said that as chief of espionage and counterintelligence he naturally delivered regular reports which concerned the conduct of the war, including the conduct of economic warfare. It is affirmed that reports were submitted on subjects which belonged neither to the jurisdiction of the Counterintelligence Office nor to that of the OKW. It has

been proved that Hitler took strict care that every worker confined himself to his own special field, and it was particularly forbidden for military offices to concern themselves with political affairs.

Keitel has declared under oath that he knew nothing about the atrocities, and especially the extermination of the Jews and the concentration camps. This is in absolute contradiction to the assertion of the witness Gisevius that Canaris submitted reports to the Defendant Keitel on the above-mentioned subjects.

One can assert that reports of any kind whatsoever were delivered to Keitel without fear of being contradicted, especially when one has no fear that these reports will be found. For if they are not delivered they cannot be found, because they do not exist. Now Gisevius has declared that he collected documents from the beginning which contained incriminating material. Is it not remarkable, under these circumstances, that up to now none of these reports have been produced? As far as they were available at the OKW, they have been used in the accusation and as evidence. Can it be sufficient under these circumstances for a witness to declare that he knows from third parties that such reports were submitted to Keitel?

Canaris, because of his particular activity, which took him constantly to foreign countries on personal secret errands for Hitler, had access to Hitler at all times. He would thus have had an opportunity to go to Hitler immediately if he had had such serious misgivings of conscience, as Gisevius has declared he had. Why did he not do so?

Now, Gisevius, who in general has pronounced comprehensive and damning accusations, has, luckily for Keitel, at one point of his deposition made a positive declaration that permits of objective verification. I quote:

"... I believe that I have still two examples to mention, which to me are particularly characteristic: First, the attempt was made by all possible means to induce Field Marshal Keitel to warn Hitler against the invasion of Holland and Belgium, that is, to inform Hitler that the information submitted by Keitel about alleged violations of neutrality by the Dutch and Belgians was false. The Counterintelligence Office was to prepare reports incriminating the Dutch and Belgians. Admiral Canaris at that time refused to sign these reports. I request that this be verified. He told Keitel repeatedly that this report which was ostensibly made by the OKW was false. This is an instance where Herr Keitel did not transmit to Hitler what he was supposed to have transmitted..."

I have submitted to General Jodl, here on the witness stand, Document 790-PS, which refers to the case of the *White Paper* concerning violations of neutrality by Holland and Belgium. Jodl testified literally, and I quote:

"... I understand the question, and would like very briefly to state the facts how it was possible—if disgust does not choke me. I was present when Canaris came to the Field Marshal in the Reich Chancellery with these report notes and laid before him the draft of the Foreign Office's *White Paper*. Field Marshal Keitel then looked it through, above all paying attention to the comments which Canaris had made at the request of the Foreign Office, namely, that the reports were perhaps still somewhat in need of improvement, that he should confirm the fact that a military operation against Holland and Belgium was absolutely necessary, and that, as is expressed here, a final really striking violation of neutrality was still lacking. Before Canaris had said a word, Field Marshal Keitel threw the book on the table and said: 'I refuse to do this, why should I take any responsibility at all for a political decision? In this *White Paper* there appear word for word, true and correct, the very same reports that you, yourself, Canaris, brought to me.' To this Canaris said: 'I am entirely of the same point of view. It is, in my opinion too, entirely superfluous to have this document signed on the part of the Armed Forces, and the reports that we have here are altogether quite sufficient to prove the violations of neutrality which have taken place in Holland and Belgium.' And he advised Field Marshal Keitel not to sign it at all. That is the way it happened. The Field Marshal then took the paper with him and I do not know what happened subsequently..."

Keitel did not sign the *White Paper*. Therefore in the only verifiable case a clear proof is obtained of the incorrectness of Gisevius' testimony.

According to the statement of the witness Gisevius, Keitel exerted a tremendous influence on the OKW and the Army. These words, without any presentation of concrete facts, are only a phrase in the mouth of a man who had no contact whatsoever with Keitel. They are refuted by the statements of Reich Marshal Göring, Admiral Dönitz, and Admiral Raeder. Jodl has defined this statement as merely a figure of speech.

Insofar as the witness speaks of his tremendous influence on the OKW, it must appear questionable what he really means. Naturally, Keitel as Chief of Staff had influence in the OKW, influence which resulted from his position, which I have already discussed. His position in relation to his subordinates will be taken up later. The

important thing, however, is whether Keitel had a decisive and culpable influence on what happened. That this was not the case has even been confirmed by Gisevius, and also the fact that he had no decisive influence on the branches of the Armed Forces; it has also been established by the results of the testimony.

A particularly damaging charge against the Defendant Keitel was "that instead of placing himself in front of his subordinate officers to protect them, he threatened to hand them over to the Gestapo."

In contradiction to this it has been established that no chief of office in the OKW was dismissed in the years up to 1944; furthermore, until 20 July 1944, the day of the attempt on Hitler's life and the transfer of the judicial power in the home Army to Himmler, no officer of the OKW was turned over to the Police. Admiral Dönitz has confirmed that the branches of the Armed Forces and the OKW were very scrupulous in maintaining the privileges of the Armed Forces in relation to the Police.

The Court has also seen here how General Jodl spoke about his relationship to the Defendant Keitel. I think this remark has a special importance, not only because Keitel lived on companionable and friendly terms with his official subordinate, General Jodl, during their long years of co-operation. As natural as that may appear, the less natural it is if one reflects that Jodl, in spite of his officially subordinate position, in reality became more and more Hitler's sole strategic adviser. What this means, considering the preponderance of the operational tasks in the war, has been convincingly demonstrated here by General Jodl.

If Keitel accepted this without jealousy, freely acknowledging the superiority of his subordinate Jodl in this domain, this proves that Keitel possessed a trait of character which refutes the information derived from obscure sources by the witness Gisevius.

The proven fact that Keitel lived on friendly and companionable terms with his subordinate Chief of Office, Canaris, is also in contrast with the assertion to the contrary by the witness Gisevius.

In this connection it is necessary to refer to the fact, not submitted by Keitel but testified to by Jodl without Keitel's consent, that the latter supported and helped Canaris' family after his arrest. I only refer to this to refute the perhaps most serious personal reproach, according to which Keitel did not behave decently toward his subordinates and abused his superior position—which was especially powerful in military life—even to the point of threatening them with violence.

In reality, according to Gisevius' evidence, Admiral Canaris not only played a double role officially, but also with respect to the Defendant Keitel; in exploiting the friendship shown to him he

expressed a similar attitude, whereas among his own group he openly spoke in a spiteful way about Keitel.

Finally, in this connection reference must still be made to the evidence of the witness Von Buttlar-Brandenfels (Session of 8 May 1946) from which it is clear that Keitel always treated the officers of the Armed Forces Operations Staff kindly.

The witness mentions a quarrel between himself and Lieutenant Colonel Ziervogel on the one hand and Himmler on the other, in which Keitel, to whom the incident was reported, immediately and energetically intervened in writing to protect his subordinates against Himmler. The affidavit of the Chief of Office in Canaris' office, Admiral Bürckner, to which I refer, testifies in the same way to Keitel's kindly attitude toward his subordinates. At any rate, it must be said in clarification that Keitel many times had occasion to speak energetically to his office and department chiefs.

I shall then continue by explaining that officers did not generally concern themselves with politics, and that only when the situation became worse did they make political information the subject of their argumentation. And I add that Keitel has, in fact, defined his attitude with words based on the assumption that the soldier in war must declare his faith and obedience, and if Keitel ever heard anything about such matters, he would reprimand these officers.

Dr. Gisevius himself has said here that it was strictly forbidden for officers to concern themselves with political questions. The Defendant Keitel has stated that Hitler several times categorically declared the politicians were not allowed to concern themselves with military questions because they knew nothing of them; neither were the generals allowed to concern themselves with politics, because they knew nothing about that either.

Hitler's fundamental attitude in this question is shown in the decree dating from 1936, or the winter 1936-37, by which political reports to or for the Armed Forces were prohibited.

In logical execution of Führer Order Number 1, Hitler not only wanted an absolute separation of the fields of activity, but also that no office should ever be informed of the proceedings in another office. It was only a logical consequence that Hitler strictly prohibited any discussion of political questions by officers, and that the Defendant Keitel, while carrying out this prohibition which he himself approved, charged his officers, when there was reason to do so, to refrain from such discussions.

It is obvious that this was not a question of an academic discussion of political problems, but of an attitude revealing itself as negative toward the position of the Supreme Commander of the Armed Forces. As long as there were successes, there was no question of this. After Stalingrad one could hear expressions of opinion, which at that time were characterized by Keitel as the expressions of a weak nature.

In accordance with his fundamental attitude that a soldier in wartime should show unconditional and natural loyalty toward his people and fatherland as represented by the head of the State and Supreme Commander of the Armed Forces (and to an extreme degree when reverses set in), Keitel was actually ruthless in condemning such expressions. He did not wish even to cause the impression that he was of a different opinion than his superior, that he personally had fears.

I now continue at the bottom of Page 19:

Keitel did this with "words." That does not mean that this was mere camouflage which did not reflect his inner attitude, but it does mean that the manner, perhaps often rough and harsh, in which the Defendant Keitel spoke to his officers, more than once led to an officer being punished or disciplined.

Dr. Gisevius, however, perhaps wanted to suggest that Keitel had dealt with his subordinates in the OKW in a morally reprehensible way.

He did not know the Defendant Keitel personally and therefore cannot give a personal opinion; he had to rely on the information of officers who were strongly opposed to Keitel, without such opposition ever becoming apparent. No one ever contacted Keitel to entice him to join in the conspiracy. That is plausible since the conspirators, knowing the character and the soldierly attitude of Keitel, could not expect any success. Since on the other hand Keitel was completely innocent, which does not need to be proved, the following situation results:

Keitel knew nothing of conspiratorial activities; what he did encounter appeared in the shape of technical objections or personal remarks which were dealt with by Keitel officially and in a cordial manner, as by a superior of whom the subordinates say that he barks but does not bite. On the other side the so-called conspirators had to consider everyone a foe who was not in favor of their own aim. Every move and every word was weighed and critically judged. As every conspirator hopes for the success of his revolutionary activities he has to gather evidence for the coming reckoning. This is, of course, a task for a future police minister and home secretary.

From an impartial estimation of the facts, verified by the evidence presented, it is shown that the accusations arising from the testimony of the witness Gisevius are not correct. But the picture would not be complete if light were not thrown on the personality of the witness Gisevius by his own evidence. This judgment is made up from two factors:

- (1) The career and the position of the witness.
- (2) The trustworthiness of his information.

On Page 92 of my text I have stated in detail the functions Dr. Gisevius carried out. I have not emphasized anything which, from my point of view, might impeach him in any way for having given the evidence here which you all have heard. I have only impartially confirmed the following:

(a) He evaded military service through falsified papers put at his disposal by Oster.

(b) He lived in Germany during the whole time from 1933 without restriction of liberty, and remained in office up to 20 July 1944.

(c) He was an official of the German Reich and was in its pay from the middle of 1937 to the beginning of 1939 with the exception of leave.

(d) He was Vice Consul of the Reich in Switzerland from 1943 in the Consulate General at Zürich, placed there through Canaris as

intelligence agent, and was naturally paid for it. At the same time he was in touch with the enemy's intelligence service.

(e) He had since 1933, when he worked in the Gestapo, exact knowledge of all the horrible happenings and knew what consequences could arise there for the German people.

(f) A special circumstance, which shows the witness Dr. Gisevius in his true light, is the advice, or the suggestion, which he gave to the experienced bank specialist, Dr. Schacht, that he should allow inflation to set in and thus get the control of matters into his own hands. This suggestion leaves only two possibilities: either complete ignorance of the national economic importance and social effect of an inflation, or else a boundless unscrupulousness which completely disregards the fate of employees and workmen. An inflation brought about knowingly can be described only as a crime against the people. Schacht described it as a catastrophe. Schacht answered him, according to the record: "You want the catastrophe; I want to avoid it."

In order to judge the reliability of the statements by the witness Gisevius before this Tribunal, I must refer to the book submitted by the witness as evidence: *To the Bitter End*. This book is also a "statement" of the witness Gisevius.

To err is human, but when in the year 1945, after the collapse of Germany, a book appears in which facts and occurrences are presented of historical and, for those personally involved, of moral and even criminal importance, the incorrectness of which has become obvious in the meantime, then the error is unforgivable and reference to false information is no longer an excuse.

Of the many inaccuracies contained in this book I will only point out briefly the four which were established before this Tribunal through the cross-examination by Dr. Kubuschok, which refer to the Defendant Von Papen, and I beg you to take official cognizance of it.

(1) Dr. Gisevius has asserted in his book that Von Papen did not resign notwithstanding the events of 30 June 1934. It is established that Von Papen did resign and that the public announcement was simply contemplated to be made at a later date.

(2) Dr. Gisevius asserted further that Von Papen took part in the Cabinet meeting which he describes with exact details and when the law was resolved that the measures taken on 30 June 1934 were correct in the interest of the State. Actually Von Papen has never taken part in this meeting.

(3) Dr. Gisevius asserted finally that Von Papen went to see Von Hindenburg, but had not raised a sufficient protest against the measures. Actually what happened was that the attempts of Von Papen to visit Von Hindenburg were frustrated, therefore he failed to see him.

(4) The assertion in the book of Dr. Gisevius that Von Papen took part in the meeting of the Reichstag in which the measures of 30 June were approved, must equally be labeled incorrect information.

It could not be termed an unfounded reproach if such a statement were to be described as dubious and the author as unreliable. It is

difficult for me as a German defense counsel to deal calmly with this problem. The statement of Gisevius reveals the entire tragedy of the German people. It is for me a proof of the weakness and of the decadence of certain German circles, who played with the idea of revolt and high treason without any feeling for the distress of the people. They were a higher level of future ministers and generals without the backing of the large masses of our people, the working classes, as Reich Minister Severing has declared here very clearly.

Mr. Justice Jackson has used the word "resistance movement" in connection with the examination of the witness Gisevius. We have often heard during the progress of this Trial about dauntless, brave men and women, who fought for their country, and have suffered and died for it. They were our enemies. But no one who tries to judge these things impartially would deny them acknowledgment of their heroism. But where do you find this heroism in the group around Gisevius? If one has read his book *To the Bitter End* and has heard him here, one looks in vain for a readily self-sacrificing man. Even the late deed of a Stauffenberg lacks heroism, because it lacked the resolution of self-sacrifice. Gisevius, up to 1938—when there might still have been time to succeed in holding back the wheel of fate—always speaks about negotiations, conferences; but all these men wished the others, that is, the generals, to act. If one considers the knowledge of affairs which Gisevius had as member of the Gestapo, and all his friends had; if one takes into account the realization of the great danger hovering over the people—then the decision to take action should not have been in doubt for an instant for patriotic men, as the members of the group claimed themselves to be. But what did they do? When the leaders of the army hesitated or refused, they did not think of taking action themselves, but turned to the foreign countries.

One would have full understanding for those Germans who were treated in an outrageous manner or who had been thrown out by the Government, particularly when they had no means or ways to undertake direct action. But the Gisevius group had such means and possibilities. Men in the most influential key positions, men in the OKW, in Hitler's closest circle, belonged to them; men who had the possibility to get close to Hitler and to his evil men behind the scenes. Not one of them mustered up courage for action when there was time. What did they do instead? They remained in office, they helped effectively so as to allow crimes such as led to this Trial to be committed.

I should not like to leave any doubt that the fact of the conspiracy in itself is of no importance in the question of credibility to be discussed here. Whoever is a conspirator out of pure motives, who risks his life, in the full realization of the danger which threatens his country, is not only clean, but also deserves the gratitude of the fatherland.

If Gisevius and his friends, who owing to their positions were informed about everything which most Germans only learned of in

all its horror through this Trial, had served their country in unselfish sacrifice, then perhaps we and the whole world would have been spared much distress and suffering.

Admiral Dönitz, who knew Admiral Canaris, the source of information, well, said:

"During the time that he was in the Navy, Admiral Canaris was an officer in whom little trust was placed. He was altogether different from us. We said that he had seven sides to his character."

But, Gentlemen, what does Dr. Gisevius say about Canaris on Page 319 of the book *To the Bitter End*?

"The successor was Canaris, at that time captain in the Navy, quite clever and more cunning than Himmler and Heydrich put together."

On the subsequent pages I have analysed those personalities who have been quoted by Gisevius as being the chief sources of information. I do not wish to go into this in any more detail. We are concerned here with the persons of Canaris, Nebe, and Thomas.

As regards Pages 96 to 103, I shall make the following brief summary. With reference to Canaris, I only want to say that he was living in the closest touch and was very friendly with Himmler, Heydrich, and the Gestapo, although he was supposed to be their sworn enemy. Thomas, who was also allegedly a member of the group from the beginning, was an excellent General Staff officer, and he was an exemplary organizer and untiring worker in the Army Economic Staff under Keitel and later in the Army Economic Armament Staff in the High Command of the Army; you know his publication, 2353-PS. This man was the spirit and the driving power behind rearmament which he, as well as Keitel and others, considered necessary to the extent which he energetically pursued. But he is also the same man who organized the "Barbarossa-Oldenburg Plan" and who later, under the Four Year Plan, became the head of the economic staff of the Plan Oldenburg. The results of that plan need not be explained here by me.

It was General Thomas who, according to very convincing outward appearances, used all his powers for the economic direction of the war, and who, after leaving Speer's division, was not dismissed but was assigned by Keitel to work with the records office so that he could write the book which forms the main point of the Indictment with regard to rearmament. If what Gisevius has said about Thomas is true, then since 1933 he played a double game, and was an opportunist and not a man who can be expected to give impartial information.

The figure of Canaris is almost mystical. This is probably necessarily the case with men who concern themselves with matters which cannot stand the

clear light of day. His position was of great importance for the entire conduct of the war. It is clear that such people must have to the highest degree the confidence of both the political and military leaders. One can judge by the amount of confidence which somebody enjoys whether he is trustworthy. He also enjoyed the confidence of the Defendant Keitel, with whom, as is proven, he associated in a friendly and companionable way, and not only as a subordinate with his superior. Jodl declared that Keitel was much too trusting. Can one believe that such a condition existed for years if Keitel dealt with the alleged reports of Canaris, as the witness Gisevius has testified here, or if he could even have received an order to commit murder from Keitel, as Lahousen would have us believe in the cases of Generals Weygand and Giraud?

Now if Canaris enjoyed such great confidence with Hitler and Keitel, but at the same time also worked authoritatively in Gisevius' group, his character must not only be considered dual, but unreliable and untrustworthy, as well. It is understandable that a person might temporarily display such a dual nature, if it is done for the sake of a higher aim, to serve one's country, to liberate it from a tyrant. However, one searches here in vain for such a serious aim, for a deed which makes the unlawful action appear in a light of greater moral right.

Canaris believed that he could satisfy his revolutionary duty by expressing doubts in the circle of his trusted political associates and raising the severest kind of criticism. He waited, like others, for the generals to act—as an admiral he apparently did not count himself in this circle—while he himself cultivated his confidential relations with Hitler and Keitel. According to the testimony of the witness Gisevius, one must assume that he permitted his political associates to establish contacts abroad.

When did Canaris tell the truth? He was necessarily entangled in falsehood. Did he not have to tell his political associates something, which, in the opinion of the group, looked like activity? Did he not also have to report on what he supposedly had told Keitel? He is the typical example of an overrefined, highly intelligent drawing-room conspirator, protected by the nature of his obscure activity, which to a large extent could not be checked, in whom however the spirit of action was lacking.

Keitel had such confidence in Canaris, and such a liking for him, that he again and again ignored Jodl's various warnings and even until after 20 July 1944 maintained his confidence in Canaris.

Although Canaris was the most bitter enemy of the Gestapo, he worked, certainly not out of conviction, closely and on an astonishingly friendly basis with Himmler and Heydrich. There existed a certain competition; Himmler also had a central intelligence office, which at first concentrated on the domestic sphere, although later, step by step, it expanded abroad. The Defendant Kaltenbrunner testified that this competition carried with it a possibility of friction, which, in view of Himmler's thirst for power, with which Canaris also was familiar, might easily lead to the Counterintelligence Department becoming integrated into the Reich Security Main Office (RSHA). Canaris saw himself and the circle of conspirators endangered. He therefore did something very clever in organizing co-operation, with the result that Himmler covered him in various dubious affairs. For a long time this co-operation functioned well, until the Oster case and the Ankara case afforded the RSHA's foreign intelligence service, organized by Kaltenbrunner, an opportunity to discredit the Counterintelligence of the OKW so strongly that Hitler decreed the transfer of the Counterintelligence Department. What is important in this connection is the fact of Himmler's particular co-operation with Canaris, and the ensuing consequence, resulting with compelling logic, that Canaris at no time could have presented a report which would have seriously incriminated Himmler and his organizations. For if Canaris had presented such a written order to Keitel, he either would have had to refer the report to Hitler or inquire from Himmler and the RSHA respectively. In both cases Himmler would have become informed. The consequence would have been clear. Co-operation would have become enmity, and enmity with Himmler meant the greatest danger for Canaris and his group. I believe that this compelling logic is stronger than any account by the witness Gisevius which concerns itself with alleged statements by Canaris.

Such was the versatility of character in a man whom one may judge at will, but who was neither a conspirator nor can lay claim to credibility.

8 July 46

For an opinion on the character and credibility of General Thomas, the following documents are important: Document 2353-PS (Green File), Document EC-270 and Document EC-271.

(1) Document 2353-PS, entitled "Part A: Work done in the fields of war economy and armaments industry until the beginning of mobilization in 1939" was presented by the Prosecution to prove rearmament. It does furnish this proof, which is not being denied by the Defendant Keitel.

After being taken prisoner, Thomas made a declaration in reference to this work of his which says that after 20 July 1944 he revised his rather critical memorandum on the rebuilding of German war economy in such a manner that in case of need, that is, in proceedings before a German court, it might serve in his defense.

His declaration, which precedes and is attached to Document 2353-PS, is either untrue, in which case it cannot be presented as evidence by the Prosecution, or it is true, thereby raising the question of the credibility of this immediate witness as a source of information for Dr. Gisevius.

On the whole, the memorandum is true. It is also true, however, that Thomas wholeheartedly co-operated not only in rearmament but also in the organization Oldenburg, that is, in economic preparation for war against the U.S.S.R. I refer to Exhibit USA-141 (conversation of 29 April 1941).

Purpose of the meeting: Introduction to organizational reconstruction of the economic sector of the Barbarossa-Oldenburg Plan. There it says:

"He"—the Reich Marshal—"has delegated the task to an economic leadership staff headed by the Chief of the Wirtschafts-Rüstungsamt (Economy and Armaments Office) (Thomas)."

For this task General Thomas thereby became attached to the Reich Marshal as the chief of this entire undertaking. As explained in Keitel's affidavit (Document Book 2, Exhibit Number K-11), Thomas prepared and directed the entire organizational construction of the undertaking.

Is this consonant with the contention of Gisevius, and now also of Thomas, that on principle they were opposed to war, and with their convinced attitude against Hitler? The task which Thomas assumed and organized was unmistakably incompatible with valid international law. At no time did he protest against assumption of this office. The attitude of General Thomas can also be ascertained from Document EC-270, submitted by the Prosecution on 6 May 1946. It is the draft of a letter written on 27 April 1938 by the War Economy Staff (Chief General Thomas), addressed to Department L (National Defense within the Armed Forces Operations Staff); it is not signed by the Defendant Keitel. This involves the struggle for power by Plenipotentiary (GBW) Funk, and Göring as the Delegate of the Four Year Plan. Document EC-271 shows that the aim of General Thomas was to place the entire war economy under the supervision of OKW, that is, under the War Economy Staff which he headed. Under the guise of an interpretation of the decree of 4 February 1938 on "direction of German armament!" he attempted to prevent Funk's subordination to Field Marshal Göring as Delegate of the Four Year Plan; at the same time he also wanted to prevent the plenipotentiary from becoming independent. It was "to be established" (Page 5 of the document, last paragraph of the communication) "that in all questions pertaining to the Armed Forces' supplies, the plenipotentiary was to carry out the instructions of OKW."

This plan did not succeed; nor did Keitel approve it. But from Document EC-270, with special reference to Figures 1 to 9 (Pages 2 to 4) it follows that the endeavor of General Thomas was to extend the scope of his office to that of a General Staff on Economics within the OKW, a plan which Thomas had been pursuing for years already, in opposition to Keitel and Jodl; he is the man, an opportunist and a double-dealer, who claims to have fought against methods he terms corrupt and contrary to international law. The Defendant Keitel admits that Thomas made reports pointing to the scarcity of raw materials; he expressed doubts as to whether armaments would suffice to carry on a war. But these doubts were shared by the generals, especially by Keitel. Generaloberst Jodl confirmed the fact that such reports were submitted to Hitler and Thomas, so that Dr. Gisevius' contention is proved incorrect in that respect too.

But it is worst of all with friend Nebe. The witness Gisevius has described Nebe as one of his most intimate friends who held the

same views as he did. According to the statements of Dr. Gisevius, Nebe had been his friend since 1933 and was thoroughly familiar with the views of the witness. He remained in the RSHA—an organization discussed from many angles here—until 20 July 1944, and in the year 1944 he was in charge of the headquarters of the Special Service (Sonderdienst) for the prevention of the escape of prisoners of war. This is shown by Document USSR-413 submitted by the Prosecution.

To describe this witness—from whom Dr. Gisevius, after leaving the Gestapo, claims to have received important information continuously—it should be pointed out that from 1933 to 1944 Nebe served in the RSHA, evidently to the satisfaction of his superiors Himmler, Heydrich, and Kaltenbrunner—otherwise he would not have stayed in office so long and would not have been promoted to the rank of Police General and SS Gruppenführer.

So while on the one hand for 11 years he carried out the duties of his office with the well-known methods of the Gestapo—which was under Himmler—and later the Kripo, Dr. Gisevius refers to him as his friend and staunch political associate. Now it might be assumed, perhaps, that in the position he held he was able to prevent disaster, possibly even to hold up execution of orders. Document USSR-413, just referred to, shows that Nebe did not do this. In the deposition by Wielen, forming part of the document, the horrible case of the 50 escaped R. A. F. fliers, in which General Nebe, the friend of Dr. Gisevius, was involved, is dealt with.

Wielen states as follows in this connection:

“One day during that time I received, about noon, an order by telegraph from General Nebe to proceed to Berlin immediately, to be entrusted with a confidential order. Arriving in Berlin on the evening of that day, I reported to General Nebe at his office, Wendischer Markt 5-7. I gave him a condensed report on the position of the matter at that time. He then showed me a teletype order signed by Kaltenbrunner, to the effect that, in conformity with the Führer’s explicit and personal order, more than half of the officers who escaped from Sagan were to be shot when recaptured. General Nebe himself seemed shocked at this order. He was deeply worried. I heard later that he did not go to bed that night, but spent the night on his sofa in his office. I myself was likewise shocked at this frightful step which was to be taken, and refused to carry it out. I said it violated rules of war and undoubtedly was bound to result in reprisal measures against those of our own officers who were in English camps as prisoners of war, and that I flatly refused to take any responsibility in the matter. General Nebe declared that in this

instance I would not be in any way responsible as the State Police was to act entirely independently, and that, after all, orders given by the Führer had to be executed without protest.

"Nebe furthermore added that naturally it was my duty to keep the matter in deepest secrecy, and that the reason for his showing me the original order was so that I would make no trouble for the State Police."

Any comment seems superfluous. This is significant of Nebe's personality. The trustworthiness of a person is an inseparable part of his entire personality. Information obtained from a person who for more than a decade was able to play such an abominable double role can lay no claim to credibility.

I believe that this analysis of the statements of the witness Dr. Gisevius and of the men belonging to the Gisevius group gives me the right to say that the charges made against the Defendant Keitel by the witness can be no suitable foundation for the argument of the Prosecution, namely, that the Defendant Keitel

- (1) formed a circle around Hitler;
- (2) had tremendous influence on the OKW and the Armed Forces;
- (3) did not submit reports on atrocities and crimes to Hitler; and
- (4) did not protect his subordinates, but even threatened them with the Gestapo.

Rather is it true that the real position of Keitel, however important it may have seemed to outsiders, was neither decisive nor of importance either for the total sum of events or for the basic and important decisions of Hitler. Justice can be done to the actual importance of this activity if one says that it was tremendous, because physically and spiritually it went beyond human strength; because it placed the defendant perpetually in a dilemma between his military point of view and the unbending will of Hitler to whom he was faithfully, far too faithfully, devoted. Physically it presented an almost insoluble problem, for it had no sharply defined, clear outline but called for the perpetual balancing of essential differences; the adjustment of personal sensitiveness; the "self-protection" against encroachments of the individual offices among themselves or against the OKW; clever maneuvering when Hitler, in explosive reaction to disagreeable news, wished to issue extravagant orders; the settlement of all disagreeable matters which Hitler did not wish to attend to himself.

It was a tremendously thankless task, which found only very slight compensation in the brilliant position in the immediate proximity to the head of the State, in the decorative participation in all events of what is called world history, in the representative discharge of the duties of a field marshal.

This evidence does not appear convincing if it is intended to prove that Keitel also actively participated in the political conversations. When the Defendant Keitel took part in State visits and conversations with foreign statesmen, he did not participate in the conversations, although present. Hitler liked to have Keitel in his entourage as the representative of the Armed Forces. Thus, Keitel was present at Godesberg when Prime Minister Chamberlain went there, also at Munich on 30 September 1938, and at the visit of Molotov in November 1940. He was also present at the meetings of Hitler with Marshal Pétain, General Franco, King Boris, Regent Von Horthy, and Mussolini. This function of Keitel is, however, insufficient to make the defendant a general who must have taken a decisive part in the shaping of political events.

How little this assertion is justified is seen from the fact testified to by Admiral Birekner that Keitel was extremely careful not to encroach on the affairs of the Foreign Office and gave his officers orders not to engage in matters referring to foreign policy. In domestic politics the exclusion of the Chief of the OKW resulted from the removal of the Reich War Minister, already dealt with, and the thereby intended and achieved elimination of political representation of the Armed Forces in the Cabinet.

It is obvious, and has also already been pointed out, that the position of the Defendant Keitel as Chief of the OKW involved, and in time of war to an increased extent, his coming into some kind of contact with all the ministries and highest offices, and dealing with them as the representative of the OKW, that is to say, of Hitler.

That did not make Keitel a politician, that is to say, a man who took part in an advisory capacity in the determination of the Government's aims, and had an influence on them. In his high office he naturally worked to carry out these aims and bears a responsibility to that extent, but not as a political general.

Mr. President, I am now beginning a long chapter. Do you want me to start with it?

THE PRESIDENT: Go on reading then until 5 o'clock.

DR. NELTE: The idea of war against Russia was rejected by Keitel. This found visible expression in the memorandum which Field Marshal Keitel drew up, discussed with Von Ribbentrop, and handed over to Hitler. According to his sworn statements the reasons were:

(a) military considerations;

(b) the Nonaggression Pact with the Soviet Union dated 23 August 1939.

In spite of being personally presented, the memorandum had no success. Hitler, as usual in questions of strategic nature, rejected Keitel's point of view as unconvincing.

In this connection, and owing to Hitler's curt rejection, Keitel asked for release and transfer to the front. This is the case which Reich Marshal Göring confirmed in his interrogation. Hitler refused, sharply criticizing the habit of generals asking to be released or tendering their resignation whenever he did not approve their opinions or suggestions.

That was decisive for Keitel: he remained at his post, did his duty, and fulfilled his obligations in carrying out the tasks incumbent upon him within the framework of further preparations. Here, too, in keeping with his conception of duty, Keitel did not make known to the outside world his basically negative attitude toward the war with Russia, after Hitler had made his decision.

This case is in several respects typical of Keitel and of the way he is judged by others. We know—and it has been proved by the evidence—that other generals were also opposed to war with the Soviet Union. Their objections, too, were waived or rejected by Hitler. They, too, accepted the decision of the Supreme Commander of the Armed Forces, continued to do their duty and carried out the orders given to them. But there was one basic difference: these other generals went back to their headquarters after the discussion. There, in their own circle of officers they spoke about the decision made by Hitler. Of course it was disputed, yet they acted in accordance with it.

Since Field Marshal Keitel, due to his military conception, as already depicted, did not make known to the generals, when they appeared in the Führer's headquarters for discussions, what his own attitude was, which was also at variance, the impression was bound to arise that Field Marshal Keitel completely agreed with Hitler and did not support the scruples of the Armed Forces' branches.

THE PRESIDENT: Dr. Nelte, I think you might stop there.

[The Tribunal adjourned until 9 July 1946 at 1000 hours.]