





TRIAL
OF
THE MAJOR WAR CRIMINALS

BEFORE

**THE INTERNATIONAL
MILITARY TRIBUNAL**

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PROCEEDINGS

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TWO HUNDRED AND FIRST DAY

Monday, 12 August 1946

Morning Session

[The witness Von Manstein resumed the stand.]

DR. FRITZ SAUTER (Counsel for Defendant Funk): Mr. President, I beg to be granted permission to submit to the Tribunal an urgent application on behalf of the Defendant Funk.

On Monday, 5 August 1946, that is to say a week ago today, the Prosecution submitted an affidavit of the former SS Obergruppenführer Oswald Pohl, Document Number 4045-PS, alleging certain connections between the Defendant Funk and the SS, particularly with reference to the so-called "gold deposits" of the SS in the Reichsbank; I was unable immediately to object to the use of this affidavit during the session of last Monday since I was absent on that day because of illness. I had reported my absence in the appropriate manner to the General Secretary. On the same day, 5 August, Dr. Nelte, in an application to the Tribunal on my behalf, asked for permission to interrogate the witness Oswald Pohl in prison in order to obtain an affidavit from him. On 7 August 1946 I myself repeated that application, asking at the same time for permission to call the witness Oswald Pohl for cross-examination, and also to recall the Defendant Funk himself to the witness stand to give testimony with reference to these new accusations.

Since the submission of these applications of mine the SS judges Dr. Reinecke and Dr. Morgen were heard as witnesses for the SS here in Court. Both of these witnesses have raised the gravest accusations against Oswald Pohl, although he was their SS comrade. The testimonies of these two witnesses, Dr. Reinecke and Dr. Morgen, have furnished proof that the former Obergruppenführer Oswald Pohl, a witness of the Prosecution, first...

THE PRESIDENT (Lord Justice Sir Geoffrey Lawrence): Are you applying to cross-examine Pohl or what?

DR. SAUTER: No. If you will permit me, Mr. President, I shall in a moment give you the reason why I do not wish to do so. I have just said that the examination of the witnesses Dr. Reinecke and Dr. Morgen has furnished proof, first, that this witness of the Prosecution is a millionfold murderer; secondly, that he was the

head of that clique of criminals which carried out the atrocities in concentration camps; thirdly, that Pohl, by every means at his disposal, attempted to prevent the discovery of these atrocities and even committed new murders for this purpose.

All that has been ascertained from the testimony given under oath by the witnesses Dr. Morgen and Dr. Reinecke. Under these circumstances, Gentlemen of the Tribunal, the defense of the Defendant Funk refuses to employ such a monster as a means of evidence. Therefore, as counsel for the Defendant Funk, I desist from calling this witness of the Prosecution, Oswald Pohl, to the witness stand, because testimony coming from a man who murdered millions of innocent people...

THE PRESIDENT: Dr. Sauter, I understand that you are not making an application of any sort now; you are making what is in the nature of a...

DR. SAUTER: No, on the contrary, I refrain from doing so.

THE PRESIDENT: I see.

DR. SAUTER: Mr. President, I beg to have your permission to make another application. I said that the testimony of a man who murdered millions of innocent people, who made a dirty business out of murdering them, is in our conception completely without value for establishing the truth.

THE PRESIDENT: Dr. Sauter, the Tribunal thinks that this is an inappropriate time at which to make a protest of this sort, which is in the nature of an argument. If you are making an application, you can make an application. If you want to make a protest, you must make it later when the case for the organizations is at an end.

DR. SAUTER: Mr. President, may I say the following: We are now near the end of the submission of evidence, and I do not think that I can wait with this application until after the end of the Trial; the application which I was going to make must be made now, so that the Tribunal will receive it in good time.

THE PRESIDENT: Dr. Sauter, if you would only come to your application we should be glad to hear it.

DR. SAUTER: Very well, Mr. President, I will do so at once.

I herewith apply that the Tribunal decide, first, that the affidavit of Oswald Pohl, dated 15 July 1946, namely, Document Number 4045-PS, should not be admitted in evidence against the Defendant Walter Funk, and, secondly, that that part of the contents of the affidavit of Oswald Pohl, Document 4045-PS, which has reference to the Defendant Funk, should be stricken from the record of the session of 5 August 1946.

Furthermore, as an additional application and as a precautionary measure, I beg permission to apply for the Defendant Walter Funk

to be recalled to the witness stand in order to give him an opportunity to express himself on these completely new assertions of Oswald Pohl.

Mr. President, I submitted this application to the General Secretary in writing this morning, but I do not know when the Language Division will pass it on to you. I have therefore considered it necessary to ask your permission to make this application orally during the proceedings in order to avoid being told that I should have done so in good time here during the session, but had failed to do it. That is the application, Mr. President, which I beg to make.

THE PRESIDENT: The Tribunal would like to hear the Prosecution on this application.

DR. ROBERT M. W. KEMPNER (Assistant Trial Counsel for the United States): May I reserve our answer until I have an occasion to talk to the chief prosecutor, Mr. Dodd?

THE PRESIDENT: Very well.

DR. KEMPNER: I would like to state that even murderers sometimes tell the truth.

DR. SAUTER: Thank you, Mr. President.

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

MAJOR GENERAL G. A. ALEXANDROV (Assistant Prosecutor for the U.S.S.R.): Witness, I have two additional questions to ask you, both connected with the activities of the Einsatzgruppe D. You stated here that you exclude the possibility of your army group having participated in the shooting which was carried out by this group. Did you not know that the watches taken from those who were shot were sent to the Army, according to the order of the High Command?

VON MANSTEIN: No, I knew nothing about that. As far as the watches are concerned, the army administration officer on one occasion reported to me, as far as I remember, that he had procured a large consignment of watches from Germany. He showed me one of these watches; it was a completely new watch made in Germany. He wanted to issue these watches to the troops. I do not remember that confiscated watches were ever issued, and in no event have I heard of watches belonging to Jews who had been shot.

GEN. ALEXANDROV: And these watches were used for the supply of the German Army, is that right?

VON MANSTEIN: This consignment of watches from Germany, yes.

GEN. ALEXANDROV: But you also spoke about watches which belonged to the Jews who were shot. That is the way I understood you. Is that correct?

VON MANSTEIN: No, I did not say that. The subject was not mentioned at all. I only said that the army administration officer reported to me about a consignment of German watches. That is the only thing I can remember with regard to watches. That he could have spoken of watches belonging to Jews who had been shot is completely out of the question.

GEN. ALEXANDROV: Very well. Did you know that in Nikolaiev and Simferopol the executions were attended by representatives of the army command?

VON MANSTEIN: No.

GEN. ALEXANDROV: Do you know that these facts were brought out here in Court by the witness Ohlendorf? Do you think that Ohlendorf testified falsely here when relating these facts?

VON MANSTEIN: I know Ohlendorf's testimony and I remember that he said that soldiers had participated in executions near Simferopol. But he also said that he did not know for certain what soldiers they were. He thought they were probably mostly subsidiary technical units, that is, not regular troops of my army. In any event, while I was in the Crimea I never heard that any soldier participated in the execution of Jews.

GEN. ALEXANDROV: I would like you to answer my question. Do you call Ohlendorf's testimony false or do you consider it correct?

VON MANSTEIN: I assume that he made a mistake. At any rate, I am quite certain that regular units of my army did not participate in these executions of Jews. What he means by subsidiary technical units, I do not know.

GEN. ALEXANDROV: He had in mind the troops of the 11th Army, which you were commanding. Now I am asking you this. Did you know that over 195,000 persons, inhabitants of Kiev, were exterminated by the German Army and the German Police, including over 100,000 people who were put to death in Babye Yar alone?

VON MANSTEIN: I heard of this for the first time from the document submitted by the Russian Prosecution.

GEN. ALEXANDROV: But you were aware of this type of mass extermination of the civilian population?

VON MANSTEIN: No, I did not know that, and at the time when these executions apparently took place Kiev did not belong to my sector.

GEN. ALEXANDROV: Had you knowledge of the OKW decree transmitted in August 1941 by Quartermaster General Wagner, forbidding the feeding of Soviet prisoners of war from Army supplies? Did not this decree result in mass starvation among Soviet prisoners of war?

VON MANSTEIN: I do not recall that order. In August 1941, I was the commanding general of an armored corps far ahead of the front, and I could not even have received that order. What is more, I cannot imagine that the order was given in that form, because at least in my area we always supplied food to the prisoners, and I do not believe therefore that in my area any prisoners died of starvation.

GEN. ALEXANDROV: But you yourself admit that there was a tremendous mortality rate from starvation among the prisoners of war. You admitted so yourself here yesterday, did you not?

VON MANSTEIN: I did not say that that was so in my army, but that I could see from the documents of the Prosecution that after the large battles of encirclement in the area of Army Group Center, in which hundreds of thousands of prisoners were taken, many apparently died from starvation, first, because they were half-starved when they emerged from the pockets, and secondly, because no army was in a position to take over the feeding and care of, let us say, half a million prisoners arriving quite suddenly. This naturally resulted in difficulties which in view of the physical condition of the Russian soldiers when they arrived very probably led to a large number of deaths. But when I said this before, I was referring to the prisoners taken in the battles of encirclement and not those in my area.

GEN. ALEXANDROV: It is not necessary to give such detailed replies to my questions. Would you kindly be more brief? Did you know of the operation called "Krimhild"?

VON MANSTEIN: The code name "Krimhild" for an operation is at the moment meaningless to me, nor do I know whether I ever heard it. Perhaps you can tell me when and what this is supposed to have been; then possibly I can recall it.

GEN. ALEXANDROV: I will help you. This operation provided for the transfer of German troops from the Kuban district to the Crimea in connection with the advance and the pressure of the Red Army. A special decree from Hitler was therefore issued and sent to all headquarters.

VON MANSTEIN: I did not quite understand that. Do you mean the transfer of the army from the Crimea to the Kuban district or the retreat from the Kuban district to the Crimea?

GEN. ALEXANDROV: The transfer, the retreat of German forces from the Kuban district to the Crimea.

VON MANSTEIN: I cannot say anything about that; I do not know details about it, because that was the area of Army Group Kleist and not my area.

GEN. ALEXANDROV: And where was your army at the time?

VON MANSTEIN: My army group was in the Southern Ukraine at the time. The southern border was evidently near Rostov.

GEN. ALEXANDROV: The retreat from the Kuban district was effected in connection with the army group in the southern sector of the front. You were handed this decree from Hitler; maybe you will be able to recall something in this connection. I would like to draw your attention to only one particular point in this decree.

[A document was handed to the witness.]

Do you remember this decree?

VON MANSTEIN: I must look at it more closely for a moment.

GEN. ALEXANDROV: If you please.

VON MANSTEIN: I can no longer tell you today whether or not I received a copy of this order; actually, it only concerns Army Group A. It is possible that I did receive a copy, but I can no longer remember. At any rate, I had nothing to do with it.

GEN. ALEXANDROV: This decree was sent to all headquarters, but that is not the point. I would like you to find the second paragraph of that decree which is entitled "Destructive Measures During Evacuations"; and please look at point "g" of that section; quoting: "The enemy must take over completely useless and uninhabitable waste territory where mine detonations will continue to occur for months." Have you read that passage?

VON MANSTEIN: Yes.

GEN. ALEXANDROV: Now I am asking you: Was this decree, too, motivated in your opinion entirely by military considerations?

VON MANSTEIN: Yes, in my opinion, it was issued for purely military reasons; namely, because Hitler—as I know—wanted to free as many of the forces in the Kuban as possible in order to use them in other parts of the Eastern Front. He wanted to leave only a minimum of forces for the defense of the Crimea, and that of course was only feasible if the danger of a Russian attack coming from the Kuban could, if possible, be excluded for a lengthy period or at least made very difficult; and probably for that reason, these orders for destruction were issued, and in points a, b, c, d, e, and f,

they do in fact only deal with objects which are of military importance; in other words roads, bridges, railroads, narrow-gauge railroads, corduroy roads, oil installations . . .

GEN. ALEXANDROV: I know this decree, Witness, and you do not have to repeat it; I have it before me. I merely asked you to look at point "g" which does not mention roads and bridges and oil wells but deals generally with reducing the territory of the enemy to complete waste so that it would not be usable for months to come. That is the subject here. I am asking you as a soldier—since you call yourself one—do you approve of such a decree? Was it prompted entirely by military considerations? Please answer my question.

VON MANSTEIN: Yes, I am convinced that the order was given only for military reasons; and I am equally convinced that letter "g" means territory completely useless for the military purposes of war. I do not believe, therefore, that the purpose here was to lay waste the land and to, let us say, exterminate the population, but that the reason was a military reason in that the land was to be rendered useless for the continuation of military operations; that is what I believe.

GEN. ALEXANDROV: It states here clearly enough what was meant. The interpretation is a matter of opinion. I shall pass to the next question. Were you aware that in May 1944 a special conference was held at Sonthofen?

THE PRESIDENT: Are you passing from that document?

GEN. ALEXANDROV: I am passing to another question, My Lord.

THE PRESIDENT: I asked you if you were passing from the document.

GEN. ALEXANDROV: Yes.

THE PRESIDENT: I think you should put to him Paragraph 3 c.

GEN. ALEXANDROV: I will.

Please, Witness, look at Section 3 of the decree, Point c. I shall read it into the record:

"For this task ruthless conscription of the civilian population uninfluenced by any false leniency, the speedy commencement of work, and the establishment of construction battalions, including female construction battalions, must be secured."

Do you consider this method of utilizing the civilian population, including the female population, as a method necessitated by military considerations?

VON MANSTEIN: As I see it, I do not doubt at all that it was necessary from a military standpoint; whether or not it was nice

from a humane point of view, is another question. But I must point out that the use of the civilian population, including the women, was something we learned from the Soviet Union, which did just that to a large extent; otherwise the provision of Russian anti-tank ditches many kilometers long would not have been possible in a few days.

THE PRESIDENT: Witness, is it your contention that it is in accordance with the laws of war to turn the females of a country into a construction battalion for the purpose of your army?

VON MANSTEIN: I am not absolutely certain at the moment whether that is in accordance with the laws of war of 1939. That in this war international law was widely trespassed against in many cases is an established fact. That the use of labor, including female labor, is one of the rights of an occupying power, is, I should think, a fact.

GEN. ALEXANDROV: You have just stated that the Red Army widely used the civilian population for constructing anti-tank ditches, *et cetera*. I want to explain that to you. That was really so, because the whole Soviet people, including of course, the Soviet women, participated in all possible actions against the Fascist invaders; but give me an illustration, just one illustration, of the Red Army utilizing German women for purposes of this kind.

VON MANSTEIN: I cannot give you an instance from the war.

GEN. ALEXANDROV: Because there were none; but this decree of Hitler talks of utilizing Soviet women for erecting defense constructions for German forces. That is what I am speaking about. Now we will go on to another question. Did you know that in May 1944 a special conference of generals was held in Sonthofen on the subject of National Socialist education of the army units?

VON MANSTEIN: In May 1944 I was no longer in service, and therefore did not hear anything about this conference.

GEN. ALEXANDROV: You never heard anything about the conference?

VON MANSTEIN: I did not hear anything about that conference, no.

GEN. ALEXANDROV: I should like to mention one fact in connection with that conference. You probably know that at that conference the Defendant Keitel, among others, stated as follows: "Any officers who express doubts about victory or who criticize the Führer I shall have shot."

THE PRESIDENT: The witness says he knows nothing about it. Is this a new document you've got or not? Is it some new document?

GEN. ALEXANDROV: No. We do have a document on which I think it is necessary to ask the witness some questions, but we are not submitting this document immediately, because we have only just received it and it has not yet been translated. It is an affidavit by Lieutenant General Vincent Müller of the German Army, in which he mentions Keitel's remark at this conference. If the Tribunal considers it necessary, this document will be put in at the end of this afternoon's session, or at the latest tomorrow morning.

THE PRESIDENT: Yes, all I mean is this: If you aren't putting in the document and the witness says he wasn't at the conference and never heard of the conference, I don't think you can put to him what was stated at the conference in order to get that in evidence.

GEN. ALEXANDROV: I understand, Mr. President. In that case I will ask another question.

[Turning to the witness.] Witness, are you aware that the High Command of the German Navy suggested a plan for the invasion of Norway already in October 1939? Were you aware of that?

VON MANSTEIN: No. I knew nothing about that. I heard of the entire Norwegian affair only when it had become an accomplished fact. I learned the details only from the Indictment, before that I did not hear a word about it.

GEN. ALEXANDROV: What do you know about the plan for an operation under the code name "Jolka"?

VON MANSTEIN: I did not understand the code name.

GEN. ALEXANDROV: Under the code name "Jolka"—that means "Christmas Tree" in English or "Tannenbaum" in German.

VON MANSTEIN: Tannenbaum? No, it does not convey anything to me; I do not know.

GEN. ALEXANDROV: I shall point out to you a few details relating to the plan. In the middle of July 1940, after the armistice with France, the chief of the German General Staff, General Halder, visited Von Leeb's Army Group Headquarters in Dijon. General Halder told Von Leeb to prepare a plan for the occupation of Switzerland, taking into consideration the fact that the Swiss would resist. This plan was worked out under a code name and submitted to the OKH. Do you know anything about it?

VON MANSTEIN: No, I was commanding general at the time, and in the summer I was transferred to the Channel Coast. I heard nothing about this plan.

GEN. ALEXANDROV: You frequently emphasized here in your answers that the war against the Soviet Union was a "special war,"

and that you, as other German generals, acted only as soldiers, and that the so-called "ideological war" was conducted by Hitler and his colleagues. Did I understand that correctly?

VON MANSTEIN: Yes.

GEN. ALEXANDROV: My American colleague reminded you yesterday about your own decree in which you spoke about the annihilation of the Soviet political system and other measures to be taken in the occupied territories. You also stated that you were aware of the decree of Field Marshal Von Reichenau about the conduct of the troops in the East. Witness, was such a decree, in your opinion, prompted by a military sense of duty, or by any other consideration?

VON MANSTEIN: No, it was certainly issued only out of a military sense of duty. In connection with this, I should like to add that these ideas were appearing in every newspaper and were, of course, promoted by higher authorities. They certainly did not originate with us. We, together with our soldiers, conducted the war in a military manner.

GEN. ALEXANDROV: Do you not think that such decrees can only be explained by the fact that their authors were not generals brought up in the military tradition, but in the Hitlerite tradition?

VON MANSTEIN: I did not quite understand that. May I ask you to explain the meaning of the question again.

GEN. ALEXANDROV: I will repeat it. Do you not think that such decrees, political decrees really—I mean the order issued by Reichenau—do you not think that such decrees can only be explained by the fact that their authors were not generals brought up in the military tradition, but generals brought up in the Hitlerite tradition?

VON MANSTEIN: I can only speak for myself, for my own order. That I personally was nothing more than a soldier, to that I think every one of my subordinates and my superiors can testify. I was not a political general, nor was I, shall we say, a National Socialist general in the sense in which you mean it. This order was a consequence of the growing danger of the partisans, and of the necessity to make it clear to our soldiers that they could not afford to be so careless, and that they must be aware that the fight on both sides was an ideological fight. The order itself is composed of two entirely different parts. Part One, which deals with the necessity of safeguarding the rear against attack, *et cetera*, and with the alertness of the soldiers, contains some ideas about the meaning of this struggle. When the order speaks of the extermination of the system, then it means the political system, and not human beings, it means exactly what is today meant when the other side speaks

of the extermination of National Socialism. Part Two I would say contains my own ideas, it states what has to be done positively, and it also states quite clearly that the soldiers must avoid all arbitrary action, and that any violation of soldierly honor will be punished. I believe that this order is evidence of the fact that I conducted the fight as a soldier, and not as a politician.

GEN. ALEXANDROV: What you were during the war is best shown by your own decree, and the Tribunal will be able to judge it.

My last question. Did you know what measures the High Command of the Armed Forces initiated for the purpose of conducting biological warfare?

VON MANSTEIN: Biological warfare? I do not know at the moment what you mean by the expression "biological warfare." Would you explain that, please?

GEN. ALEXANDROV: The use of various types of dangerous bacteria in warfare. That is what I mean by "biological warfare."

VON MANSTEIN: No. I knew nothing about it. I have never heard of a bacteriological war or of poison warfare.

GEN. ALEXANDROV: You will now be shown several details of this plan for biological warfare, and you may then be able to recall it. I am submitting to the Tribunal Document USSR-510, which consists of the affidavit of the former Major General and Professor of the Military Medical Academy in Berlin, Walter Schreiber. I am reading it into the record.

"In connection with the Trial of the Major War Criminals in Nuremberg, I, as Professor of Hygiene and Bacteriology of the Military Medical Academy in Berlin and former Major General of the Medical Corps of the German Army, consider it my duty to our people who have undergone such severe trials and to the whole world, to disclose one more page of Germany's preparation for war which has not been touched upon in Nuremberg. Aside from the former political and military leadership of Germany a large part of the guilt is borne by German scientists and particularly by German doctors. Had that type of weapon which was being prepared been used, it would have meant putting to a shameful and evil use the great discoveries of Robert Koch, whose native country was Germany and who was a great teacher..."

THE PRESIDENT: Dr. Laternser, counsel for the Defense, would like to say something.

DR. HANS LATERNSER (Counsel for General Staff and High Command of the German Armed Forces): I should like to raise an objection. On looking through the document, I have discovered that

the author of this affidavit is raising particularly grave accusations. I do not know against whom these accusations are directed, but I should like to ask that the author of this document appear as a witness, so that I may cross-examine him.

THE PRESIDENT: Where is he?

GEN. ALEXANDROV: I can answer that, Mr. President. The former Major General Walter Schreiber is now in the Soviet Union as a prisoner of war. If the Tribunal think it necessary to have Walter Schreiber testify here as a witness, the Prosecution will not object.

DR. LATERNSEER: I think that if he is making such a serious allegation he should appear here in person.

THE PRESIDENT: General Alexandrov, could you inform the Tribunal how long it would take to get this witness Schreiber brought here for the purpose of cross-examination?

GEN. ALEXANDROV: We shall take all steps to get the witness here in the shortest possible time, but I cannot guarantee that or state a number of days, since the distance is rather great. I would like the Tribunal to take this into consideration. However, regardless of whether the witness is going to be brought here or not, I request the permission of the Tribunal to have this document presented in this cross-examination.

DR. LATERNSEER: May I be allowed to reply to that?

THE PRESIDENT: Dr. Laternser, you can make your objections, if you wish to do so now, and then the Tribunal will consider the matter when they adjourn. We don't propose to allow the document to be presented now at the moment. We will consider the matter when we adjourn.

DR. LATERNSEER: I request that the Tribunal decide that the document must not be read until Walter Schreiber can appear here as a witness.

THE PRESIDENT: Your application is that the document should not be admitted unless the witness is brought here for further examination?

DR. LATERNSEER: I should like to go even further, Mr. President, and apply that the document should not be admitted at all, since the witness is now going to be produced by the Prosecution, and can then state these facts under oath.

GEN. ALEXANDROV: Mr. President, may I oppose the application of the defense. It seems to me that the affidavit of Walter Schreiber could and should be read during the cross-examination of the witness Von Manstein, regardless of whether Walter Schreiber

will or will not appear here as a witness. A photostat of his affidavit is before the Tribunal; it is certified by the Extraordinary State Commission, which is the plenipotentiary of the Soviet Government. Therefore, regardless of what the Tribunal may decide about calling Walter Schreiber as a witness, I insist that the document, which I put in as USSR-510, be accepted by the Tribunal and that I be given an opportunity of reading it into the record during the present cross-examination.

THE PRESIDENT: No, General Alexandrov; the Tribunal has said that they will not admit the document at this stage. We propose to adjourn at 11:30 and will then consider the application. I observe that the affidavit was made in April 1946 and there was plenty of time to bring the witness here.

GEN. ALEXANDROV: The question of bringing the witness here has never had to be considered up to now. If the Tribunal commands me not to use the document, I shall not be able to ask the witness the questions which arise out of the affidavit of Walter Schreiber. Moreover, I shall thereby be prevented from putting questions on Walter Schreiber's affidavit at another stage of this Trial.

THE PRESIDENT: General Alexandrov, you will be able to ask him the question after the Tribunal has decided upon the admissibility of the document; that is to say, if it is decided as to its admissibility, can you not ask him then? But he has already said he knows nothing of biological warfare.

GEN. ALEXANDROV: He does not know what is in the affidavit of Dr. Schreiber. I have no further questions at the moment, Mr. President.

THE PRESIDENT: Is there any further cross-examination?

DR. LATERNER: Field Marshal, you were questioned about the order, or alleged order, by Quartermaster General Wagner, which prohibited the feeding of prisoners of war from supplies of the Armed Forces. I would like to ask you, do you know that Generaloberst Halder, during a visit to the front on the occasion of a conference at Orsha, actually ordered that the food supplies to the troops should be cut so that prisoners of war could be better fed?

VON MANSTEIN: That is not known to me, because it did not take place in my area. I do know that in the winter of 1941-42 I had to reduce the rations for my army in the Crimea since supplies from home did not arrive in sufficient quantity on account of the shortage of railroad transportation, and also since we could not completely strip the country of all food reserves to feed the population and the prisoners. As far as I can recollect, we reduced the meat ration at that time, and I know that I expressly prohibited

that the one cow which would have remained the farmer's own property even under the Soviet Government should be taken away from him, even though the army needed the meat. I also remember that when the food situation became critical at times during that winter, we sent flour down to the South coast, although hundreds, in fact thousands, of horses belonging to our army on the South coast perished at that time because the lack of transport space prevented us from bringing hay and straw for them.

DR. LATERNSEER: The order USSR-155 was submitted to you. Who signed that order?

VON MANSTEIN: I do not know which one you mean, USSR...

DR. LATERNSEER: I mean Document Number USSR-115.

VON MANSTEIN: I do not have the number.

THE PRESIDENT: We can see for ourselves by whom it is signed.

DR. LATERNSEER: I merely want to know by whom it is signed.

VON MANSTEIN: Oh, yes, I see; it is signed by Adolf Hitler.

DR. LATERNSEER: Yes, that is the order. You were questioned with regard to Figure 2 g. It says there that "the land should be made useless and uninhabitable." Do you know, Field Marshal, if that was actually carried out?

VON MANSTEIN: I cannot give information about the Kuban district, because I was not there, and it did not belong to my area.

DR. LATERNSEER: Were explosives, mines, and troops available in large numbers at that time, that is, in 1943?

VON MANSTEIN: Yes, of course we had mines and explosives, but they were certainly not sufficient for such purposes.

DR. LATERNSEER: Were not these supplies very short at that time, in 1943?

VON MANSTEIN: Yes, at any rate we never had enough mines to lay mine fields in sufficient numbers ahead of our positions.

DR. LATERNSEER: The Russian Prosecutor went on to ask you about Number 3 c, about the ruthless conscription of the civilian population, particularly the women. You did not answer the question of the Russian Prosecutor, whether you had ever heard that similar or other measures of force were applied to German women?

VON MANSTEIN: Yes. I know that that happened during the war, but even now women are conscripted for all sorts of work. My wife, for example, has been put to work collecting potato beetles.

DR. LATERNSEER: I mean, what happened in East Prussia in 1944?

VON MANSTEIN: I cannot say that from my own observation, as I was not there, but I am sure that the civilian population had nothing to laugh about.

DR. LATERNSEER: The American Prosecution submitted to you Document Number C-52, Exhibit Number GB-485. Will you please once more look at Figure 6. Is this a directive or an order?

VON MANSTEIN: That is a directive, but not an order.

DR. LATERNSEER: So that, if "draconian measures," as this directive says, were to be enforced, orders to that effect from the commanding generals were necessary?

VON MANSTEIN: Yes, of course, it was said that they were not to ask for security forces but to find a means themselves by taking draconian measures; and so further orders from the commanders were necessary.

DR. LATERNSEER: Do you know of any orders which were issued on the basis of this Figure 6?

VON MANSTEIN: No, I do not recall any order issued on the basis of that paragraph.

DR. LATERNSEER: Now, I have one question regarding Document Number 447-PS. Please look at Page 2, 2b. Does not Figure 2b show, first, that the Reichsführer SS was given special tasks in the operational zone, and secondly, that in discharging these tasks he acted independently and on his own responsibility?

VON MANSTEIN: Yes, the order says so quite clearly.

DR. LATERNSEER: Then it follows that the special action groups, the Einsatzgruppen, were not tactically under the commanding generals?

VON MANSTEIN: No, tactically they were, at most, under the local commanders, for instance in the fight against the partisans or in the battle zone at the front, but in any case as far as their police tasks were concerned they certainly were not under them.

DR. LATERNSEER: Document Number R-102 was also submitted to you—that is a Top Secret matter. What does that mean?

VON MANSTEIN: A Top Secret matter is, I think, an order or a directive or an announcement which is issued only to the highest authorities in the Reich or to certain specified persons, and which is not allowed to be generally known.

DR. LATERNSEER: Is the distribution indicated on this document?

VON MANSTEIN: No, it should be noted at the end, but it is not.

DR. LATERNSEER: So you cannot determine if this document also went to offices of the Army?

VON MANSTEIN: No, that cannot be determined, but quite certainly it did not go to offices of the Army, because we never received such reports.

DR. LATERNSEER: During your examination last Saturday, you said that you were convinced that the other commanding generals would also have taken steps against mass executions, had they been reported to them?

VON MANSTEIN: Yes, naturally.

DR. LATERNSEER: Is it known to you that when Field Marshal Von Kuechler, during the Polish campaign, heard of the execution of Jews, he used every means at his disposal to prevent it?

VON MANSTEIN: Yes, I heard of that here in Nuremberg. I did not know of it at the time.

DR. LATERNSEER: It is known to you that the mayor of Marinka, who was a racial German, was sentenced to death by court-martial for a crime against a Jewish woman?

VON MANSTEIN: I cannot recollect that. I do not know either whether it happened in my area; if it had been in my area, it would have been reported to me, but I cannot remember it.

DR. LATERNSEER: Do you know that General Von Knobelsdorff, an officer also affected by the Indictment, had an SS leader arrested because he wanted to carry out executions?

VON MANSTEIN: Of that I also heard here. I did not know anything about the executions at that time.

DR. LATERNSEER: Do you know of any other cases in which the commanding generals took steps against particularly outrageous arbitrary actions?

VON MANSTEIN: I know, for example, that Generaloberst Blaskowitz, who succeeded Field Marshal Von Rundstedt as commander in the East, that is, in occupied Poland, protested and raised objections against the conduct of the Police in the Government General, and that there was some sort of a row about it, whereupon he was relieved.

DR. LATERNSEER: Now, I come to the last point. Regarding the subordination of the Einsatzgruppen, the American Prosecution referred to Affidavit Number 12 of Schellenberg, Exhibit USA-557. You do not consider that affidavit correct, I believe, because in practice the facts did not correspond to what is said in the affidavit, is not that so?

VON MANSTEIN: Do you mean the one in which Schellenberg speaks about the agreement with the Quartermaster General?

DR. LATERNSEER: Yes.

VON.MANSTEIN: The subordination mentioned in that affidavit does not by any means give a picture of the situation in practice, nor can I imagine that that was the agreement made by Wagner. As I said, there were two types of subordination, the tactical subordination for fighting, and the economic subordination for supplies, accommodations, *et cetera*. There were those two types of subordination, but the tactical subordination, as I said, only applied in battle conditions. Then there was a third possibility, subordination for military service, troop training, and so forth, but that certainly never applied in practice.

DR. LATERNSEER: I shall now read to you the affidavit, which I propose to introduce as evidence shortly, from Generalrichter Mantel, who, fortunately, had discussed just that point with General Wagner, and after reading it, I should like to ask you whether the contents of the affidavit correspond with the facts in practice. He states:

"Shortly before the beginning of the Russian campaign, I temporarily participated at the headquarters of the OKH in a conference which Quartermaster General Wagner was having with the chief quartermasters of the armies in the East. Among other things, Einsatzgruppen and Einsatzkommandos of the Security Service in the operational zones of the Army were discussed on that occasion, and it was clearly stated that they would receive instructions for their activities exclusively from the Reichsführer SS, and that the command authorities of the Army had no jurisdiction over them from the point of view of discipline and service, although economically speaking they might be attached to the Army."

I now want to ask you: Do the contents of this affidavit in regard to the Einsatzgruppen and their subordination correspond to the facts in practice?

VON MANSTEIN: In the statement of Ohlendorf it is pointed out that Himmler gave his orders to the Einsatzgruppen, for instance at Nikolaiev, orally and only directly to them; and that Army agencies did not hear anything about them becomes apparent from the following, which I heard afterwards here in Nuremberg: Even though Himmler was at that time in Nikolaiev where the army command, then under General Von Schobert, was situated, he did not visit the army command, although he was well acquainted with Schobert. That shows that he intentionally refrained from mentioning his plan.

DR. LATERNSEER: Thank you.

I have no further questions to the witness.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

THE PRESIDENT: Mr. Dodd, the Tribunal would like to hear the submission of the Prosecution with reference to Dr. Sauter's application.

MR. THOMAS J. DODD (Executive Trial Counsel for the United States): My Lord, I have the following statement to make to the Tribunal. I understand that the application asks for the striking of the Pohl affidavit and the permission that Funk again take the stand. I should like to oppose the application to strike the Pohl affidavit. It seems to us that it is highly material in this case, and if anything—although I doubt very much even the necessity for recalling or calling Pohl for cross-examination—but if anything is necessary, that might be it. The Defendant Funk, it seems to us, has had a rather full opportunity when he was on the stand. I asked him when he started to do business with the SS, if the Tribunal will recall, and I think I went rather fully into all possible phases at that time of relationships between the Defendant Funk and the SS, and there was a denial on the part of the Defendant Funk. Furthermore, he will have an opportunity, I assume, in the last statement to say something, if the Tribunal saw fit to permit it, with respect to anything new that might have arisen out of the Pohl affidavit.

THE PRESIDENT: Yes, but the Pohl affidavit is entirely new, is it not?

MR. DODD: Well, Sir, it is new, but it really covers only one new matter and that is the matter of the textile business that we alleged went on between the SS and the Reichsbank and the Defendant Funk. The matter of the jewelry and all the other things I think were gone into.

THE PRESIDENT: I did not mean that it dealt with entirely new subject matter, but it is the evidence of a new witness upon that subject matter.

MR. DODD: Yes, yes, it is.

THE PRESIDENT: And as to that the Defendant Funk has not had an opportunity to deny it upon oath; it may be that the Tribunal will think it right to grant him that opportunity. There are two quite distinct questions, first of all, as to whether Pohl's affidavit should be struck out, and secondly, whether Funk should be called.

MR. DODD: Well, I certainly do not feel that the Pohl affidavit should be struck out, because it seems to us to be material, highly material. As the Tribunal will recall, there was considerable controversy about this relationship which we claimed between Funk and the SS. We called another witness, Pohl, and still another witness who was his subordinate, and I would assume that counsel would prefer to cross-examine Pohl. We are perfectly happy to have him do that; and then at a later date, if Funk has an opportunity, as I am sure he will, to make his statement, he could make his denial. I don't know what more he could say except that it isn't so and I thought he had said that rather fully when he was on the stand and rather fully denied that he had really any relationship with Himmler or with the SS. I am also fearful, Mr. President, that if the Court permits this procedure in this case, there may have been some other instances where other defendants will want to be heard fully and the thing will go on with surrebuttal and I am afraid it will take much of the Tribunal's time.

[Dr. Sauter indicated a desire to be heard.]

THE PRESIDENT: Dr. Sauter, we have heard you fully upon the subject already.

DR. SAUTER: Mr. President, may I point out one fact? This witness Pohl arrived at the Nuremberg prison on 1 June, that is, the first day of the sixth month; he was questioned in preparation for the affidavit on 15 July, that is...

THE PRESIDENT: Dr. Sauter, you have expressed yourself that you do not want to cross-examine him. What is the relevance of the fact that he arrived here at a certain time if you don't want to cross-examine him?

DR. SAUTER: Mr. President, my point of view is that on principle the Prosecution cannot be permitted to present further evidence against a defendant whose case is completely closed. The witness Pohl arrived here on 1 June; on 15 July, that is 6 weeks later, he was examined for the affidavit. That was the same day on which I made my final plea for the Defendant Funk. Again several weeks later, the affidavit was finally submitted. I do not believe that it is compatible with justice if after a defendant's case is completely closed, the Prosecution submit further evidence against the defendant, who at that stage no longer has an opportunity of commenting on it from the witness stand. The Pohl affidavit contains completely new allegations. For example, Pohl alleges that at a luncheon in the presence of 10 or 12 persons this gold teeth affair was discussed. That is something entirely new and, of course, completely improbable and that is why I ask, Mr. President, that you permit us to have the Defendant Funk examined on this point in the witness stand.

THE PRESIDENT: You must understand that it is a matter for the discretion of the Tribunal at what time they will end the evidence, and it is necessary that the evidence should be ended at some time. The Tribunal has heard fully what you have had to say and they will now consider the matter.

DR. SAUTER: Thank you.

THE PRESIDENT: With reference to the application by Dr. Sauter, the affidavit by Pohl will not be struck out. It will remain upon the record. But in view of the particular circumstances of this case, the Defendant Funk may be recalled to give evidence upon the subject and he will be recalled after the evidence has been given on behalf of the organizations.

With reference to the objection of Dr. Laternser to the use of the statement made by Major General Walter Schreiber, the Tribunal is not inclined to admit any evidence so late as this, or to reopen questions which have been gone into fully before the Tribunal; but on the other hand, in view of the importance of the statement of Major General Schreiber and its particular relevance not only to the case of certain of the individual defendants but also to the case of the High Command, the Tribunal will allow General Schreiber to be heard as a witness if he is produced before the end of the hearing of the case. Otherwise no use can be made of this statement.

With reference to the time within which General Schreiber must be brought here if he is to be heard as a witness, the Tribunal thinks that it will be proper to order that he might be heard as a witness, if he is brought here at any time before the final speeches with reference to the organizations are concluded. And, of course, counsel for the organization would have an opportunity of commenting upon any evidence which General Schreiber might give. That is all.

The witness may retire.

Dr. Laternser, will you call your other witness?

DR. LATERNSER: With the approval of the Tribunal, I call as my last witness Field Marshal Von Rundstedt.

[The witness Von Rundstedt took the stand.]

THE PRESIDENT: Will you state your full name, please?

GERT VON RUNDSTEDT (Witness): Gert von Rundstedt.

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. LATERNSEER: Field Marshal, you are the senior officer of the former German Army. What was your last position?

VON RUNDSTEDT: I am the senior officer of the German Army and have been a soldier for over 54 years. My last position was Commander-in-Chief West, until 9 March 1945.

DR. LATERNSEER: During what period were you commander-in-chief in Berlin?

VON RUNDSTEDT: From 1 October 1932 until 31 October 1938.

DR. LATERNSEER: What was the attitude of the military leaders towards domestic and foreign politics?

VON RUNDSTEDT: We generals did not concern ourselves with politics. We did not take part in any political discussions, and we did not hold any political discussions among ourselves.

I should like in this connection to quote the famous British Field Marshal Montgomery, who said: "As a servant of the nation, the Army is above politics, and that must remain so."

DR. LATERNSEER: Did the Reichswehr in 1933 help Hitler to assume power?

VON RUNDSTEDT: No.

DR. LATERNSEER: What was the attitude of the generals toward the Party and its methods?

VON RUNDSTEDT: The generals either rejected the Party or were indifferent. As for the methods regarding the Jewish question, they absolutely rejected them, particularly because many comrades were severely affected by the Aryan laws. The so-called master race is an absurdity. There is a mixture of Slav, Romanic, and Dinaric races in Germany. We also rejected the attitude in the Church question, and we succeeded in retaining chaplains in the Army up to the end.

DR. LATERNSEER: Was this attitude also true of the younger generals who, in the course of the war, came into positions subject to the Indictment?

VON RUNDSTEDT: As far as my own close acquaintances are concerned, absolutely.

DR. LATERNSEER: Did you, in 1934, as the senior officer have an opportunity of doing anything to demand from Hitler punishment of the murderers of Schleicher?

VON RUNDSTEDT: No. In the first place, Reich President Von Hindenburg was still at the head of the State. In the second place, I was not the senior officer. We had a Commander-in-Chief of the Army and a Minister of War for things of that sort.

DR. LATERNSEER: Did the troop maneuvers or the trips of the General Staff after 1935 indicate any intention or plan for wars of aggression?

VON RUNDSTEDT: No, in no way. The large-scale maneuvers and the General Staff or Führer trips were always concerned with war in our own country.

DR. LATERNSEER: Were you, as resident commander-in-chief in Berlin, consulted before the declaration of military sovereignty?

VON RUNDSTEDT: No.

DR. LATERNSEER: Did you know Generaloberst Von Fritsch well?

VON RUNDSTEDT: Very well; he was my subordinate for a time.

DR. LATERNSEER: Did he tell you, as his official representative after 1937, of Hitler's intention to wage wars of aggression?

VON RUNDSTEDT: No, he could not do that, because there is such a thing as an official secret.

DR. LATERNSEER: You deputized for him, did you not, when he went on prolonged leave to Egypt in the winter of 1937-1938? Did he on that occasion tell you of Hitler's intentions as contained in the minutes of the meeting of 5 November 1937?

VON RUNDSTEDT: I only deputized for Generaloberst Von Fritsch; his official representative was the Chief of the General Staff, Beck. Generaloberst Von Fritsch did not give me any information at that time, nor did Generaloberst Beck.

DR. LATERNSEER: What were the results of the measures which Hitler took on 4 February 1938, in the military field?

VON RUNDSTEDT: Hitler eliminated the Minister of War as intermediary between himself and the Wehrmacht; thus he himself now had command over all three branches of the Wehrmacht. In addition, he took the opportunity of dismissing high military leaders who were unwelcome to him.

DR. LATERNSEER: In February of 1938 you had a private conference with Hitler alone. What did he tell you about the attitude of the German generals?

VON RUNDSTEDT: He complained very bitterly about the supreme military leaders. He said that he alone had been the one who had forced rearmament through. The supreme leaders had always resisted and said it was going too fast. In the occupation of the Rhineland, he charged the leaders with a certain cowardice when they asked for withdrawal of the troops behind the Rhine, since France was not adopting a threatening attitude.

DR. LATERNSEER: Did you in this talk discuss the question of a successor to Fritsch?

VON RUNDSTEDT: Yes. Hitler first suggested to me General Von Reichenau. That suggestion I turned down in the name of the Army. He then suggested General Von Brauchitsch, whose appointment I entirely approved in the name of the Army.

DR. LATERNSEER: When did you, as commander-in-chief in Berlin, learn of the planned march into Austria?

VON RUNDSTEDT: I was suddenly assigned to represent General Von Brauchitsch in Breslau, at a commemoration celebration of the Iron Cross, and it was only there that I officially learned that the occupation of Austria had actually taken place.

DR. LATERNSEER: How were the commanders-in-chief informed of existing intentions?

VON RUNDSTEDT: We were told of the intentions of the Supreme Command by our Commander-in-Chief, Von Brauchitsch, but he was only allowed to tell us what concerned us.

DR. LATERNSEER: Mr. President, I should now like to question the witness on Affidavits 3 and 5 of Field Marshal Von Blomberg and Generaloberst Blaskowitz. They are USA-536 and 537 (Documents Numbers 3704-PS and 3706-PS), in the first volume of the document book of the Prosecution. In this connection I should like to call the attention of the Court to the fact that these affidavits, in the paragraphs in question, agree word for word, although they were made on different days by different persons.

[Turning to the witness.] Field Marshal, the two affidavits of Field Marshal Von Blomberg and Generaloberst Blaskowitz say that the groups of German staff officers—that is the way in which it is put—considered the solution of the Polish question by war to be indispensable and that that was the reason for secret armament. Is that true?

VON RUNDSTEDT: In the first place, a group of German staff officers never existed...

DR. LATERNSEER: What is meant by staff officers?

VON RUNDSTEDT: A staff officer is an officer holding the rank of Major, Lieutenant Colonel, or Colonel, then come the Generals.

DR. LATERNSEER: Please continue.

VON RUNDSTEDT: Even if the statement of Blomberg is intended to mean that a German war of aggression against Poland was indispensable, that is not true. On the other hand, if he means that we had to expect an attack from Poland at any time, I can say that in the first years after the World War, I also counted on this possibility. Hence the border protection and fortifications on the Eastern border of the Reich against Poland. But as I said, no

sensible person thought of a war of aggression. We were in no position to wage such a war.

DR. LATERNSEER: Generaloberst Blaskowitz, at the end of this Affidavit Number 5, USA Exhibit-537, says that the front commanders-in-chief were the actual advisers in the OKW, and as an example he gives the battle of Kutno. Is this correct?

VON RUNDSTEDT: That is not correct. The commanders-in-chief never had an advisory role. Our Commander-in-Chief of the Army was the only one who had to hold council with the supreme authorities. As for the battle of Kutno, any advice to Hitler is absolute nonsense. The orders for the battle of Kutno were given by me as Commander-in-Chief of Army Group South, according to the instructions which I had from Herr Von Brauchitsch, and Herr Blaskowitz had only to obey and could not have given any sort of advice to Hitler. No, no, that must be a mistake.

DR. LATERNSEER: What impression did the discussion on 22 August 1939 at the Obersalzberg make on you, Field Marshal?

VON RUNDSTEDT: When we left the conference, we thought that this undertaking would end just like the so-called Sudeten war in 1938, primarily because Russia was on our side. When on 26 August the movement for the beginning of operations, which had been ordered, was suddenly stopped, and was to begin again on 1 September, we said, "Ah, that is the same kind of bluff which we had in 1938." We did not take the decision for war seriously.

DR. LATERNSEER: Did you, after the conference of 22 August, talk to other commanders-in-chief and exchange ideas on the impressions gathered at this discussion?

VON RUNDSTEDT: I remember with certainty that I talked to Field Marshal Von Bock about it. I left Obersalzberg very quickly. With Manstein and later with my staff I exchanged the same views which I have just mentioned.

DR. LATERNSEER: Did you have knowledge of the attack on the Gleiwitz radio station?

VON RUNDSTEDT: No.

DR. LATERNSEER: In what way did you learn of the intention of occupying Denmark and Norway?

VON RUNDSTEDT: I learned of the accomplished fact through official channels.

DR. LATERNSEER: How about the entry into Yugoslavia and Greece?

VON RUNDSTEDT: It was the same.

DR. LATERNSEER: You participated in the conference in March 1941, when Hitler spoke of the necessity of attacking the Soviet Union?

VON RUNDSTEDT: Yes.

DR. LATERNSEER: What were you told about Soviet preparations?

VON RUNDSTEDT: Until a short time before that I had been in France, and I had no knowledge whatever of the ostensible preparations of the Russians. At the conference, to our surprise, we were told that the Russians were very strongly armed, were concentrating troops and preparing to attack us. If I am not mistaken, information from the Japanese Military Attaché was referred to, and a map of the Russian distribution of forces on the borders of Poland was shown to us, so that we had to assume that these facts were actually true.

DR. LATERNSEER: Was this impression confirmed after the entry into Russia?

VON RUNDSTEDT: Yes. The resistance at the border was not too great, but it grew continually as we advanced into the interior of the country. Very strong tank forces, tanks of a better type, far superior to ours, appeared; and an enormous number of airfields, troop camps, munitions dumps, and newly built roads through impassable territory were encountered. Maps were also found, showing German territory as far as Silesia, so that we had the impression that Hitler must have been right.

DR. LATERNSEER: At the conference in March 1941, Hitler announced the Commissar Order. What was your attitude toward this order?

VON RUNDSTEDT: Our attitude was unanimously and absolutely against it. Immediately after the conference we approached Brauchitsch and told him that this was impossible. Our commanders-in-chief of the armies were of the same opinion. The order was simply not carried out, and as I learned afterwards, it was later rescinded. General Von Brauchitsch, to make this order more or less ineffective, issued a very strict order to the troops on the correct conduct of German soldiers in the coming war. I know of no case in which this order was used in any way.

DR. LATERNSEER: Was the intention to remove the Jewish population in the East announced at this conference?

VON RUNDSTEDT: No. Hitler would never have expressed such intentions to officers.

DR. LATERNSEER: According to the Russian Prosecution 33,000 Jews were shot in November 1941 in Kiev. Where were the armies of Army Group South in November 1941?

VON RUNDSTEDT: My armies were on the line Rostov-Stalino, along the Donets, to the district east of Kharkov. The rear border between the army area and the Ukraine district under civil administration followed a line east of Kiev along the Dnieper.

DR. LATERNSEER: Then Kiev was not at that time in any operational area of an army under your command?

VON RUNDSTEDT: No.

DR. LATERNSEER: Did the commanders-in-chief of the army groups of the armies in the East have any powers outside this area of operations?

VON RUNDSTEDT: No.

DR. LATERNSEER: Was the operational area kept as small or as large as possible?

VON RUNDSTEDT: The operational area of the army was kept as small as possible, first, in order to trouble the army as little as possible with affairs in the rear, and secondly, to make the Ukraine district, *et cetera*, which was under the civil administration, as large as possible and thus remove it from the influence of the Army.

DR. LATERNSEER: And now for the Commando Order. What was your attitude toward the Commando Order?

VON RUNDSTEDT: We military commanders were absolutely opposed to the Commando Order and in oral discussions among our staffs we agreed to make it ineffective.

DR. LATERNSEER: Did you, as Commander-in-Chief West, receive a report of any case in which the order was applied?

VON RUNDSTEDT: Not a single case was reported to me, and my chief of staff, whom I asked about it here in Nuremberg, knew of no case either. I must assume that this Commando Order had an intimidating effect on the enemy, for I know of no Commando operation undertaken afterwards, aside from that on the island of Sark, where illegal acts did take place, but no prisoners were taken by us.

DR. LATERNSEER: Illegal acts on whose part?

VON RUNDSTEDT: On the part of those who had undertaken the Commando operation.

DR. LATERNSEER: Now the invasion came, or was expected. Document Number 531-PS shows that you asked to have the Commando Order rescinded. For what reason?

VON RUNDSTEDT: During the invasion, strong air landings far behind the front, perhaps as far as Paris, had to be expected, and a distinction between Commando troops and fighting troops would no longer have been possible. Moreover, it was at least a good opportunity to do away with this order altogether, all the more since the majority of the new divisions did not even know it.

DR. LATERNSEER: But you said in your request to have it rescinded that the order had been obeyed up to that time. How do you explain that?

VON RUNDSTEDT: I had to express it in that way. I had evaded the order, but I could not very well say: "Paragraph 1. I have not carried out the Commando Order." Some sort of pretence had to be kept up.

DR. LATERNSEER: Now a few questions about the struggle against the Resistance movement in France. What agencies were responsible for peace and order in the occupied area in France?

VON RUNDSTEDT: The Military Commander was responsible for peace and order in occupied France. In Pétain's France—shall I say—that is, in the South of France, the Military Commander had a special general in Lyons who was to work in close co-operation with the Pétain Government. As the Resistance movement in southern France became ever stronger and developed into a tremendous threat to the troops fighting in the Mediterranean area—that was in the winter of 1943 and 1944—the Commander-in-Chief West was made responsible for the southern part of France. Thereupon I placed this general in Lyons under the Army Group "Gustav" which was at Toulon and was responsible for establishing order in the South of France.

DR. LATERNSEER: Were the French Government and the French population warned?

VON RUNDSTEDT: The French Government was repeatedly warned and asked to oppose this movement with all its strength, for the sake of the inhabitants. We issued proclamations to the population which in a fair manner were always first submitted to the French Government for scrutiny. When the invasion threatened, I personally asked the old gentleman to warn his people on the radio and ask that in their own interests they should not do such things. He promised to do so. Whether he did it, I do not know.

DR. LATERNSEER: Were these warnings observed?

VON RUNDSTEDT: Unfortunately, no. Finally even the French Police, whom we had armed better to combat the movement, went over to the rebels.

DR. LATERNSEER: Did the Germans nevertheless fight against them with forbearance?

VON RUNDSTEDT: Yes, as far as we possibly could. For example, never were entire towns destroyed from the air, but single planes were always sent out against particular places of resistance. Mass use of artillery or tanks did not take place. The fact that excesses such as those at Oradour took place, we all greatly regretted. At that time I immediately demanded a report, since I could not order a judicial investigation, and I also reported this unfortunate occurrence to the OKW.

DR. LATERNSEER: Why could you not order a judicial investigation?

VON RUNDSTEDT: All the troop units of the SS were subordinate only to Himmler. I had neither disciplinary power nor judicial power over them. I could not give them leave, or bestow awards. I was limited only to the tactical employment of these divisions, much as if I were having an Italian, or Hungarian, or Slovakian division under my command.

DR. LATERNSEER: Was the legality of the Resistance movement recognized?

VON RUNDSTEDT: General Eisenhower and De Gaulle declared via radio that it was legal. We inquired of the High Command of the Wehrmacht what should be done in the matter, and the decision received was negative. Later, after the Allied troops had landed on the Mediterranean coast, the legality of the new French Army is said to have been recognized and observed without argument.

DR. LATERNSEER: What is your attitude toward illegal warfare?

VON RUNDSTEDT: My point of view is the following, based on quite understandable patriotic feeling: Disorderly, irregular warfare behind the front of the enemy army must bring very great misery to the population of the country affected. No army in the world can tolerate such conditions for any length of time, and in the interests of the security and protection of its own troops, it must take sharp, energetic measures. But this should, of course, be done in a correct and soldierly manner. Excesses such as those in Oradour were strongly condemned by myself and by all army leaders. We very much disliked seeing the attempt made on the German side to set up this Werewolf movement at the last moment. If it had been put into practice, it would have brought untold misery to our fatherland, and justly so. I would consider it fortunate for humanity if through international agreements such illegal wars could in future be made impossible. That is my point of view.

DR. LATERNSEER: What measures did you introduce to relieve the position of the French population during the occupation?

VON RUNDSTEDT: I would not like to give all the details here. I can only say that I did everything to help Marshal Pétain, with whom I was on terms of great confidence. I asked Hitler to define at last what position France was to have in the future Europe. I assisted Marshal Pétain to raise his Guards and tried to create a new French Army for him, though it did not grow into more than a regiment. I succeeded in obtaining more rations for the fine French railroad men who managed all our transports, and I tried to have their relatives who were prisoners of war returned to them, in the same way in which Hitler had approved after the Dieppe raid that the relatives of those in Dieppe could return.

We did what we could to supply the great city of Paris with coal and food, though the transport situation for the German Army was almost unbearably poor. Those are the main points.

DR. LATERNSEER: One intermediate question: on one of the last few days, a witness said that from 1944 on the concentration camps were guarded by soldiers of all branches of the Wehrmacht. How do you explain that?

VON RUNDSTEDT: I know nothing about that. Since Himmler was Commander-in-Chief of the Reserve Army after the attempted assassination of the Führer, he could probably issue such an order. If he did issue it, my feeling is that he wanted to charge the Army also with all these occurrences in connection with the concentration camps.

DR. LATERNSEER: Now a few questions about the Ardennes offensive. Was an order to shoot prisoners ever issued before or during this offensive?

VON RUNDSTEDT: Such an order was not issued by Hitler. On the contrary, he considered it most important to take as many prisoners as possible in the offensive. I consider it impossible that a subordinate military command issued such an order, which would contradict our training and our ideas.

DR. LATERNSEER: Did you not oppose this offensive?

VON RUNDSTEDT: I opposed the offensive for the following reasons: The operational idea as such can almost be called a stroke of genius, but all, absolutely all conditions for a possible success of such an offensive were lacking. Therefore, Field Marshal Model and I suggested that we should be satisfied with less and should attack the Allied troops east of Aix-la-Chapelle from several sides. These suggestions remained unheeded. The offensive had to start with completely inadequate forces on the ground and in the air and, as predicted, could only fail.

DR. LATERNSER: Did you oppose Hitler on other occasions also?

VON RUNDSTEDT: Not personally, because I had no opportunity of doing so; but to his staff I frequently objected to measures ordered from above; especially in the case of the Normandy invasion, the Ardennes offensive, after it had failed, and the conduct of operations in Holland. But it was all in vain.

DR. LATERNSER: When did you consider the war lost?

VON RUNDSTEDT: In my opinion the war could not be won after the fall of Stalingrad. I considered the war lost when the Allies had succeeded in establishing a strong bridgehead on French soil. That meant the end.

DR. LATERNSER: Did you or other commanders-in-chief attempt to stop the continuation of the war when you regarded it as lost?

VON RUNDSTEDT: Both Field Marshal Rommel and I twice attempted to persuade Hitler to change the conduct of the war and especially to withdraw the front to the German borders. But as was to be expected, these suggestions were not heeded.

DR. LATERNSER: Since Hitler refused to listen to such advice, did you not consider causing a violent overthrow?

VON RUNDSTEDT: I would never have thought of such a thing; that would have been base, barefaced treachery, and could not have changed the situation. The Army and the people still believed in Hitler at that time, and such an overthrow would have been quite unsuccessful. Even if I, perhaps with the aid of the Allies, had brought about an overthrow, the fate of the German people, according to the famous statement of the Big Three, would have been exactly what it is now, and I would have emerged and been considered for all time as the greatest traitor to my fatherland.

DR. LATERNSER: You lost your position three times during the war. What were the reasons?

VON RUNDSTEDT: In 1941 a quite impossible order of a technical nature was issued from above, and would have led to the destruction of the entire Kleist Panzer Army near Rostov. I objected to it, I demanded that the order be withdrawn, and said that otherwise I would be compelled to consider it a lack of confidence in my leadership, and I would ask that another commander-in-chief be selected. Thereupon, I was removed from my post that same night, on 1 December, at my own request, as it was put. That was the first case.

The second case was on 2 July 1944, when by a very cordial letter, I was replaced by another commander-in-chief because of the impaired state of my health.

The third case was on 9 March 1945. Then I could no longer be expected as an old gentleman to continue performing the exacting duties of Commander-in-Chief West.

Those were the three cases.

DR. LATERNSEER: And in none of these cases did you resign against the will of Hitler?

VON RUNDSTEDT: In the first case one might say so. But he did not hold it against me in any way, for already in the following March I was made Commander-in-Chief in France.

DR. LATERNSEER: Now I come to the last question. You know, Field Marshal, that the Prosecution have asked that the body of military leaders be declared criminal. As the senior officer of the German Army, you know the attitude of these leaders toward military and international law. Would you please tell the Court about it briefly?

VON RUNDSTEDT: The rules of warfare and of international law as set down in the Geneva Convention and the Hague Rules on Land Warfare were always binding for us older leaders. Their strict observance by the troops was demanded, and very severe measures were taken in case of excesses, which in war can probably take place in all armies. The court-martial records of the various divisions can give information on this point. Property of the inhabitants was ordered to be respected. Severe punishment for plundering had to be meted out, if only in the interests of maintaining discipline amongst our own troops. Raping of women and other inhuman acts were also subject to severe punishment. What we could do to support the inhabitants of enemy countries affected by the war was done as far as was possible. The wounded or conquered enemy was no longer considered as such, but had a claim to decent treatment. We ordered that the battle itself was to be fought chivalrously. We old officers who lived through the time of cavalry battles and of infantry bayonet attacks, witnessed the increasing mechanization of warfare with regret. Today the bravest men and the best troops are helpless against the force of sheer material. All the more did we leaders believe that where there was fighting on land, the old soldierly decent forms of battle should be maintained, and that they should be impressed on the troops again and again.

As senior soldier of the German Army, I will say this: We accused leaders were trained in the old soldierly traditions of decency and chivalry. We lived and acted according to them, and we endeavored to hand them down to the younger officers.

DR. LATERNSEER: I have no further questions.

COMMANDER PETER CALVACORESSI (Junior Counsel for the United Kingdom): Field Marshal, in time of war, the military commander must keep in close touch, must he not, and know the opinions of his immediate subordinates, is that right?

VON RUNDSTEDT: That is not necessary to that extent. My subordinates only had to know my operational and tactical views. For the rest, they were free as army leaders within their sphere.

COMMANDER CALVACORESSI: I want to quote to you one sentence from the evidence which has been given by your former commander-in-chief. The translators already have it. It is on Page 2 of Affidavit Number 4:

"During operations, the OKH maintained a constant exchange of ideas with army groups by means of telephone, radio, and courier. The Commander-in-Chief of the Army used every opportunity to maintain a personal exchange of ideas with the commanders of army groups, armies, and lower echelons by means of personal visits to them."

Is that, generally speaking, correct?

VON RUNDSTEDT: That is absolutely correct as far as the conduct of the war, operations, and tactical actions are concerned. Such an exchange did take place from the army groups up to the Commander-in-Chief of the Army.

COMMANDER CALVACORESSI: I shall read you one more sentence from the evidence that has been given by Generaloberst Blaskowitz. He has said—and I want you to tell me whether you agree with this—that it was common practice for the commanders of army groups and of armies to be asked from time to time for estimates of a situation, and for their recommendations, by telephone, teletype, or wireless, as well as by personal records.

VON RUNDSTEDT: It is not correct that they had to give such estimates. They could do so.

COMMANDER CALVACORESSI: Now I have some questions on the Russian campaign. You yourself at a conference with Hitler and your Army colleagues raised a question of a gap which existed between your army group and that of Field Marshal Von Bock. Is that right?

VON RUNDSTEDT: That is correct.

COMMANDER CALVACORESSI: And you knew from your former experience that although on the map that gap was shown as swamp land, it could be used by troops; and you therefore advised about the steps that should be taken to prevent its exploitation by the enemy?

VON RUNDSTEDT: I pointed out that according to my experiences in the last war against Russia, the Russians could operate freely in this swamp area, and that it would therefore be practical if German troops also could be moved through this area. This suggestion was not accepted. As the operations later showed, the Russians had strong forces in the area, and from there they constantly threatened the left flank of my army group.

COMMANDER CALVACORESSI: Yes. I am not concerned with whether the advice was listened to or not. But you agree that you offered it?

VON RUNDSTEDT: It was not advice; it was a question which occurred to me as I described the plan of the operation to the Führer. It was not advice.

COMMANDER CALVACORESSI: I am not going to quarrel with you on that. I want to mention one other conference about which we have already heard a certain amount, and that was the meeting which took place—I think it was in the office of Field Marshal Von Brauchitsch—May 1938, when there was a question of seizing the Sudetenland. Is it not a fact that at that conference Von Brauchitsch asked for the opinion of you and your fellow-officers on the proposals which Hitler had laid before you?

VON RUNDSTEDT: At that time, a memorandum was read which the Chief of the General Staff, Beck, had drawn up, and which warned against a war over the question of the Sudetenland. It was to be submitted to Hitler by Von Brauchitsch. We were asked for our opinion on this memorandum, and we unanimously agreed that war should not be waged.

COMMANDER CALVACORESSI: You were unanimously agreed with General Beck that the sort of war that was likely to happen at that time, if Hitler had his way, should not be waged at that time in that way?

VON RUNDSTEDT: In our opinion, or in the opinion of the memorandum, the German Army was in no position whatever to wage this war if France, England, and America were likely to join the enemy side. That was the fundamental idea of the memorandum. We could probably have dealt with Czechoslovakia alone, although certainly not if the countries just mentioned had come to her aid. And against that Hitler was to be warned.

COMMANDER CALVACORESSI: Then it is fair to say, is it not, that in order to support himself in the objections which he proposed to make to Hitler, Brauchitsch assembled a circle of leading generals who were of the same opinion as himself? That strengthened his hand, did it not?

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VON RUNDSTEDT: Yes; one might say that.

COMMANDER CALVACORESSI: You all agreed in giving similar advice to the advice which had been given by General-oberst Beck?

THE PRESIDENT: Is this a convenient time to break off?

COMMANDER CALVACORESSI: Yes, My Lord.

[The Tribunal recessed until 1400 hours.]

Afternoon Session

[The witness Von Rundstedt resumed the stand.]

COMMANDER CALVACORESSI: You have given evidence, Field Marshal, to the effect that you had little or no knowledge of such moves as the occupation of the Rhineland or the seizure of the Sudetenland, is that correct?

VON RUNDSTEDT: I had no previous knowledge of the occupation of the Rhineland, just as little as I knew anything of the occupation of the Sudetenland in 1939. I was inactive at the time, retired.

COMMANDER CALVACORESSI: What was the highest post you held when you were in service between 1933 and the outbreak of the war in 1939?

VON RUNDSTEDT: As I stated earlier, from 1 October 1932 until 31 October 1938 I was Commander-in-Chief of Group I, Berlin. Then I retired.

COMMANDER CALVACORESSI: Therefore, during the period up to the outbreak of the war, during such time as you held the post, and when you received little or no information about what was going on, you were not a member of the indicted group, as defined in this Indictment?

VON RUNDSTEDT: No, I was not a member of that group.

COMMANDER CALVACORESSI: And as far as the invasion of Norway is concerned, you were at that time active in a different theater of war, is that right?

VON RUNDSTEDT: At the time when the Norway enterprise began I was Commander-in-Chief of Army Group A, stationed at Coblenz, in the West.

COMMANDER CALVACORESSI: And in any case, the Norwegian invasion was not the affair of the OKH, but of the OKW?

VON RUNDSTEDT: I cannot tell you whether it was an affair of the Navy or of the OKW.

COMMANDER CALVACORESSI: Now, in general, before the war, you would say your picture is: the generals were left alone to occupy themselves with training exercises and the training of relatively small details and units. Is that a fair summary of the evidence you gave before the Commission?

VON RUNDSTEDT: That probably is a misunderstanding. The smaller training exercises were a matter for the divisional commanders and commanding generals, and only General Von Fritsch

asked of the commanders-in-chief that they too should concern themselves with smaller details occasionally.

COMMANDER CALVACORESSI: Anyhow, during this period when the boundaries of Germany were rapidly expanding, you say that the problem of defense came first in the minds of the military leadership of Germany?

VON RUNDSTEDT: I did not quite understand that. Did you say the borders of Germany were expanding? They did not do that. It was only in 1938 through the Sudeten affair and until . . .

COMMANDER CALVACORESSI: I mean from the beginning of the period of the Anschluss until the outbreak of the war with Poland?

VON RUNDSTEDT: Yes, quite.

COMMANDER CALVACORESSI: And you said this morning the exercises which were held at that time were defensive exercises, defensive maneuvers?

VON RUNDSTEDT: I did not hold any maneuvers any more. After the Sudeten war in 1938 I was pensioned. Whether and to what extent maneuvers were carried out in 1939 is beyond my knowledge.

COMMANDER CALVACORESSI: And you referred this morning to prewar maneuvers prior to 1939, and as I understand it, you spoke of these maneuvers as simply defensive exercises?

VON RUNDSTEDT: Yes. Those were the maneuvers in 1936 and 1937. During the latter I myself, as an army commander, was leading a party in Pomerania against an enemy attack on Germany.

COMMANDER CALVACORESSI: Would you also describe as defensive exercises those which were held with stukas and other weapons at Guernica in Spain?

VON RUNDSTEDT: About that I cannot give you any information. When rearmament had been decided upon in 1935, or 1936, I think, the Air Force introduced stukas too. But I do not know that. At any rate, I considered that at that time any type of weapon was justified within the rearmed Army.

COMMANDER CALVACORESSI: We will pass on to another point. You told us that German officers were severely aloof from politics?

VON RUNDSTEDT: Yes.

COMMANDER CALVACORESSI: Is it not the case that this policy is very closely associated with the name of General Von Seeckt?

VON RUNDSTEDT: General Von Seeckt took the greatest care in the Reichswehr to see that no officer concerned himself with political matters. What he himself did politically is another story, and about that I cannot give you any information.

COMMANDER CALVACORESSI: Is it not true to say that the reason why General Von Seeckt was determined to keep the Army out of politics is the fact that at the time when he took over there had just been the Kapp Putsch?

VON RUNDSTEDT: That I do not believe. It is a very ancient Prussian tradition that an officer does not concern himself with politics. And General Von Seeckt was just as loyal to the Right—in the Kapp Putsch—as to the Left—the Communist revolt in the Ruhr, for example—always supporting the constitution of the Weimar Government. That was our general attitude.

COMMANDER CALVACORESSI: I have no doubt that all that is perfectly true, but I suggest to you that this whole Prussian policy was revised and insisted upon by Von Seeckt because, as a result of the Kapp Putsch, he saw how important it was to keep the Army out of entanglements with incompetent politicians.

VON RUNDSTEDT: That is entirely my view too. All the more since the Hitler Putsch in 1923 placed the Army in a very difficult position because the Bavarian division was commencing to detach itself from Seeckt.

COMMANDER CALVACORESSI: Now, Kapp was a failure, wasn't he? He tried unsuccessfully to overthrow the Republic?

VON RUNDSTEDT: No. Seeckt never tried to overthrow the Republic.

COMMANDER CALVACORESSI: I said Kapp.

VON RUNDSTEDT: I beg your pardon then; I misunderstood you.

COMMANDER CALVACORESSI: I will repeat that Kapp was a failure, wasn't he? He tried unsuccessfully to overthrow the Republic?

VON RUNDSTEDT: Kapp was a failure and a very stupid one at that, a Putsch which could never succeed.

COMMANDER CALVACORESSI: But after 1933 or 1934 Hitler was not a failure, was he?

VON RUNDSTEDT: I shall have to state that Hitler, under Hindenburg's Government, was called into the Government by legal means, namely, by the majority of the people, as the leader of the strongest party. That was a perfectly democratic way in keeping with the constitution, not by means of a Putsch.

COMMANDER CALVACORESSI: I am not concerned with the forms of democracy or anything like that. I was only asking you whether, after 1933-1934, it was plain that Hitler was not a failure; he was doing very well, wasn't he?

VON RUNDSTEDT: He had the majority of the people behind him.

COMMANDER CALVACORESSI: That is an assent to success from which we will pass on. Generaloberst Reinhardt has said that there was not a single officer who did not back up Hitler in his extraordinary successes. Do you agree with that?

VON RUNDSTEDT: No.

COMMANDER CALVACORESSI: Von Blomberg has said that you and your colleagues in the Army had at that time no reason to oppose Hitler, because he produced the results you desired. Do you disagree with that, too?

VON RUNDSTEDT: That is not quite correct. We did our duty because Hitler had legally been made Chancellor by Hindenburg, and because, after his death, he appeared as the Führer on the basis of the testament.

COMMANDER CALVACORESSI: Well, the answer is, no, you don't agree with the Field Marshal.

VON RUNDSTEDT: I have never agreed with Field Marshal Von Blomberg at any time.

COMMANDER CALVACORESSI: Have you at any time agreed with Generaloberst Blaskowitz?

VON RUNDSTEDT: How am I to understand that? He was one of my subordinates; but I cannot accept what he has said in the affidavits in that form.

COMMANDER CALVACORESSI: Well, I am only putting to you the fact that when Hitler's power was assured and there was no more danger of his being a failure, the nonpolitical opponents began to disappear.

VON RUNDSTEDT: No, we always remained nonpolitical. Of course there were active National Socialists, like Reichenau and Blomberg, in the Army, but the bulk were politically quite indifferent.

COMMANDER CALVACORESSI: Surely it is common ground, isn't it, that there was a lot in common between Hitler's policy and the general aspirations of you and your colleagues immediately after 1933?

VON RUNDSTEDT: Yes; that is to say the equality aimed at by Hitler and achieved by him was welcomed by us, and that which

was good in the National Socialist movement, as I have already emphasized, and which was mostly taken over from old Prussian traditions, we of course welcomed also; but we all disapproved of the excesses which I have mentioned earlier, the older generation at any rate.

COMMANDER CALVACORESSI: When you say that there was a certain amount that was good in National Socialist ideas and that that was taken over from the old Prussian times, are you not saying that Hitler revived the old Prussian policy of nationalistic expansion and that you were glad about it?

VON RUNDSTEDT: That had very little to do with politics as such. The principles are important: care for the worker, just as under Bismarck, social welfare, common good which takes precedence over all personal interest—those are the things I am referring to.

COMMANDER CALVACORESSI: Now, before the war, did you and your colleagues at the head of the Army discuss the question of the neutrality of Belgium, for instance?

VON RUNDSTEDT: To my knowledge, no. We were not thinking of Belgium. We always believed, as I said earlier today, that Poland would some day attack Germany.

COMMANDER CALVACORESSI: Didn't you say before the Commission that you used to have discussions about the neutrality of Belgium?

VON RUNDSTEDT: No, that must be a mistake. Answering the question put by the American Prosecutor I only replied that a march through Belgium into the Ruhr was considered possible by us.

COMMANDER CALVACORESSI: Well, I have here a copy of the transcript of what was said before the Commission. I only need to read one sentence, and it is at Page 1352 of the English version. According to what I have here you said that "the opinion concerning the neutrality of Belgium and the Netherlands was very much doubted within the higher military circles." Now, all I want to ask you about that: If you discussed that question, was that not a political discussion?

VON RUNDSTEDT: May I just put that right. This statement before the Commission was made concerning 1939, when we had drawn up our troops in the West, and when the question arose whether Holland and Belgium would remain neutral or not. My answer was given in that connection at the time.

COMMANDER CALVACORESSI: Very well. You have also said that you opposed or you fought Nazi totalitarian ideas; is that right?

VON RUNDSTEDT: May I ask you to repeat that question to me, please?

COMMANDER CALVACORESSI: You have said, I believe, that you opposed Nazi totalitarian ideas?

VON RUNDSTEDT: We could not put up any resistance. I opposed it, as so many of my comrades did.

COMMANDER CALVACORESSI: Well, wasn't that a political attitude, a political standpoint?

VON RUNDSTEDT: Everybody can have a political standpoint for himself, but a soldier cannot participate in political activities. That is what I understand by political standpoint.

COMMANDER CALVACORESSI: A soldier then, in your view, has political views but may not express them; is that right?

VON RUNDSTEDT: Yes, that could be applicable. Of course it was possible to talk to some friend about such questions and discuss them, but there was never a meeting or a body called together for the purpose of discussing political questions.

COMMANDER CALVACORESSI: Now I want to move on to the late thirties. When you say that all the generals—I forget your exact words this morning, but most of the generals, you said, did maintain the old nonpolitical attitude. I want to show you a document.

My Lord, this is Document Number 4060-PS and it will be Exhibit USA-928.

Now this is a sketch of a speech which General Reinecke proposed to give in the autumn of 1938 to some of the up-and-coming military people. General Reinecke held a very high position in the German Army, didn't he?

VON RUNDSTEDT: At the end he was the chief chairman of that National Socialist leadership training outfit; in 1938 he must still have been a junior staff officer, a low-grade staff officer.

COMMANDER CALVACORESSI: What do you mean by a junior staff officer? By the middle of the war he was one of the few people who were immediately subordinated to Keitel, wasn't he?

VON RUNDSTEDT: About that I cannot give you any information.

COMMANDER CALVACORESSI: But, anyhow at this time, he was a Colonel. It is Page 2.

VON RUNDSTEDT: Yes.

COMMANDER CALVACORESSI: After all, he was a very high-ranking officer.

VON RUNDSTEDT: Yes. But still one of the younger officers. About this entire subject I cannot give any testimony. I have never at any time had anything to do with it. As I have mentioned, I was no longer active in November 1938, and so I cannot give you any information about these training courses which Reinecke held.

COMMANDER CALVACORESSI: All I am asking you to do is to look at certain passages in this document which I shall indicate to you and which, in my submission, show that the extreme non-political attitude of the generals was not maintained at this time.

VON RUNDSTEDT: That will be applicable insofar as Hitler tried everything to make the Armed Forces National-Socialist-minded...

THE PRESIDENT: Mr. Calvacoressi, the witness has said that he was retired at the time and has never seen the document. You can put it in if it is a new document.

COMMANDER CALVACORESSI: Should I read from this point or would it be more convenient at the end of the cross-examination?

THE PRESIDENT: I think we can look at it ourselves.

COMMANDER CALVACORESSI: If Your Lordship pleases. My Lord, there is another document which bears on the same subject and which I will also put in at this point. That is Document Number 4065-PS, and it will be Exhibit USA-929.

THE PRESIDENT: What is the number of the PS?

COMMANDER CALVACORESSI: 4065, My Lord.

[Turning to the witness.] Now, Field Marshal, I want to ask you a few questions about the rearmament of Germany. You have told us that that was purely defensive. Do you maintain that?

VON RUNDSTEDT: I had said before that the measures against Poland mentioned in Blomberg's affidavit were of a purely defensive nature. After rearmament was carried out up to 36 divisions, the German Army alone was still too weak to conduct an aggressive war against Poland, not to speak of aggression against a western or an eastern neighbor. I still maintain my opinion that we are here concerned with a defensive measure. If Hitler had planned a war of aggression, he would at least have been compelled to have 3 to 4 times as many divisions. This was utterly impossible.

COMMANDER CALVACORESSI: Well, if you are defending yourselves, you must be defending yourselves against somebody, and you said before the Commission that you were, among other things, taking defensive measures against the Lithuanians.

VON RUNDSTEDT: Yes.

COMMANDER CALVACORESSI: Are you still asking the Tribunal to believe that you were very much concerned with the defense of Germany against the Lithuanians?

VON RUNDSTEDT: May I answer? I called it, at the time, the basis for the various games of war. Lithuania was menacing the isolated province of East Prussia, where at that time there was only one, although later three divisions. The Poles and Czechs added together were fully in a position to attack and to occupy the whole of Eastern Germany, not to mention that the French might have crossed the Rhine in the West. Those were the thoughts which I expressed, and which were the basis for our games of war: how were we going to defend ourselves against an invasion from the East and West, or from the East or the West.

COMMANDER CALVACORESSI: Well, now, we have already had that. You have never agreed with General Von Blomberg on any point, but I think I'll draw your attention to the fact that in June 1937 Marshal Von Blomberg, who was, after all, War Minister and Commander-in-Chief at that time, issued a directive in which he said that Germany need not consider an attack from any side. That is already in evidence, My Lord. It is a quotation from Document Number C-175, Exhibit USA-69.

Now, you said that you thought Germany was to act outside a war. Was it your opinion that Hitler was rearming too fast?

VON RUNDSTEDT: No, on the contrary.

COMMANDER CALVACORESSI: He wasn't arming fast enough?

VON RUNDSTEDT: He was rearming too quickly. That was what he accused Generals Von Fritsch and Von Blomberg of, namely, that they had tried to slow down the speedy rearmament. Many divisional commanders adopted the same attitude. We could not keep pace with the rearmament program, since we did not have enough trained reservists.

COMMANDER CALVACORESSI: Then it is fair to say that what you objected to about Hitler in this matter were his methods?

VON RUNDSTEDT: That I do not understand. I do not understand what you mean.

COMMANDER CALVACORESSI: What aims did you and your colleagues hope to gain through Hitler on the question of rearmament if not through the methods Hitler himself was using?

VON RUNDSTEDT: The aim itself to be achieved by rearmament was to protect ourselves from an aggressive war, particularly coming from the East. This had been attempted earlier by the Stresemann Government, by peaceful means through Geneva. What I said regarding the speed of the rearmament was in answer to a

question by counsel as to whether Hitler ever criticized the generals. I myself have never discussed rearmament with Hitler, giving him my point of view.

COMMANDER CALVACORESSI: Now, you knew, from reading the newspapers, didn't you, that Hitler was adopting what I would call a diplomatic offensive?

VON RUNDSTEDT: I do not know what you mean by that. He effected a diplomatic offensive at Munich and at Godesberg. Is that what you mean by it?

COMMANDER CALVACORESSI: Let me put it in a slightly different way. Was it not clear to any reasonably well-informed citizen that a strong military machine was an essential part of Hitler's general foreign policy; was it or was it not clear?

VON RUNDSTEDT: That was evident, for with Hitler's creation of this military machine, Germany could feel secure against any attack from abroad. What we had not succeeded in doing by peaceful means, Hitler achieved with a stroke of his pen; that is, the rearmament program. But I stress this fact once more: for an attack even on Poland, these miserable 36 divisions were far too weak.

COMMANDER CALVACORESSI: Now, is it your opinion that Schuschnigg would have turned down and given in to Hitler if he had not known that Hitler had a strong military machine?

VON RUNDSTEDT: That I do not believe . . .

DR. LATERNSENER: I object, Mr. President. This question is not permissible because the witness does not know what Schuschnigg thought at the moment and he cannot testify as to what was in the mind of Schuschnigg. I request that this question be ruled out.

COMMANDER CALVACORESSI: My Lord, I should have thought it was a question of common knowledge and that everyone was discussing this matter at the time. I am not asking him what was in Schuschnigg's mind, but I am asking whether in his mind he thought Hitler could have achieved what he did achieve without a strong arm. He can give an answer to that question.

THE PRESIDENT: Perhaps the Tribunal can judge for themselves about it.

COMMANDER CALVACORESSI: If My Lord pleases. I do not want to go over ground that has already been very well covered, but I only want to draw your attention to this matter which, of course, has not been gone over in connection with this particular part of the case. My Lord, if the Tribunal wish to refresh their minds on this point, I would ask them to refer to that part of the transcript (Morning Session of 1 April 1946, Volume X, Page 328

et sequentes) where the Defendant Ribbentrop was cross-examined on matters concerning these.

VON RUNDSTEDT: I am very willing to answer the question.

COMMANDER CALVACORESSI: I do not think, Witness, that the Tribunal is interested in having any more on this point. Now, the last point with which I want to deal is the question of the conduct of the war. You know, of course, about the Commando Order and it is not necessary for us to look at it again. You had said today that it was never carried out in your area when you were in the West?

VON RUNDSTEDT: Yes.

COMMANDER CALVACORESSI: And you told the OKW in 1944 that it had been carried out?

VON RUNDSTEDT: Yes.

COMMANDER CALVACORESSI: Will you please state, categorically, which of those two statements is true, because they cannot both be true.

VON RUNDSTEDT: They do not conflict, because I told counsel that the Commando Order was not carried out by us, but passed up under silence. Since, however, it came to the Army from Hitler and had been announced in the Wehrmacht communiqué, one might have had to say at that time: "No, I will not carry out that order," whereupon one would have been dismissed or something. We simply did not carry out the order, and when I asked to have it rescinded, I wrote in Paragraph I: "Action was taken accordingly." That was, I do not mind saying so openly, an insincerity. I told you why I said so, I cannot explain it in any other way. Anyhow, I ask you to believe me that it was not carried out.

COMMANDER CALVACORESSI: Whether it was issued or not there is no doubt, is there? Whether it was carried out or not—and there is no doubt that it was issued through regular army channels—and whatever may be the true picture of the number of men who may have lost their lives as a result of the issuance of this illegal order, it is clear, isn't it, that the mere issuing of this order through regular army channels shows that there was something wrong, something rotten with the military leadership of Germany?

VON RUNDSTEDT: There was not a single person in the West who lost his life on the strength of that Commando Order.

COMMANDER CALVACORESSI: The German soldier is well known for his discipline, is he not?

VON RUNDSTEDT: Yes.

COMMANDER CALVACORESSI: And you wouldn't suggest, I suppose, that he is more liable to commit excesses than any other soldier?

VON RUNDSTEDT: That did not happen in this case either. I wish to repeat that in the West not a single man was killed on account of that Commando Order.

COMMANDER CALVACORESSI: Well, I want to leave the Commando Order now. In general, supposing for the sake of argument that we find that the German soldier is normally well-disciplined and well-behaved, if he would act and behave with unnecessary brutality, would you not feel compelled to look for some extraordinary outside motive?

VON RUNDSTEDT: Within my field of authority no brutalities occurred.

COMMANDER CALVACORESSI: If that did occur, you would have to look for some such motive, would you not?

VON RUNDSTEDT: If the Commando Order was carried out elsewhere in another theater of war, then the commander or the unit in question acted in accordance with Hitler's order, which they had to assume was founded on international law.

COMMANDER CALVACORESSI: I have already said that we are not talking about the Commando Order any more. I am going to suggest to you that if these German soldiers, for the sake of argument, behaved badly in occupied territory, a logical reason for it would be the knowledge by them that their commanders had a ruthless disregard and indifference for the sufferings of the population.

THE PRESIDENT: The Tribunal thinks that it is too hypothetical a question to put to him.

COMMANDER CALVACORESSI: Your Lordship, if you please. You commanded the Army Group South in Russia in the autumn of 1941, didn't you?

VON RUNDSTEDT: Yes, Army Group South.

COMMANDER CALVACORESSI: And one of your subordinate commanders was Field Marshal Von Reichenau?

VON RUNDSTEDT: Yes.

COMMANDER CALVACORESSI: And you no doubt heard many times about the order which Field Marshal Von Reichenau issued to the 6th Army about how to behave in Russia?

VON RUNDSTEDT: I never discussed that with him nor do I recollect that I had seen that order before I came to England and my chief of staff spoke about it. Von Reichenau had repeatedly

given orders which the army group never received, and which did not concern them either. I do not recollect having seen the so-called "severity order" (Härtebefehl), but I do not deny on the other hand that through some channels it may have reached my army group and probably got into the office. At any rate, my former first General Staff officer, who is also interned here in Nuremberg, cannot recollect either that we received that order for our information. It was a matter of course that one could not approve of that order, particularly since it was in contradiction to the clear order...

COMMANDER CALVACORESSI: Well, just a minute, please. I only asked you if you knew of its existence, and I take it from what you have been saying that you do know of its existence. Are you saying that Reichenau was exceptional in these matters?

VON RUNDSTEDT: Yes, correct.

COMMANDER CALVACORESSI: That he was exceptional?

VON RUNDSTEDT: Considering Reichenau's entire attitude and his character, I assume that to be the case. General Von Manstein, General Von Kleist, General Von Schobert, General Von Stülpnagel would never have issued such an order on their own, especially since—may I go on?—General Von Brauchitsch had given the strictest orders that the conduct of the war in the East was to be carried out in an absolutely soldierly manner and in accordance with the rules and regulations.

COMMANDER CALVACORESSI: You see, yesterday we had put in evidence an order of Field Marshal Von Manstein which was strikingly similar to the "Rundstedt" order. In some passages...

VON RUNDSTEDT: The "Reichenau" order, you mean.

THE PRESIDENT: You said the "Rundstedt" order.

COMMANDER CALVACORESSI: I beg your pardon, My Lord. Now, you commanded three, or was it four, armies in Army Group South?

VON RUNDSTEDT: I had four armies under my command, besides the Romanians.

COMMANDER CALVACORESSI: And of these four armies which fought so far away so many years ago, we have recovered orders of this kind from two. I put it to you that any soldier of the 6th Army or the 11th Army who received this order would be justified in assuming that his commanders-in-chief were encouraging or at least tolerating excesses, and now, just to show you that these matters were not confined to one army group or even to one front, I want you to look at this signal, Document Number 4067-PS, and it will be Exhibit USA-930.

My Lord, it is convenient to put this in at this point: I am not suggesting that the witness is himself personally concerned with it. This is a signal that was made to the Panzer Army Africa in June 1942, and I will read it, as it is pretty short, in full:

"For Panzer Army Africa via the German General with the Supreme Command of the Italian Armed Forces in Rome—OKH/Quartermaster General for information—General for special duty with the OKH for information—Air Force/Quartermaster General for information—OKW/WR for information. Top Secret, only to be transmitted via officers. According to information received, numerous German political refugees are supposed to be amongst the Free French units in Africa. The Führer has ordered that they are to be treated with the greatest severity. They are therefore to be disposed of without mercy in battle. Where this has not happened, they are to be shot retroactively on the command of the nearest German officer immediately and without further ado, as long as they do not have to be kept back for the time being for purposes of intelligence. Handing over a written copy of this order is forbidden. Commanders are to be informed verbally."

It is unsigned.

You see, whoever sent this order was conscious of its criminality as appears quite clearly from the last two sentences. "The Führer has ordered that they are to be treated with the greatest severity." The order which the Army puts on that in sending it out is to kill. Do you remember the death of Field Marshal Rommel?

VON RUNDSTEDT: Yes.

COMMANDER CALVACORESSI: It was generally supposed at the time, was it not, that there was something suspicious about the death of Rommel; did you hear these rumors at that time?

VON RUNDSTEDT: No, I did not hear these rumors; otherwise I would have refused to act as representative of the Führer at the State funeral for Field Marshal Rommel; that would have been an infamy beyond words.

I only heard of those rumors from the American papers after I was taken prisoner. According to these, Rommel's young son was supposed to have said that his father took poison in order not to be hanged.

COMMANDER CALVACORESSI: You never heard during all these months that succeeded the death of Rommel up to the end of the war, that it was generally said that Rommel had been "bumped off"?

VON RUNDSTEDT: No; it was merely said that he had been under suspicion.

COMMANDER CALVACORESSI: My Lord, I have no further questions.

THE PRESIDENT: Any other cross-examination? Dr. Laternser.

DR. LATERNSER: Field Marshal, you have been questioned with reference to Affidavit Number 4, which comes from Field Marshal Von Brauchitsch and is Exhibit USA-335. The Prosecution attached value to the assertion made in this affidavit that in this manner—referring to personal visits of the commanders-in-chief—the commander-in-chief was in a position to obtain the advice of the other commanders under him. What was the nature of such advice; on which subject could it have been given and in which way?

VON RUNDSTEDT: The matter was very simple. Let me go back a bit. Say I am the commander of a regiment and am giving a task to my battalion commander, saying: "You will attack that village with your battalion." When I go to see him and ask him, "How do you propose to do this?" he will reply, "I propose to do this and that, Sir, and if I may say so, I would like to go to the left where there is better terrain." It is the same on a higher level. If the Commander-in-Chief of the Army should come to see me, as the army group commander, he might say: "Herr Von Rundstedt, how are you going to tackle your task?" and I might say, "In such and such a way, and perhaps I will need one more division." That is the only way of doing it, a friendly discussion. But I would never say to my superior: "What you are doing is wrong, do it differently." Is this intelligible, the way I have put it?

DR. LATERNSER: I think so; then it amounted to a discussion as to how the special task assigned to some commander was to be carried out?

VON RUNDSTEDT: It was not a discussion with the commander-in-chief as to whether it was to be carried out, but a short discussion on how it was to be carried out and how it could best be achieved. You see, sometimes a subordinate has quite a clever idea which the superior will accept gratefully. That was out of the question as far as Hitler was concerned, though.

DR. LATERNSER: And on the other hand, there were always discussions and meetings concerning the solving of tasks in all the armies?

VON RUNDSTEDT: Yes, I imagine so.

DR. LATERNSER: Now with reference to Affidavit Number 5, by General Blaskowitz. The Prosecution has emphasized that leaders of army groups and armies had been in contact by means of telephone, teletype, and radio and had thus been in a position to get situation reports from each other. Are we not concerned

with the ordinary daily communiqués which every unit commander had to make so as to facilitate military leadership?

VON RUNDSTEDT: Yes, definitely. These situation reports were made up in the morning on what happened during the previous night, and in the evening on what happened during the day. If there was an action which was of particular importance to me as the superior commander, then I would ask for reports not only once or twice but possibly three times, by telephone or by teletype: "How are things going; how are you doing? Are you advancing or retreating?" That is the meaning of this.

DR. LATERNER: The Prosecution still refers to this Affidavit Number 5 by General Blaskowitz, and for the purpose of clearing up this statement, as the interpretation by the Prosecution might lead to misunderstandings, I have asked General Blaskowitz to make a statement on his affidavit. I shall read part of it to you now and subsequently I shall ask you whether the facts are correct as General Blaskowitz has given them. I quote:

"The purpose of the present declaration is to make clear a restrictive clause I mentioned in my affidavit of 10 November 1945: 'In their sphere!' This restriction was intended to convey what I am explaining in today's supplementary declaration. I did not mean a conference of commanders at the front forming a 'group' or an actual 'advisory circle.' Both expressions might be misunderstood; they only designate a circle from which individual advisers could be heard by their superiors on matters affecting the latter's spheres."

Would this supplement to the previous explanation correspond to what a commander could actually do?

VON RUNDSTEDT: Yes, that is so, and it removes the misunderstanding which I never believed had originated with General Blaskowitz in that sense.

DR. LATERNER: You were furthermore asked regarding the misunderstanding which occurred before the opening of the Russian campaign between you and Field Marshal Von Bock concerning a gap due to by-passing a large swamp area.

VON RUNDSTEDT: That is an error; it was not a misunderstanding between Von Bock and myself. This deployment plan had been laid down by the OKH, and I, as commanding officer of Army Group South, did not like this gap. That was why I reported to Hitler, saying: "My army group has such and such a task and will do this or that. It would be a good plan if some troops were to pass through this gap." It was not a disagreement with Bock at all, it was a suggestion for improvement coming from me.

DR. LATERNSEER: When you reported to Hitler concerning your intention of carrying out your military tasks, did you do so jointly with Field Marshal Von Bock, or were the reports made one after the other?

VON RUNDSTEDT: They took place one after the other. First Bock and his army commanders had their turn. Then I had my turn with my commanders. I again refer to the order that officers were not supposed to know any more than what concerned them. That meant that I was not supposed to know how Bock was going to operate with his army group. According to Hitler's order, it was none of my business. I was only allowed to know where the tip of his right wing was.

DR. LATERNSEER: And that reached a point where you actually reported separately?

VON RUNDSTEDT: Yes, and that is easy to understand since the more there were present at such a report the more uneasy one felt.

DR. LATERNSEER: An order has been submitted to you, 4067-PS, according to which German citizens, when found fighting for the Free French units in Africa, were to be shot. Did you ever hear...

VON RUNDSTEDT: No.

DR. LATERNSEER: ... that this order was put into practice?

VON RUNDSTEDT: No, I do not know anything about the order.

DR. LATERNSEER: You said that you had never agreed with Field Marshal Von Blomberg's ideas. In this affidavit, which is constantly being referred to by the Prosecution, Field Marshal Von Blomberg gives his opinion of what is called the "Group of German Staff Officers." Did Field Marshal Von Blomberg have particularly close connections with the generals under him?

VON RUNDSTEDT: He always remained somewhat aloof. He did not seem to live on the earth. He was a pupil of the Steiner school of theosophy, and no one really liked him. Once he was a subordinate of mine, before becoming Minister of War. His position was rather exceptional.

DR. LATERNSEER: You have not answered the question. Did Blomberg have such close contact with the generals under him that he could state their opinions in such a decided manner as he did in this affidavit?

VON RUNDSTEDT: I cannot imagine that.

DR. LATERNSEER: Thank you very much. I have no further question.

THE PRESIDENT: The witness may retire.

DR. LATERNSEER: Mr. President, in the event that Professor Dr. Schreiber is produced by the Russian Prosecution, and only in that case, I should like to make application for another witness to be questioned on this point, on which he can give the most exact information. But only in that case.

THE PRESIDENT: Perhaps you would say what point you mean?

DR. LATERNSEER: The Russian Prosecution today, during the cross-examination of Von Manstein, submitted a written statement by Professor Dr. Schreiber regarding a special type of warfare.

THE PRESIDENT: Yes, I know, but there are three or four points in that statement. Which one are you referring to? There is not only one point in the statement. There are a number of points.

DR. LATERNSEER: In the event the witness arrives I should like to ask that I be afforded an opportunity of producing a witness of mine to be questioned on this point. This is only an application made for an eventuality.

THE PRESIDENT: You must make the application now. What is the application; who is the witness?

DR. LATERNSEER: If Professor Dr. Schreiber appears here as witness, I would like to call, to give evidence on this subject, General of the Medical Corps Dr. Handloser, as a witness for the Defense.

THE PRESIDENT: Is he in Nuremberg, or where?

DR. LATERNSEER: I cannot tell you where he is, Mr. President, but I will make every effort to find out.

THE PRESIDENT: Dr. Laternser, the Tribunal thinks that the application should be made in writing, giving the reasons why you think this doctor knows anything about biological warfare, and where you can find him. That concludes with your witnesses, does it?

DR. LATERNSEER: Yes.

THE PRESIDENT: The Tribunal has now only the SA to consider. Will you call your witnesses for the SA?

HERR BÖHM: I should like to call as first witness for the SA the witness Bock.

[The witness Bock took the stand.]

THE PRESIDENT: Will you state your full name, please?

FRANZ BOCK (Witness): Franz Bock.

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.

HERR BÖHM: Witness, when did you join the SA?

BOCK: I joined the SA in 1922.

HERR BÖHM: What was your profession at the time?

BOCK: At the time I was a commercial employee.

HERR BÖHM: What offices did you hold in the SA?

BOCK: From 1922 to 1929 I was an SA private. From 1929 until 1932 I had the following ranks: Truppführer until about 1930; Sturmführer until 1931, and Sturmbannführer until 1932. When I became unemployed around this time, I professionally joined the SA Group Staff West as adjutant in 1932. In 1933 I was transferred to the SA Group "Bayrische Ostmark" and became Stabsführer. In 1934, as Standartenführer, I was transferred to Traunstein. From 1935 to 1937 I was Brigadeführer. In 1937 I became section chief and later department chief with the Supreme Staff of the SA. In 1940, I performed my military service. After having completed my military service toward the end of 1942, I was sent to Düsseldorf as commander of the Group Lower Rhine. There I remained until the collapse in 1945.

HERR BÖHM: So you are one of the oldest SA leaders. You can therefore tell us why the SA was created and how it was organized.

BOCK: Originally, the SA was created as a sports and athletic association in about 1920. Shortly thereafter they were organized into a guard or protective organization, as a security group for duties in assembly halls and for self-protection. At that time, the SA consisted of young idealists and front-line soldiers of the first World War and was not specifically organized until approximately 1923. It was created in accordance with the local needs and necessities as the Party happened to see fit.

HERR BÖHM: You have talked of a self-protection squad for duties in assembly halls. What was to be achieved by these means?

BOCK: The spreading of National Socialist ideas met with much resistance by political opponents, who tried to fight the Party with all means, even by terror. From that a so-called protective organization arose and a so-called assembly security guard.

HERR BÖHM: Why did the SA declare their main task to be the fight against the opponents of their movement and its great aims?

BOCK: Every urge for self-preservation demands a struggle. The realization of National Socialist ideas, with the aim of assuming power in the State, required political struggles and fighting. Our weapons, however, were spiritual ones—propaganda, the spoken word, and mass demonstrations.

HERR BÖHM: What was the development of the SA from 1925 until its complete organization in 1931?

BOCK: The SA from 1925 on developed organically, generally speaking keeping pace with the development of the entire Party. It was closely connected with the Party, and merely had a very insignificant organizational construction of its own. At that time, the Party and the SA were recognized by the rulers of the State and were legalized by them, just as all other political parties, like, for instance, the Reichsbanner or the Red Front Fighters' Association, the combat units which formed part of the various organizations and parties of the time:

HERR BÖHM: What reasons existed in your opinion for a reorganization in 1931?

BOCK: The development of the Party and the spreading of the SA over the entire Reich necessitated at that time, in my opinion, a closer co-ordination and a corresponding organization of the leadership of the SA. Furthermore, it was urgently necessary, because of the Party rallies which took place every year and in which the SA was mainly responsible for the organization, that the SA should be closely organized and united for these propagandistic purposes.

HERR BÖHM: Why did the SA wear uniforms, and did this type of clothing correspond to military functions?

BOCK: In my opinion, it is not correct that the SA had military uniforms in the literal sense. First of all they had a grey windjacket and later on a brown shirt, but most of the other clothing was of a civilian nature. The SA had to have a certain uniform at that time to distinguish it from the other political organizations such as the Reichsbanner, *et cetera*. It would be fallacious to hold that the uniform was of a military character and we never considered that this type of clothing could or should be of a military nature.

HERR BÖHM: Did the members of the other organizations at the time wear any badges of distinction indicating they were units?

BOCK: Yes, of course; the Reichsbanner, for instance, had uniforms similar to ours; they wore our type of grey windjackets and special caps. As far as I remember, the Red Front Fighters' Association, too, wore a kind of uniform, a green-brown shirt, and so on. All organizations at the time were appearing in the uniform typical of their organization.

HERR BÖHM: Did the SA have arms and who was allowed to carry such arms?

BOCK: The SA was not allowed to carry arms in conformity with regulations. After 1933, that is, at the end of 1933 or in the beginning of 1934, the SA received the so-called "Dagger of Honor." Later on—after the seizure of power—leaders only were allowed to carry a pistol, and then only if they had an appropriate police permit or a valid SA pass. The carrying of arms, particularly during the period of struggle, was checked upon by the police and State authorities, and I remember from the time when I was a unit leader, that before and during every meeting or during our marches and demonstrations, the Police searched us for arms. We had the strictest orders at the time not to carry arms, even when we were in danger of being attacked.

THE PRESIDENT: We will adjourn now for 10 minutes.

[A recess was taken.]

HERR BÖHM: Witness, you know that SA members were active in the service of the State and of the Police and were armed. By whom were they armed in these instances?

BOCK: As far as I know, the SA units which were used for emergency State services or as auxiliary Police were armed by the competent authorities by whom they were employed, and were also generally led by the corresponding military or police offices.

HERR BÖHM: You know that special units were established in the SA. Please tell us what the tasks of these special units were.

BOCK: These special units were created in the SA, in the first place, to correspond to the peculiar characteristics of people of the different regions—for example, the people living near the sea coast or in the mountains—or, in the second place, to allow the technical abilities of the SA men to be utilized. Training in these units was, in general, the same as in other SA units. Only to the extent that these units had the necessary material at their disposal or could obtain it—such as signals equipment—was service in these specialized fields carried on.

In addition, particularly in the earlier days, we needed these special units, also called technical units, for our big parades, for the demonstrations and so forth, because thus we could be completely independent. For example, in carrying out a big Party rally in Nuremberg it was absolutely essential for directing and encamping 100,000 men to have the necessary signals units and engineering units to make the arrangements ourselves for these

rallies; and it was the same in the individual Gau territories. There also, signals units were set up for such purposes.

Furthermore, later these signals units and special units were urgently needed for service during catastrophes and for protection against catastrophes, in which the SA specialized.

HERR BÖHM: For what purpose did the SA keep musicians' units?

BOCK: They were an essential component of the marching units whenever they appeared for propagandistic and recruiting purposes. In addition, we needed these musicians' units for the big rallies and demonstrations of the Party.

HERR BÖHM: What points of view governed service in the SA?

BOCK: I should say that that varied greatly everywhere. Partly it was determined according to purely Party viewpoints, such as I mentioned in regard to these special units for the Party rallies, parades, and so forth, for the meetings, the distribution of handbills and so forth.

Furthermore, SA service was necessary for arranging the columns for the parades in such a way that they would make a good impression and be a means of recruitment. It was the spiritual and physical development of the units which was effected through the training program of the Supreme SA Leadership. And finally, there was the service for emergencies, which had to be practiced beforehand in order to be effective.

HERR BÖHM: Did the SA members fulfill their obligations?

BOCK: As far as I could see in my units, the SA men performed their duty gladly, only there were great difficulties for the men, difficulties arising from the men's occupational duties and due to problems of distance and time. For example, a worker in the Ruhr district could, of course, not always be available to follow up his duties.

As I emphasized at the beginning, service varied greatly, and it was especially difficult in country districts in the summertime. As a rule efficient training could only be carried on during the few fall and winter months.

HERR BÖHM: Did the SA men perform their duty according to their oath or in blind obedience?

BOCK: The SA man performed his duty voluntarily. He followed, according to an oath, the orders which were given to him. The oath was that he, the SA man, was bound to absolute obedience to his superior unless illegal things were demanded of him. That is about how it read.

HERR BÖHM: Service in the SA was voluntary, you said. Do you know of no cases in which the principle of voluntary service was broken?

BOCK: It may be that units appeared with the SA which were not built up on a voluntary basis. I am referring, for example, to the Reich Finance Schools or the units which were recruited primarily from students later on, or possibly also such nationalist organizations as had been taken over by the SA.

HERR BÖHM: Was punishment inflicted in the SA? Was there a penal code and why was it necessary?

BOCK: There was a penal code in the SA and there were punishments. The SA had to have these in order to maintain discipline and order in its ranks. One must consider that in the SA we had people from all sections of the population, and that especially after the seizure of power we received an enormous number of people into our ranks, whose characters we were not acquainted with, so disciplinary and penal codes had to be created in order to maintain order and discipline. There was no punishment involving imprisonment in the SA. So-called arrest sentences were provided for, which were intended primarily for the schools. In all my time I was never obliged to use them.

HERR BÖHM: From the fact of the existence of a penal code, can one not conclude a military character of the SA?

BOCK: Not according to my opinion. One must have punishments and penal codes in any organization.

HERR BÖHM: What other regulations were there in the SA?

BOCK: There was a general service regulation in the SA; special orders were contained in the salute regulation, the uniform regulation, the medical regulation, and the drill order.

HERR BÖHM: Why was this drill regulation necessary? Must one not conclude a military character of the SA from it?

BOCK: The drill regulation was a regulation for exercise. It was introduced in the SA in order that the marching units should make a good impression. These exercises were for the appearance and bearing of the men, and were primarily to have an effect on the marching discipline. A comparison with the service regulations of the Army is not possible, for, as far as I am acquainted with these regulations of the Army, they include drill with arms and sham battles, while we had only physical exercises for the purpose of attaining good marching discipline.

HERR BÖHM: Was there not an SA Sport or Defense Insignia for special training?

BOCK: There was an SA Sport Insignia. After 1939, after the decree of 19 January, it was called the Defense Insignia (SA-Wehrabzeichen). This SA Sport or Defense Insignia was an award for achievement, just like the German Sport and Athletic Insignia. It included Group 1, so-called physical exercises, that is, achievements of a physical nature; Group 2, defense sport exercises for training willpower, and Group 3, occupational service, water sports, and special tasks—training of the mind. Those are the exercises that were taught and practiced. This Defense Insignia had the purpose of achieving moral and physical fitness among the SA.

HERR BÖHM: What do you mean by moral and physical fitness?

BOCK: By that I mean there was taught in the schools a mental attitude in the sense of strong patriotic conviction, the training of the men for defense and self-possession, and finally the maintaining of physical stamina through training in sports.

HERR BÖHM: Was the execution of the tasks connected with the Sport Insignia immediately possible on a large scale, or was special preparation necessary?

BOCK: The execution of these exercises for the SA Sport Insignia required an extensive preparation. It is obvious that to obtain this insignia the men had to be taught by competent instructors and leaders and that examiners had to be trained first before the exercises for the acquisition of this insignia could be carried out on a broad basis. In addition, for carrying out the work connected with this insignia we often lacked the necessary means, above all in the country. Thus it happened that after the re-establishment of this Sport Insignia in 1935 it could only make headway with the bulk of the SA men very gradually and year by year. In addition, the work for this Sport or Defense Insignia was not the main task which we had in the SA, but taking this test was more or less voluntary and considered supplementary.

HERR BÖHM: Are training and the discipline of this Defense Sport Insignia to be judged from a military point of view?

BOCK: In my opinion, this insignia is not to be judged from a military point of view but, as I said, it was like the Reich Sport Insignia, an insignia of achievement. Essentially it included the disciplines which were required for the acquisition of the German Sport Insignia and which are at the basis of any other sport discipline, such as the Olympic Games, for example, modern pentathlon, obstacle races, throwing the hammer and javelin, riding, swimming, *et cetera*.

HERR BÖHM: The Prosecution asserts that such activities played a great role in the defense of the country. What do you have to say to that?

BOCK: Possibly, but only to the extent that all functions of civil life play a certain role in the defense of a country.

HERR BÖHM: Did attendance at the SA schools entail any military qualifications? What schools were there in the SA?

BOCK: There were four possibilities of training in the SA. First, the so-called week-end training, covering free Saturdays and Sundays. At these week-end courses the lower ranks, the Scharführer and Truppführer, were primarily trained. This was a so-called elementary training for the lower units and could be quite brief according to circumstances and necessity. The next training school was the so-called SA Group School, that is, a course within the district of a group. It was for the Sturmführer and lasted about two weeks. At the SA Group Schools the purpose of the training was the strengthening of comradeship amongst the Sturmführer, to introduce them to general SA service with their units, to instruct them briefly in sport activities and at the same time to make them acquainted with the disciplines of the Sport or Defense Insignia. Furthermore, questions of the day were discussed, a brief general intellectual education was given, and, finally, they were given an examination of their achievements, ability, and character. The next training school was the Reich School. These were primarily for the secondary leaders, the Sturmbannführer and Standartenführer. The training was more or less the same as at the Group Schools, only one step higher. Generally there was an examination of the ability and achievement of the individual and of his character, and an introduction to SA service at the equivalent rank. These schools were also . . .

THE PRESIDENT: Dr. Böhm, can't you condense this a little bit? We have got this all. You are going straight through the examinations as far as I can make out, when you know we don't want that.

HERR BÖHM: Yes, Mr. President, I will try to condense it a little.

[Turning to the witness.] The Prosecution asserts that 25,000 officers were trained in these schools. What do you have to say to that? Officers for the Wehrmacht, of course.

BOCK: SA Führer were never trained as officers of the Wehrmacht at these schools; only SA Führer were trained and no one else.

HERR BÖHM: Were drills with arms carried out at these schools?

BOCK: No, none at all.

HERR BÖHM: The Prosecution alleges further that 70 percent of the militarily trained men of the SA were sent to the Wehrmacht. What do you have to say to that?

BOCK: According to the German defense law, every German had to do his military service no matter to what organization he belonged. The SA did not train any soldiers. In 1940 I myself served in the Wehrmacht as a simple private and worked my way up to be an officer, although I was active as inspector of the SA Group Schools.

HERR BÖHM: Did the Wehrmacht have an opportunity to influence these schools in any way?

BOCK: No, the Wehrmacht had no opportunity to influence these schools and no right to inspect the schools.

HERR BÖHM: Tell me, Witness, what do you understand by political soldiery and spiritual arming in the SA?

BOCK: Political soldiery means the general attitude and bearing of the men connected with a clear political conception. Spiritual arming was training in the fundamentals of physical, mental, and spiritual bearing, nothing else.

HERR BÖHM: You are acquainted with the decree of the Führer of 1939 on premilitary and postmilitary training of the SA. How about this order? Was it carried out or not?

BOCK: This order of 19 January was not carried out. Immediately after the outbreak of war, when the preparations for the execution of this order were far from being concluded, the Commander-in-Chief of the Army repealed it and postponed it until the end of the war. When this order was published on 19 January, the Chief of Staff, Lutze, intended to make an experimental beginning of this training on 1 October, but he did not get to do so. At the beginning of the war everything still remained in an experimental and preparatory state.

HERR BÖHM: Can the decree of the Führer of 19 January 1939 be interpreted to mean that it pursued a logical development of the work of the SA before 1939?

BOCK: As I could see it, no. The state of training of the SA when the decree was issued was not such that one could speak of an analogous continuation. Our whole training from 1934 to 1939 was only a general sport training. Otherwise, in my opinion, there would have been no need for any agreement between the SA and the commanders-in-chief of the three branches of the Wehrmacht. In the second place, we could have begun immediately after 19 January, and in the third place, the training of the SA Führer, as far as I know, had not sufficiently progressed, in about 80 percent of the cases, to enable them to fulfill even the slightest military demands. These leaders would no doubt first have had to learn in the Army what would have to be done for this training or postmilitary training.

HERR BÖHM: Can one say that in the field of premilitary and postmilitary training, as originally ordered, anything practical ever took place?

BOCK: In my opinion, no. For one thing, this order was given only on 19 January, and it was never carried out. For another it could not become applicable because it was to begin only on 1 October. No men could come back, since the war actually began on 1 September. Only preparations of a technical and financial nature were made—particulars are not known to me—and perhaps the general considerations of how and in what way this order could be carried out.

HERR BÖHM: And then an order was given that this activity concerning premilitary and postmilitary training of SA members should be stopped?

BOCK: As far as I know, both the Commander-in-Chief of the Army and the Party Chancellery ordered this measure to be put aside, and if I recall rightly, this letter of the Party Chancellery further included instructions that this whole decree of 19 January, due to difficulties made by the youth organizations and the Party units concerning the carrying out of the decree by the SA alone, was to be reviewed and possibly abandoned altogether.

HERR BÖHM: Did the SA have financial facilities for creating training opportunities, especially in the special units?

BOCK: The SA had very meager means. For example, an SA Sturm received 80 to 120 marks. A Standarte had about 800 to 1,200 marks. An SA Group had about 2,500 to 3,500 marks—I cannot say exactly. These means were just sufficient to cover the immediate needs of the offices. We had hardly any means for bigger purchases or the acquisition of depots for our special units. If from time to time we received any funds, then these were only smaller amounts which were meagerly distributed through the Supreme SA Leadership. Generally, however, and I believe I have mentioned that, our SA men, and above all those in the special units, manufactured about 90 percent of their equipment themselves or made use of materials they had procured from their working sites or had collected from friends or acquaintances.

HERR BÖHM: Witness, there was rifle practice in the SA, among other things. Will you tell us what kinds of weapons were used and how many of these weapons were at the disposal of the individual units?

BOCK: The SA carried out shooting exercises on ranges with small-bore weapons, partly also with air rifles. In addition, at various leader meetings, we had pistol shooting competition for sports training and just as a matter of entertainment. Some SA men

and units on private rifle ranges belonging to rifle clubs carried out competitions from time to time with full-bore guns. The number of rifles they had was very small. I remember . . .

THE PRESIDENT: We surely don't want the details of these rifles. You have probably got it all in your hearings before the Commission, the details of the particular caliber of the rifles.

HERR BÖHM: Mr. President, this witness was only named for two questions, the question of military training in the SA and several questions in connection with the newspaper *Der SA Mann*. I believe that I have only a few more questions to put to this witness altogether.

[Turning to the witness.] You have spoken about schools before—Group Schools and so forth. Were these schools continued during the war?

BOCK: Shortly after the beginning of the war—no, I would rather say immediately with the beginning of the war, the majority of these SA schools were closed. Only a few were kept open. The reason for that was that in the course of time more and more SA men and leaders were inducted into the Armed Forces, while on the other hand those who remained at home at their occupation were kept so busy that they could no longer carry out their service in the SA to the fullest extent, especially in the schools.

HERR BÖHM: Now I should like to ask you about another subject, the last one which I would like to discuss with you, and that is the publication *Der SA Mann*. Can we consider *Der SA Mann* as an official publication of the Supreme SA Leadership?

BOCK: No, I did not consider it an official publication because I knew that *Der SA Mann* was not published by the Supreme SA Leadership. It was a newspaper just like any other.

HERR BÖHM: What was the attitude of the Supreme SA Leadership to that publication?

BOCK: The Supreme SA Leadership published official statements, such as promotions or announcements of a similar nature, in the newspaper. Apart from that, the contents were similar to those of other publications.

HERR BÖHM: Did you, as chief of office, Amtschef, with the Supreme SA Leadership, have any influence on the setup of that publication?

BOCK: No, I had no influence on that newspaper. I only know that my superior, the Hauptamtschef, had tried several times to get a special section in that publication for schooling and training. It was not possible, though. I do not know for what reason, but I have always assumed that purely business matters did not allow this.

HERR BÖHM: Now was that publication *Der SA Mann* used for training purposes within the SA?

BOCK: I did not notice that. That publication was distributed in schools and was read there just as other publications were, but as far as I know, it was not used for special training purposes.

HERR BÖHM: There appeared in that publication a series of articles about armament in other states. Is it not to be assumed that these articles were published in order to justify our own armament?

BOCK: In my opinion, that particular weekly was not so important or so widely distributed that it could have had any influence on important people or large numbers of people.

HERR BÖHM: Do you know of a publication within the SA which had an official character?

BOCK: The *Verordnungsblatt*, the publication containing regulations of the Supreme SA Leadership, or for instance *Der SA Führer*, which was published by a special department in the Supreme SA Leadership.

HERR BÖHM: One question which is outside this complex of questions: could you tell me who guarded the concentration camp in Dachau from the very beginning?

BOCK: As far as I can recall, that was guarded by SS. I, myself, was never in that camp. Only later did I find out about the existence of that camp.

HERR BÖHM: What effect had the seizure of power on 30 January on the old SA men of the combat time after the serious political strife of the previous years?

BOCK: At the time of the seizure of power, I was adjutant in a Gruppenstab. And if I think back to that time today, I remember that I believed at first that, on the basis of the tremendous political tensions and conflicts of the 12 preceding years, precisely at that time a tremendous eruption of pent-up fury and hatred and reprisals was bound to come. I wish to state, however, since I lived through this period of time personally, that I could only see and notice that the seizure of power was effected on the whole quietly and reasonably, and that the old SA man, who still remembered the fighting days, remained calm and prudent.

HERR BÖHM: In what light, however, did you see the various excesses which have occurred later on from 1933 to 1934, according to the statement which you have now given?

BOCK: In my opinion, the excesses which occurred later in spite of the discipline and order which had been commanded, could only have been committed by a few individuals or small groups who did

not understand the point of our Socialist revolution, its scope and its limitations; or on the other hand, by individuals who were thrown off their balance and could not regain their inner equilibrium.

HERR BÖHM: Mr. President, I have no further questions to put to this witness.

THE PRESIDENT: Does the Prosecution wish to cross-examine?

MAJOR J. HARCOURT BARRINGTON (Junior Counsel for the United Kingdom): Witness, you have told the Tribunal that the SA were trained only in "political soldierdom." Did not political soldierdom mean that the SA men had special privileges in the State which the ordinary German citizen had not?

BOCK: I do not know what privileges the SA men were supposed to have had.

MAJOR BARRINGTON: Was not the SA man one of the National Socialists' elite?

BOCK: The SA man was the political soldier within the Movement and nothing else.

HERR BÖHM: Mr. President, our transmission apparatus does not work. We do not understand the questions. The witness understands them in part only because he knows some English.

MAJOR BARRINGTON: Would it be possible for Dr. Böhm to come and sit here? The German switch appears to be working all right here.

THE PRESIDENT: Yes, I think so. If his earphones are not working properly he can get another pair.

MAJOR BARRINGTON: Witness, was the SA man subject to the same restraints of behavior as an ordinary German citizen?

BOCK: To a much greater extent. The SA man performed his services voluntarily, and he was particularly subject to the law. I as chief of the Office for Social Welfare, have been concerned for years with gradually finding employment for thousands of SA men, and supported them in their work. I had to take care of many poor and needy SA men through that vast welfare organization for many years until close to the end.

MAJOR BARRINGTON: I asked you—perhaps the translation did not come through right—were there the same restraints, or restrictions, on the behavior of the SA men as there were on ordinary German citizens?

BOCK: Mr. Prosecutor, I would ask you to tell me what restraints you mean. I do not know of any essential restraints such as you mention.

MAJOR BARRINGTON: Is your answer no? There were no restraints? Or is it yes?

BOCK: I asked a question of the prosecutor. What restraints did the SA man not have in contrast to others? That is how I understood the question.

MAJOR BARRINGTON: Was the SA man as free in his behavior, or was the SA man more free in his behavior than the ordinary German citizen?

If you cannot answer it, have a look for a moment at the general service regulations which you talked about just now.

My Lord, that is on Page 30-A of Document Book B. It is Document Number 2820-PS, and is Exhibit USA-427.

[Turning to the witness.] Look first at Article I. I think it is on Page 9. Have you got it?

BOCK: Yes.

MAJOR BARRINGTON: "The SA man is the political soldier of Adolf Hitler"; and a few lines further down: "He therefore enjoys special prestige and has definite rights in the State." Do you deny that those words mean what they say? Wasn't the SA man in a privileged position?

BOCK: I can only say that as far as I was an SA man, and as far as I came to know others, SA men were not in a privileged position. Besides, this is the SA service regulation of 1933, which, according to my knowledge, was rescinded essentially in 1934, and . . .

MAJOR BARRINGTON: I do not care when it was rescinded. It was issued on the 12th of December 1933, was it not? And that was after the Nazis were in power?

[The witness made no response.]

MAJOR BARRINGTON: Well, you can see it says so on the top of it. Tell me what those definite rights in the State were that the SA man is said to have by Article I. What were the definite rights in the State? What did it mean? Every SA man read that book.

BOCK: If the SA man was in the service of the State or in the emergency police service, he, of course, had the privileges accorded that particular service.

MAJOR BARRINGTON: You cannot tell me what they are, I suppose. Well, look at that Article 10 on Page 13. Have you got Article 10, Page 13?

BOCK: Ten? Yes.

MAJOR BARRINGTON:

"The exalted position of the SA man may not be degraded by insulting, slighting, or unjust treatment."

How was the SA man "exalted" above any other German citizens?

BOCK: In my opinion he only had particular responsibilities.

MAJOR BARRINGTON: What did it mean when it says he had "an exalted position," and he must not be insulted? He could insult other German citizens, could he not?

[The witness made no response.]

MAJOR BARRINGTON: Was the SA man exalted above the Army? Yes or no?

BOCK: I have already said that, as far as I am concerned, I never had or assumed any special privilege, and therefore I cannot imagine that the SA man could have availed himself of any such privilege.

MAJOR BARRINGTON: Very well then; that is your answer. Now, look at Article 18, on Page 17:

"The SA man may use weapons which are entrusted to him only in execution of his service or for legal self-protection."

Now I want you to tell me, what aspect of the SA man's service might require the use of weapons other than in self-defense?

BOCK: I have already said that the SA man could be used for emergency service. With regard to these service regulations, I would like to say that in my opinion they had been issued under Röhm at the time . . .

MAJOR BARRINGTON: I do not want to go into that. Röhm was Chief of Staff of the SA, and what he issued presumably was law to the SA. And he says that they may use weapons only in execution of their service or for legal self-protection.

Now I ask you again, apart from self-protection, what case could there be where the SA man's service should require the use of a weapon? If you cannot answer, say so.

BOCK: I can only say what I have already said in answering a question of counsel, that the SA was armed only to the extent that it was active in carrying out functions of the State.

MAJOR BARRINGTON: Are you suggesting that the purpose to which they might use their arms might be a military purpose, then?

[The witness made no response.]

MAJOR BARRINGTON: Are you suggesting they might use them for a military purpose, if they were called for that purpose?

BOCK: I have said emergency service, especially auxiliary police service or police service, whenever the SA was called upon to do so.

MAJOR BARRINGTON: You say you are not asserting they would use them in the Army, but you are asserting they might use them to assist the Police, are you?

BOCK: For police emergency service, or police auxiliary service.

MAJOR BARRINGTON: Do you mean, then, that when they were under the police auxiliaries, this regulation in the general service regulations of the SA was the regulation that applied to them? Or did police regulations apply?

[The witness made no response.]

MAJOR BARRINGTON: Did they take the commands of the SA, or did they take the commands of the Police when they were auxiliary policemen? That is what I want to know.

BOCK: Mr. Prosecutor, I have only stated what I have seen myself. I do not know what has been decreed in detail according to the service regulations. The SA man, as I have seen it, was armed in as far as he was used in the State or police auxiliary service.

MAJOR BARRINGTON: Can you tell me any other case besides police service where he would have to use his arms, except self-defense? Any other case?

[The witness made no response.]

MAJOR BARRINGTON: I put it to you, Witness, that what these arms which are mentioned in this Article 18 were meant for was nothing more nor less than for the carrying out of the so-called SA actions; isn't that right?

BOCK: I can only repeat again and again that in my opinion . . .

THE PRESIDENT: Witness, you can answer the question. It is either right or it is wrong. You can say, you were with the SA all this time.

BOCK: If the SA man used the weapons when not employed on emergency service, then he became liable to punishment. Apart from that, the SA man was used only for emergency service.

MAJOR BARRINGTON: The SA man, I put it to you, became liable for punishment if he used his weapons for a purpose that the SA did not approve of. But what I am saying now is that he was encouraged—indeed, ordered—to use his weapons for actions which the SA did approve of.

[The witness made no response.]

MAJOR BARRINGTON: Well, if you cannot answer that, I will leave it.

Look on in that little book to one more thing. Look on to Page 33, Number 6 of the punishment regulations; Page 33. Have you got Page 33?

BOCK: Yes, I have Page 33.

MAJOR BARRINGTON: Now, you see the last sentence of the first paragraph, about punishment: "Right is what is advantageous to the Movement, and wrong is what harms it." Have you got that?

BOCK: No.

MAJOR BARRINGTON: "Right is what is advantageous to the Movement, and wrong is what harms it."

BOCK: Yes, I have found that.

MAJOR BARRINGTON: Now, I suggest to you, Witness, that what is advantageous to the Movement, such as SA actions, is precisely the thing that the SA arms and weapons were meant to be used for; is that right or wrong? You can say yes or no.

BOCK: The SA leaders were employed under the command of their leaders, and they had to know for what purposes they were allowed to employ their SA men.

MAJOR BARRINGTON: I do not think that has got much to do with my question. Look again at that sentence, "Right is what is advantageous to the Movement, and wrong is what harms it." Does not that show perfectly clearly that the Nazi Party regarded the SA as a privileged party who were entitled to commit crimes if they were advantageous to the Movement?

BOCK: The SA man was led, and could not on the basis of that regulation act as an individual, or as he wanted to.

MAJOR BARRINGTON: My Lord, I have only got one more document. There are only two or three questions on it, My Lord.

THE PRESIDENT: Very well.

MAJOR BARRINGTON: My Lord, the document is the first document in Book C. It is D-918. Oh, I beg Your Lordship's pardon. It is Book 16-B. The document is D-918 and it will become Exhibit GB-594.

Witness, I am not going to take you into any detail in this document. You can see what it is. It is Lutze's training directive for 1939, and you will see on Page 2 that the date on which it was issued was 4 November 1938, which was before Hitler's order about the pre- and postmilitary training. Now I have only one point to put to you on this document. You have maintained just now, have you not, that the training of the SA was predominantly for sport; is that right?

BOCK: I have said that the training of the SA was primarily training and exercise towards the achievement of the Sport Insignia and ideological and physical training generally.

MAJOR BARRINGTON: But didn't you say that the emphasis was placed upon sport and not upon military tendencies? If you didn't say that, admit it.

BOCK: I cannot remember the details of what was said before. I can only say one thing, that the SA only had defense-sports training, including physical and intellectual training and training of the will power as described here in this book.

MAJOR BARRINGTON: You don't deny then that that training had a military tendency behind it; do you deny that? The training for the Sport Insignia had a military tendency behind it?

BOCK: We received no directives for any kind of military training nor did we actually engage in it. It was a case of moral education, comprising, as I should like to point out again and again, physical and intellectual training and training of the will-power, and nothing else.

MAJOR BARRINGTON: Well, all I want you to do is to run your eye down certain passages of this document. Look at Page 7 of Lutze's training directive for 1939. You will see that Page 7 deals with the first training period, from November 1938 until the beginning of February 1939, and at the bottom part of the page you will see, set out in certain sequence, the items on which particular attention is laid: Marching, drill, shooting, field training, and last of all, sport. Can you see that?

BOCK: Yes.

MAJOR BARRINGTON: Now turn on to Page 9, which gives you a similar thing for the second training period, from February to April 1939. In the middle of the page you will see, underlined again: Drill, firing training, and last of all, sport. Do you see that?

BOCK: I do not know, Mr. Prosecutor, what you are referring to right now—I have it now.

MAJOR BARRINGTON: Now, turn on to Page 10, where you see the same thing for the third and last training period, which is May to June 1939. On Page 10 you will see the same thing: drill, musketry, field training, and last of all, sport. Isn't it perfectly clear that sport was very much an excuse and a means to an end?

My Lord, I am not proposing to put any more questions to this witness, as the general topics will be dealt with in the cross-examination of the witness Jüttner.

THE PRESIDENT: Very well; we will adjourn now.

[The Tribunal adjourned until 13 August 1946 at 1000 hours.]

TWO HUNDRED AND SECOND DAY

Tuesday, 13 August 1946

Morning Session

[The witness Bock resumed the stand.]

THE PRESIDENT: The Tribunal will sit in closed session tomorrow afternoon at 2 o'clock. That is to say, it will not sit in open session after 1 o'clock tomorrow.

Mr. Barrington, had you finished?

MAJOR BARRINGTON: Yes, My Lord.

THE PRESIDENT: Are there any other Chief Prosecutors who want to cross-examine? Then, Dr. Böhm, do you wish to re-examine?

HERR BÖHM: Mr. President, I should like to ask a few brief questions on the cross-examination yesterday.

Witness, will you please answer these questions as briefly as possible. Do you know the basic principle, the foremost in the SA: equal rights for everyone?

BOCK: Yes, I know the principle. It was also taught in the schools.

HERR BÖHM: Is it true that the higher position of an SA man, which was mentioned here yesterday, meant only the respect held for him in the national community on the strength of his contribution to the realization of the aims of the Third Reich?

BOCK: The SA man was always trained to observe order and discipline and to obey directives and the law.

HERR BÖHM: Were the privileges which were mentioned here yesterday something different from the respect for the SA man as a political soldier?

BOCK: The SA man had no privileges. He could earn certain rights in connection with his services which enabled him to advance more easily, socially speaking, but otherwise he was subject to the law in all respects.

HERR BÖHM: You mentioned yesterday that the SA man was not armed, that he only carried an SA dagger. From Sturmführer up, he had in addition some firearm for which he needed a license, like every German who wanted to carry firearms.

BOCK: Yes.

HERR BÖHM: Now, as a member of the SA, within the circle of persons in question here, did the individual who carried a pistol have a right to use it against other nationals?

BOCK: No, the SA man who carried a weapon was bound to realize just like any other citizen that he could use it only in an emergency for his own defense.

HERR BÖHM: Article 10 was read to you yesterday, stating that the high position of the SA man must not be disgraced by treatment of damaging, disparaging, or unjust character.

BOCK: The rights were the consequences of certain duties. If the SA man was under special obligation he had to have special rights. But never—that was constantly emphasized—could he overstep the existing laws in any way.

HERR BÖHM: Article 18 says especially that the SA man may use weapons that were entrusted to him to the extent I have just stated, that is, only in the execution of his services and for legitimate self-protection. Does this not mean that the SA man, like every other German citizen, had to obey the existing regulations concerning the possession and the use of weapons?

BOCK: I have already said so once. The SA man was subject to the existing rules. That means, of course, that he needed a police license or a proper pass stating how and when he was entitled to use his weapon.

HERR BÖHM: Was it not true that the SA man, because he was in the SA and because more was asked of him than of any other citizen, would receive more severe punishment if he committed an offense with his weapon?

BOCK: An order was in existence that the SA man, when on trial, was to be punished especially severely, and that special standards were to be applied in determining his punishment if he had committed any offense.

HERR BÖHM: Another quotation from the service regulations of 12 December 1933 was read to you yesterday, stating that all violations of discipline were to be punished. Does that not mean that violations, that is, discipline infringements, were punished by the Supreme SA Leadership and that orderliness was a ruling principle in the SA?

BOCK: The leaders particularly made especially strenuous efforts to see to it that every SA man kept within the limits of the law. In addition, we had strict orders that the SA man, if he had committed any offense anywhere in civil life, had to be reported,

that a report was also made to us by the judicial authorities and that the person in question was then given disciplinary punishment.

HERR BÖHM: The document which was shown to you yesterday, of 12 December 1933, on Page 33, Number 6, says, "Right is what is advantageous to the Movement; wrong is what harms it." Did this phrase mean anything more than the English proverb "Right or wrong, my country"?

BOCK: According to any conception and interpretation, it means that the man has rights within the framework of his duties and that, on the other hand, if he does wrong, and oversteps the limits of the law, he also thereby harms his fatherland.

HERR BÖHM: The training directives were also shown to you, and Pages 7 and 9 of them were pointed out to you. There is talk here of policing duties, of drill, shooting practice, exercises in open country, and sports. Did not the pentathlon in the Olympic Games consist of just that? Did not the athletes taking part march into the stadium in good order and in a way made possible only by previous exercise? Did they not also shoot and drill; did they not also engage in sports, all the forms of sports which are listed here?

THE PRESIDENT: Don't you think this is really more a matter of argument than examination? We have had this argument as to whether or not it was for sport or whether or not for military purposes over and over again. We have got to make up our minds about it. It doesn't help very much to have it put in again in re-examination.

HERR BÖHM: Yes, Mr. President. I would not have asked this question if the witness had not been referred to the fact that sports were the last-mentioned of the exercises in these training directives. I should like to point out that the other exercises which are listed here were also carried out in the pentathlon of the Olympic Games, and I hardly think that they involve a military or militaristic attitude.

May I now ask the witness one more question.

[Turning to the witness.] Incidentally, you did not answer my previous question: Were not the same or very similar exercises carried out in the pentathlon of the Olympic Games?

BOCK: I was interrupted by the President. I was present at the Olympic Games and I know the various forms of sport well. We carried out all the drill so that we could appear in public in a disciplined fashion like all sport organizations, and make a good impression. Because we were later to organize these large-scale games, we chose in general the exercises of the Olympic Games, and these were taught and practiced by us. We shot, we held obstacle races, and we used all these exercises in our training.

HERR BÖHM: On Page 8 of the training directives which were submitted to you yesterday it says that in drill—this would be the only exercise resembling military training—“the training should be put into effect energetically. After exercise in the basic movements, applied drill tests should be tackled, as they occur in drill movements necessary in political assignments.” In connection with the wording of these instructions, did you think of military training or militaristic training when it was a question of drill within the SA?

BOCK: To us, the drill and the training of the men as individuals as well as in closed formations were always done for the purpose of presenting a unified picture in public appearances.

HERR BÖHM: I have no more questions to put to the witness.

THE PRESIDENT: The witness can retire.

HERR BÖHM: Mr. President, I should now like to call the next witness, Schäfer.

[The witness Schäfer took the stand.]

THE PRESIDENT: Will you state your full name, please.

WERNER AUGUST MAX SCHÄFER (Witness): Schäfer.

THE PRESIDENT: Is that your full name?

SCHÄFER: Werner August Max Schäfer.

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.

HERR BÖHM: Witness, what are you by profession?

SCHÄFER: I am a Government Director in the Penal Execution Administration.

HERR BÖHM: Were you a member of the NSDAP or any of its branches?

SCHÄFER: I have been a member of the Party since 1928.

HERR BÖHM: Were you a member of the SA?

SCHÄFER: I have been a member of the SA since 1932. I became an SA Oberführer in 1938.

HERR BÖHM: The witness Raymond Geist said in an affidavit that one thousand local assembly places of the SA were used to keep people under arrest. Do you know anything about that and is this allegation true?

SCHÄFER: I have no knowledge of the figure of one thousand local assembly places used to keep people under arrest.

HERR BÖHM: Would you have known anything about such places, if they had existed in that number?

SCHÄFER: If they had existed in that number, I should certainly have known of them; actually, a few of these places did exist, but quite shortly after conditions had become settled they were dissolved or taken over and administered by the Gestapo.

HERR BÖHM: Is it correct to say that these arrest places were an emergency measure in the period around 1933?

SCHÄFER: Yes, it was definitely an emergency measure. At that time, at the time of the assumption of power, we were in a state of latent civil war in Germany. It was therefore necessary to arrest active opponents in order to put into effect what the Führer had decreed in connection with the assumption of power, namely, that the revolution was to be carried out without bloodshed.

HERR BÖHM: Is it true that extensive discovery of weapons caused the arrests in 1933, and that these arrests were carried out to avoid chaotic conditions, which would have resulted if these weapons had not been confiscated?

SCHÄFER: Yes. A large number of such weapons were found and it did not remain unknown to us that a large number of our active opponents were willing to use these weapons to bring about such chaotic conditions.

HERR BÖHM: Can one say that the SA, in confiscating the weapons at that time, was carrying out an assignment of the State?

SCHÄFER: Yes. It was a state assignment by the Prussian Minister of the Interior and Minister President, Göring, who used the SA as an auxiliary police force on that occasion.

HERR BÖHM: Dr. Diels says in an affidavit that it was his task to curb the tendencies of the central political police toward the SA and its ideology, and to follow up the innumerable complaints about illegal actions by the SA due to the fact that some radical SA Führer, appointed Police Presidents, had allowed lawless conditions to arise between July and November 1933. Since you were in that district, what can you say about Dr. Diels' statement?

SCHÄFER: As far as I recall—and I can remember it very well—Diels maintained very friendly relations with the then SA Chief of Staff Röhm, and also with the local chief of the Berlin-Brandenburg Group, Ernst. Therefore I cannot understand why he should have considered and termed it his main task as chief of the Gestapo to follow up any complaints which were received about the SA. I should like to point out the fact that such undisciplined elements, which might have damaged the Movement and the SA, were restrained by the Movement and by an SA liaison staff at

Gestapo headquarters. I know for a fact it was Gruppenführer Ernst who at that time arrested such undisciplined elements on his own initiative and kept them in a separate sector of the Oranienburg Concentration Camp. It was, therefore, not the task of the head of the Gestapo to take action against undisciplined elements of the SA or the Movement; his tasks were quite clearly on another level.

HERR BÖHM: Diels has now restricted his originally far-reaching affidavit to refer mainly to Berlin. What was the attitude of Count Helldorf, who was liquidated by Hitler on 20 July 1944, in this respect?

SCHÄFER: I know Count Helldorf from my activity as SA Führer in Berlin. Shortly after the seizure of power he was, as far as I know, for a short time in the Prussian Ministry of the Interior and was then Police President in Potsdam. In this capacity Count Helldorf, I can only say, did everything required and necessary to maintain an orderly police institution. For this purpose he employed old and reliable police officials. As Police President he was also my superior with regard to the concentration camp at Oranienburg. I must mention that he paid frequent surprise visits to Oranienburg and inspected with great thoroughness the measures which had been ordered. He was known to me as a man who advocated the absolute maintenance of correctness and discipline.

HERR BÖHM: I further draw your attention to Diels' statement that the SA formations forcibly entered prisons, abducted prisoners, removed files, and established themselves in the offices of the Police. Is that true? Did such conditions ever exist?

SCHÄFER: I cannot recall such conditions. They would surely have been known to me if they had existed, for I was frequently in Berlin; but I must say that I did not hear of such occurrences. Later too I should have heard something about them when I became an official in the Penal Execution Administration of the Reich. In my opinion the Berlin colleagues would certainly have reported such events to me even afterward, but that was not done.

HERR BÖHM: You were at that time commandant of Oranienburg and associated in Berlin with the men of the Police or of the Gestapo almost every day?

SCHÄFER: I was not in Berlin every day, but still quite frequently, so that such things certainly would not have escaped my notice.

HERR BÖHM: Considering the statement made in his affidavit for the SA that altogether 50 people were the victims of the revolution in Berlin, do you think that Diels' assertion that it was his task to try and transfer the SA camps into the hands of the Government in order to avoid mass murder is true?

SCHÄFER: This statement of Diels' is undoubtedly incorrect. I can say that it in no way corresponded to the ideology of the SA to remove political opponents by committing mass murder. Diels himself in his affidavit gives the figure of 50 victims in Berlin, as you have just read, and that proves what I say. One must not forget that a large part of the political opponents of yesterday were now marching with the SA and that therefore there still existed many personal ties with the camp of the political opponents. If this intention to remove political opponents by mass murder had existed at all, its execution would have met with the greatest resistance within the SA itself; and I may say frankly here that what Diels asserts is in no way true.

HERR BÖHM: Is it true that Diels' position became untenable as a result of constant conflict with the SA? He says so in his affidavit for the Gestapo; but he says that he must also admit that he was Regierungspräsident both in Hanover and Cologne.

SCHÄFER: I know nothing about this alleged deterioration of relations between Diels and the Supreme SA Leadership. I do not think that what he says is correct, because a few years later I found him to be on very close terms with the then Chief of Staff Lutze; that was in connection with a tour in the Ems district. He was then obviously on very friendly terms with the Chief of Staff, Lutze, and the fact that he was Regierungspräsident in Cologne and especially the fact that he was later Regierungspräsident in Hanover under Chief of Staff Lutze, who was the Oberpräsident there, really contradict this assertion that he had disputes with the SA.

HERR BÖHM: Did, as Diels says, the SA widely confiscate property of peaceful citizens, although in his affidavit for the SA he states that really only the staff of Ernst and the signals section set up by him participated in revolutionary activity?

SCHÄFER: Of the looting of so-called peaceful citizens by the SA I know nothing. If some such case did occur, which probably cannot be denied, I should like to say that the generalization of such isolated instances is at considerable variance with the truth. It is quite unjustifiable to generalize these individual cases which undoubtedly occurred, and which, one must not forget, were absolutely possible. I may point out that for example the brown shirt, which the SA man had to buy for himself, could be purchased in all the appropriate stores in Berlin and in the whole Reich. I learned personally of a number of cases in which obscure elements which did not belong to the SA or to the Movement—and that fact was established later in court proceedings—welcomed the opportunity of committing illegal actions under cover of the Party uniform. For that reason the Party uniform was finally put under legal protection.

HERR BÖHM: You know that Diels was Gestapo chief in 1933 and 1934; and if one reads his statement that the SA took property away from peaceful citizens, the obvious question arises whether he is not trying to attribute Gestapo customs to the SA.

SCHÄFER: I must say that this assertion of Diels surprises me greatly, because, as I have said, he was at that time on very friendly terms with the leaders of the SA. I cannot quite see how he arrives at this assertion against, it seems to me, his better knowledge.

HERR BÖHM: He then speaks about 40,000 prisoners in concentration camps, in about 40 illegal camps. Can you say how many concentration camps actually existed at that time?

SCHÄFER: I have no statistics on this point, but I should like to scrutinize this figure of 40,000 internees, and particularly the number of 40 camps which Diels mentions. During 1933 Oranienburg soon became the only camp for political opponents from Berlin and the whole province of Brandenburg. A few transit camps which had existed up till then were dissolved. There could not have been many prisoners in them, because they were transferred to me at Oranienburg; it was a very small number of prisoners.

If one considers that at the time when his figure of 40,000 applies, Oranienburg did not even number one thousand internees, and also considers that this camp was instituted for a district totalling over 6 million people; if one considers, thirdly, that Berlin was the center of the political opponents of the NSDAP and therefore had an extraordinarily large proportion of active political opponents, then I can hardly imagine his number of 40,000 internees to be correct. I must say that the figure of 40,000 is absolutely new to me, and I never heard anything about it, not even from Dr. Diels, with whom I was personally on quite friendly terms; I should have known of this figure if it had ever been mentioned.

HERR BÖHM: Diels speaks of approximately 40,000 prisoners. Could you give an approximate figure which might be more correct?

SCHÄFER: That is extremely difficult to say, but the Christmas amnesty ordered by Minister President Göring at that time—and I should like to emphasize particularly that this amnesty was carried out on a very generous scale—allows of some conclusion. 5,000 internees—I well recall this figure—were released from the camps at that time, and Oranienburg for instance, which as I said was the only recognized and state-controlled camp for Berlin and Brandenburg, reduced the number of its inmates to just over 100; over two-thirds of the camp inmates were released at that time.

HERR BÖHM: You were commandant in Oranienburg?

SCHÄFER: Yes.

HERR BÖHM: From when to when?

SCHÄFER: From March 1933 to March 1934.

HERR BÖHM: This camp was guarded by SA men?

SCHÄFER: Yes.

HERR BÖHM: From when to when?

SCHÄFER: From March 1933 to June or July 1934, I believe.

HERR BÖHM: And under whose orders were these men?

SCHÄFER: These SA men were members of the auxiliary police. As such they were under my direct orders as commandant.

HERR BÖHM: And to whom were you subordinate as camp commandant?

SCHÄFER: As camp commandant I was subordinate to the Regierungspräsident in Potsdam, who was competent for Oranienburg, to his Police President, Count Helldorf, and, of course, ultimately to the Prussian Minister of the Interior.

HERR BÖHM: And what influence did the then Führer of the Gruppe Berlin-Brandenburg have on the Concentration Camp Oranienburg?

SCHÄFER: The Führer of the Gruppe Berlin-Brandenburg had no influence on the camp itself. He had no influence on the conduct or the general administration of the concentration camp.

HERR BÖHM: Could one assume that individual actions carried out by him meant terror measures of the SA?

SCHÄFER: I did not hear of any.

HERR BÖHM: Do you know the number of persons interned in the unauthorized transit camps who were released before Christmas 1933?

SCHÄFER: No, I do not know the number, but I may say that there existed only a small number of such camps and a small number of internees in them. I have already explained that only a few internees were transferred to me at Oranienburg as the only camp in existence then. A large part had already been released at that time.

HERR BÖHM: Is there any reason for believing that at that time there were 50,000 internees in the rest of Germany?

SCHÄFER: No, there is no reason for believing that, and I must say that in proportion to the figure of internees in Prussia, which I gave before, the number of 50,000 is absolutely incredible. Prussia was geographically the largest part of Germany, and if there were comparatively few internees in Prussia I cannot imagine that there could have been 50,000 in the rest of the Reich. This figure is new to me.

HERR BÖHM: What do you know about co-operation with the Gestapo in its early stages?

SCHÄFER: In its early stages the Gestapo had only loose connection with Oranienburg. It had only official connections arising from the relation of the political police with the auxiliary police, the SA. In the course of the year, the Gestapo sent persons whom it had arrested to the camp and released them again, at the direction of the Prussian Minister President, when their cases had been examined.

HERR BÖHM: Were there difficulties between the Concentration Camp Oranienburg and the Gestapo in Berlin?

SCHÄFER: Originally no, but later through an incident difficulties arose which I would not like to conceal at this point. On one occasion the Gestapo in Berlin sent two internees to the camp in a severely maltreated condition. Next day I went to see Standartenführer Schutzwechsler who was my superior, and asked him to protest, together with me, to the Gestapo in the Prinz Albrecht Strasse, and to demand an explanation which I intended to make the subject of a report to the Prussian Ministry of the Interior.

I was promised that this explanation would be forthcoming, but on the next day I was called up on the telephone by Standartenführer Schutzwechsler, who told me that he had just learned that the Concentration Camp Oranienburg was to be dissolved immediately. He asked me to come to Berlin at once, as he wanted to go with me to the Prussian Ministry of the Interior to investigate why the dissolution of the camp had been ordered so suddenly.

We went to the Prussian Ministry of the Interior together and learned to our great astonishment that after our protest on the previous day at the Prinz Albrecht Strasse, the Prussian Ministry of the Interior had been called up and informed that cases of maltreatment had occurred, and that it had become necessary to dissolve Oranienburg. The suggestion of the Prinz Albrecht Strasse was that all the prisoners in Oranienburg were to be transferred to the new camps built by the SS in the Ems district. A train was already on the way and had in fact already arrived at Oranienburg.

When I told State Secretary Grauert of the circumstances and explained to him what had induced me to protest at the Prinz Albrecht Strasse on the previous day, he promised me at once to have these circumstances investigated thoroughly, and he did so immediately. In my presence he told Ministerialdirigent Fischer to conduct an investigation of the affair. Fischer was known as a thoroughly correct and reliable old official, and Fischer then actually found the circumstances to be as I had described them to Grauert. It was established clearly that these cases of maltreatment, with

which Oranienburg had been charged, had occurred in the Gestapo in Berlin. Thereupon it was decided not to dissolve the camp.

HERR BÖHM: Do you know of cases in which the Gestapo had to penetrate by force into SA camps to liberate prisoners?

SCHÄFER: No. I never heard of such cases.

HERR BÖHM: You did not have such cases in Oranienburg?

SCHÄFER: No, no.

HERR BÖHM: Did the Gestapo have decisive influence on the release of internees, or who, in your opinion, was responsible for the releases which took place in the course of time?

SCHÄFER: Various authorities were responsible for the release of prisoners: first, the competent Regierungspräsident and Landräte who as a result of incessant protests on the part of the relatives of internees were well acquainted with their circumstances. Then the camp itself, and I as commandant of the camp, had an important part in the release of internees. After investigation in some of the cases I made suggestions for the immediate release of the prisoners, but I must say that, above all, it was Minister President Göring himself who at the time showed the greatest concern that the Oranienburg Camp should not be stuffed with prisoners but that as many as possible should be released. I must emphasize that at this point. I recall a Christmas speech of Diels, which he made to the prisoners on the occasion of their release, and in which he said that Minister President Göring had urged that at Christmas very extensive releases of prisoners should take place.

THE PRESIDENT: Dr. Böhm, the Tribunal is not trying this witness. It is trying the criminality of the SA. This is far too detailed about the release of prisoners. He seems not to have got further than 1933 up to the present.

HERR BÖHM: I should like to ask only one more question in this connection: How many people still remained in the camp after the releases at Christmas 1933?

SCHÄFER: Just over 100.

HERR BÖHM: Did you ever have any personal differences with Dr. Diels?

SCHÄFER: No, none at all. On the contrary, when in 1934 I wrote a book about Oranienburg, he immediately on his own initiative offered to write an introduction for it, and I know that he always praised the camp.

HERR BÖHM: Are you familiar with the testimony of Ministerialdirektor Hans Fritzsche?

SCHÄFER: In part, yes.

HERR BÖHM: Is it true, as he says, that the first commandant of Oranienburg, who was there from March 1933 to 1934, was executed? You were the first commandant, were you not?

SCHÄFER: Yes. His statement is best refuted by the fact that I am now sitting here. Of course the statement is not true.

HERR BÖHM: The journalist Stolzenberg who was allegedly interned in Oranienburg reports that an official investigation took place in Oranienburg. Is that correct?

SCHÄFER: I recall only two such official investigations—the case of the Gestapo, which I mentioned before, and the Seger case—in which an official investigation was held.

HERR BÖHM: What were the results of the investigations?

SCHÄFER: As I already said, in the case of the Gestapo it was established that the cases of maltreatment with which we had been charged had actually occurred in the Gestapo in Berlin, and in the Seger case it was proved beyond doubt that Seger had made statements contrary to the truth.

HERR BÖHM: Is it true that further tortures did take place, of which, as Fritzsche says, he learned from individuals in the Gestapo or the Press Office of the Reichsführer SS?

SCHÄFER: I myself was firmly opposed to maltreatment and torture, and my guards knew my attitude well, moreover the inmates of the camp also knew it.

HERR BÖHM: Is it true, as Fritzsche says, that the 30th of June 1934 constituted a purge inasmuch as Gauleiter and SA Führer who had misused their power were removed?

SCHÄFER: In connection with the concentration camps I cannot share this opinion.

HERR BÖHM: The former Reichstag Member for the SPD, Seger, of Dessau, wrote a book on Oranienburg. Do you know it?

SCHÄFER: Yes. Seger himself sent me this book.

HERR BÖHM: Do you know that Seger submitted this book to the Ministry of Justice for the investigation of the complaints which he made?

SCHÄFER: I know that too.

HERR BÖHM: And what did the Ministry of Justice do?

SCHÄFER: The prosecutor competent for the locality of Seger's former residence questioned me in great detail. A thorough investigation was carried out, with the result that, as far as I can recall, the Supreme Court in Leipzig stopped the proceedings.

HERR BÖHM: Do you know that Seger accused you of murder?

SCHÄFER: Yes, I know that.

HERR BÖHM: Was this matter cleared up beyond doubt?

SCHÄFER: Seger accused me of being responsible for the shooting and killing of two internees. This case was cleared up beyond all doubt, so satisfactorily indeed that when this book on my instructions was read to the internees in the camp, one of the persons who, as Seger alleged, had been shot, suddenly stood up and reported that he was alive and well, while the other one was already with his family, having been released; a clear refutation, therefore, by the two men themselves who were said to have been shot.

HERR BÖHM: The statement of fact as given by Seger must therefore plainly be called a lie?

SCHÄFER: Quite.

HERR BÖHM: Is it correct, as you say in your book, that the prisoners could even make use of their right of secret ballot, on the basis of the Weimar Constitution?

SCHÄFER: That is also true. The prisoners took part in the plebiscite on the continued participation of Germany in the League of Nations, and it was conducted under the legal rules as laid down in the Weimar Constitution.

THE PRESIDENT: Dr. Böhm, I have already pointed out to you that we think you might get on to something a little more important. We are still dealing with 1933 or the beginning of 1934, in the Camp Oranienburg.

HERR BÖHM: Mr. President, the SA is charged only with the Camp Oranienburg, and actually the SA guarded Oranienburg only from March 1933 to March 1934. It is therefore not possible to talk of any other period.

THE PRESIDENT: That we understand, that this witness tells us that the camp was administered in a perfectly satisfactory and proper manner, and we don't desire details of every day during 1933 and 1934.

HERR BÖHM: Since I expect the book of Seger to be submitted in cross-examination, perhaps the Tribunal will be interested to hear that its title was...

THE PRESIDENT: Dr. Böhm, if it is submitted in cross-examination, the witness will then be able to answer questions which are put upon the book. It isn't necessary for you to anticipate possible cross-examination.

HERR BÖHM: Very well, Mr. President. May I continue? Is Seger's assertion true that Gauleiter Löber of Dessau, furious on account of Seger's escape, came up to you in Oranienburg and slapped you?

SCHÄFER: No, that is not true. I never saw Gauleiter Löber, and never made his acquaintance. Löber was never in Oranienburg, I never met him on any other occasion, and there was therefore never any altercation between us.

HERR BÖHM: You said that the false reports on Oranienburg which were spread abroad were intended to poison relations between the nations. Can you support this view with facts?

SCHÄFER: Yes. Whenever articles appeared abroad on Oranienburg, for instance, I received an enormous number of threatening and offensive letters, which unfortunately showed that the completely false reports which appeared on Oranienburg had the result that perfect strangers, whom I did not know, and who did not know me, now felt obliged, not only with regard to me, but also with regard to the SA men under my command, and unfortunately also the whole German nation...

THE PRESIDENT: What you are speaking of now—when did these articles appear, and when did you receive threatening letters?

SCHÄFER: In 1933 and 1934.

THE PRESIDENT: Those appeared then, and you received those letters then?

SCHÄFER: Yes.

HERR BÖHM: Under whose orders were the guards at the Concentration Camp Oranienburg?

SCHÄFER: They were under my orders as their SA Führer.

HERR BÖHM: And to whom was Oranienburg itself subordinate?

SCHÄFER: As I have already said, it was under the Regierungspräsident and the superior office of the Regierungspräsident, the Prussian Ministry of the Interior. The SA was called upon for service within the SA auxiliary police to a very small extent. Channels went from the State, in this case the Prussian Ministry of the Interior, to the SA Gruppe, from the SA Gruppe to the SA Brigade and Standarte. My superior SA Führer was at the same time an auxiliary police official, and through these channels the orders from above reached me. I was subject to a double command: For discipline, I was under the SA, and for State measures, I was directly subordinate to the State.

HERR BÖHM: You told the Commission that you received the order for the establishment of this camp from the competent SA Standarte.

SCHÄFER: Yes.

HERR BÖHM: How is that possible?

SCHÄFER: That is in accordance with the channels I have just described: the State, SA Gruppe, Standartenführer, as the man responsible for the use of the auxiliary police, and so, through him, by the State, I received the order to establish the camp.

HERR BÖHM: What persons were brought to the Oranienburg Camp?

SCHÄFER: Mainly, of course, active opponents were sent to the Oranienburg Camp. Then there were elements of the Movement and the SA, who owing to undisciplined conduct had incurred confinement. For this purpose there was a special camp section in Oranienburg. At the same time however informers who had acted for their own personal advantage in denouncing political opponents to further their own interests and against their better knowledge were also imprisoned there. And then there was a small group of people who, although sympathizing with the NSDAP, might have caused difficulties with foreign powers by their foreign nationality. Among those was the leader of the Russian National Socialists in Berlin, who had to be detained in Oranienburg because he was causing political mischief. He was a man obsessed with fantastic ideas who had in this way to be withdrawn from circulation, though for a comparatively short time, as a matter of fact.

HERR BÖHM: Is it right to say that the groups you have just mentioned could be expected to cause an uprising of some sort against the existing government?

SCHÄFER: Yes, that could be expected from the groups of active political opponents, and it was proved by the weapons which were found in a well-preserved condition.

THE PRESIDENT: We had this already today, about the confiscation of weapons.

HERR BÖHM: No, Mr. President.

THE PRESIDENT: I have written it down myself. I heard it.

HERR BÖHM: I certainly do not want to have it repeated, Mr. President. It is plain that excesses happen in times of revolution. Did excesses also take place on the part of members of the SA and the NSDAP?

SCHÄFER: That cannot and shall not be denied.

HERR BÖHM: How do you explain such excesses?

SCHÄFER: There was, in the first place, a group of political hot-heads who in such a time of revolution went far beyond the goal set for them; but, as I have already clearly said, there were also obscure elements which, uncontrolled, because they came from the outside, had gained admittance into the SA and the Party. For these elements, of course, the seizure of power was the best opportunity

to commit punishable acts, but may I emphasize that we on our part did everything possible to take really strict steps whenever such excesses were reported to us. The Party had formed its own police corps for this purpose, which was known to take action without consideration for persons or position.

HERR BÖHM: What was the basis for arrests and confinement in concentration camps?

SCHÄFER: An order for protective custody had in all cases to be issued first.

HERR BÖHM: Who issued this order?

SCHÄFER: The political police or the Kreis police authority issued these orders.

HERR BÖHM: To what work were the people in the concentration camps assigned?

SCHÄFER: They were used for work in the interest of the concentration camp itself, in the administration, and also for land cultivation work.

HERR BÖHM: Did you, as the commandant, receive complaints from prisoners about improper treatment?

SCHÄFER: I do not recall that I personally ever received any complaints.

HERR BÖHM: But when it became known that improper conditions actually existed, did you do anything about them?

SCHÄFER: Through constant contact with the internees—I was in the camp very frequently and for long periods—I occasionally learned of improper conditions. I can give the assurance here that I did everything possible to remove such conditions as soon as I had learned of them.

HERR BÖHM: Did any executions take place during the time in which this camp was guarded by the SA?

SCHÄFER: No.

HERR BÖHM: Were there any instruments for the torture or the extermination of human beings in this camp, while you were commandant?

SCHÄFER: No.

HERR BÖHM: Who was in charge of guarding the camp after you?

SCHÄFER: The SA continued to guard it for some time, about two months, and then the SS took over.

HERR BÖHM: And what can you, as the first commandant of the camp, say about that change-over?

SCHÄFER: The camp was not taken over because of any inadequacies or improper conditions, but because after the 30th of June it became the task of the SS to direct these concentration camps. The Reichsführer SS Himmler took over the concentration camps and administered them with his men. The SA therefore had nothing at all to do with the concentration camps after 1934.

HERR BÖHM: Now I want to ask you, did you have occasion to punish the camp guards for any excesses which they might have committed?

SCHÄFER: Of course, excesses were punished. If they appeared to be of a serious nature, I was under the obligation to report them to the superior authority—in this particular case, the State. I had to make such reports about two Sturmbannführer and one Sturmführer who were assigned to me. These three men were immediately removed from their positions and were put on trial.

HERR BÖHM: Did you yourself inflict punishments, and if so, what punishments?

THE PRESIDENT: Wasn't this gone into before the Commission?

HERR BÖHM: In part, Mr. President.

THE PRESIDENT: You are dealing with the case of three officers at the moment. Either it was gone into before the Commission or it was not.

HERR BÖHM: It was mentioned before the Commission, Mr. President. But I now wanted to add the question whether SA men, not only these three officers, but SA men, were punished and dismissed.

THE PRESIDENT: Then you can pass on from the three officers.

HERR BÖHM: It is true that in addition to these officers of whom you spoke before the Commission, SA men were also dismissed in this connection?

SCHÄFER: Yes.

HERR BÖHM: Is it true that because of your satisfactory direction of the Camp Oranienburg you became head of the Penal Execution Administration in the Ministry of Justice?

SCHÄFER: In 1934 I was taken over by the Prussian Ministry of Justice. I was not appointed Chief of the Reich Penal Execution Administration, but I became commander of the Ems installations, the biggest organization within that administration. Then in the course of the year I became director of a penitentiary, and thereafter I remained in the Penal Execution Administration.

HERR BÖHM: In this connection it may be necessary to clarify what you understand by "SA auxiliary police."

SCHÄFER: The SA auxiliary police was, as the name says, an auxiliary organ of the Police. In order that the revolution might be carried through without bloodshed according to orders, it was, of course, necessary that there should be close supervision. Since the police forces available were not adequate, the State made use of a comparatively small number of SA men who had a particularly good police record and whose lives had been without reproach. Old and experienced police officials initiated them into their duties, and then together with the police they carried out their services within the limits of general police duties. But this was only a temporary measure.

HERR BÖHM: What did you, as commandant of Camp Oranienburg, consider to be your task?

SCHÄFER: It was my task primarily to direct the camp in a clear and correct way. In addition I had to supervise the measures which were taken against the internees.

SIR DAVID MAXWELL-FYFE (Deputy Chief Prosecutor for the United Kingdom): My Lord, I interfere with the greatest possible reluctance with Dr. Böhm's examination, but I cannot think that he has appreciated the instruction which Your Lordship has repeated to Defense Counsel on several occasions during the last week.

My Lord, this witness gave evidence before the Commission, which I have in front of me. This morning Dr. Böhm is going into these matters in far greater detail than they were gone into before the Commission. As I understood the order of the Tribunal, it was that counsel should not repeat what was gone into before the Commission, but should select the important points and deal with them and give Your Lordship and the Tribunal an opportunity for judging the witness and seeing his merits and capabilities.

My Lord, I do ask, very respectfully, that some limit should be put on this very extended examination in controversion of the Tribunal's ruling.

THE PRESIDENT: Now, Dr. Böhm, unless you observe the orders of the Tribunal in this matter the Tribunal will have to stop the examination of this witness. You must consider that.

The Tribunal will now adjourn, in the hope that after the adjournment you will observe the orders. Otherwise, as I say, we will stop the examination of this witness.

[A recess was taken.]

HERR BÖHM: Mr. President, I intend to observe the order of the High Tribunal that witnesses are to be heard upon topics which were not discussed before the Commission. But the questionnaire

submitted to the witness had to be extended somewhat to include the Seger case, details of which we heard only quite recently, and to include questions on the affidavit of the witness Diels, on which this witness had to give views. At the time when this witness was heard before the Commission, both the questionnaire and the affidavit deposed by Diels were still unknown.

THE PRESIDENT: There was no objection about his being examined about the affidavit. That was not dealt with in the Commission before. We do not want you to go over all the details which were gone over before the Commission.

HERR BÖHM: I have only about ten more questions to put to the witness, Mr. President. I shall ask the witness to be as brief as possible.

When you were commandant of Oranienburg, was there any supervision on the part of the State?

SCHÄFER: Yes. The camp of Oranienburg was supervised by the Regierungspräsident at Potsdam, by the Police President, Count Helldorf, and by high officials of the Prussian Ministry of the Interior.

HERR BÖHM: Did the Kreis police authority have any right of supervision?

SCHÄFER: Yes, the Landrat of the Kreis Barnim.

HERR BÖHM: Did all these authorities actually carry out controls and checks?

SCHÄFER: Frequent checks, and very thorough ones, did take place.

HERR BÖHM: Did foreigners and other prominent personalities have an opportunity of visiting the camp at Oranienburg and of talking with the inmates?

SCHÄFER: Visits of that kind were made at Oranienburg on a very large scale. Those participating were the Foreign Press, the German Press, and private citizens from abroad who were politically interested. They had an opportunity of talking with the prisoners quite freely inside the camp and at their places of work.

HERR BÖHM: Is it correct that on the occasion of one of these visits you were told: "Now you are going to show us only what we are permitted to see and all the rest will remain concealed from us"?

SCHÄFER: That is correct. That was put to me and I thereupon saw to it that these visitors to the camp should be able to go wherever they pleased. There was nothing to hide, nothing to be concealed in Oranienburg. The visitors themselves had an opportunity of forming their own judgment.

HERR BÖHM: Please tell us, briefly, about the food of the internees in this camp.

SCHÄFER: The food for the inmates was good. Proof of that was the fact that the inmates always increased in weight. Apart from that, everything necessary and required was done to allow the inmates to live under humanly dignified conditions. They even had their own canteen where their daily needs could be met.

HERR BÖHM: Now, just a few questions about the penal camps in Emsland. Why were these camps established?

SCHÄFER: In 1933 the penal institutions of Germany were overcrowded, the prime reason being the country's great social distress at that time. It was the special wish of Minister President Göring at that time that prisoners should take part in the large cultivation projects in the Ems district. The SS was charged with setting up a number of large camps so that prisoners could be collected there for their cultivation work. However, the generous Christmas amnesty of the Minister President made this task problematical, so an offer of filling these camps with criminal prisoners was accepted and carried into effect by the then Prussian Minister of Justice, Kerrl.

HERR BÖHM: Did the Supreme SA command have jurisdiction over the camps in the Emsland?

SCHÄFER: No, they were State camps, subordinate only to the Reich Ministry of Justice.

HERR BÖHM: You already mentioned that these camps were filled with criminals who were put to work there?

SCHÄFER: Yes.

HERR BÖHM: Now I should like to put a final question to you. How many SA men were used in the concentration camp at Oranienburg as guards and as employees of the German Police?

SCHÄFER: When the camp was first erected, approximately 30 to 40; at the time when it had most inmates, approximately 90.

HERR BÖHM: Can you tell me who, from the beginning, furnished the guards at Dachau?

SCHÄFER: As far as I know, Dachau was an SS camp entirely. The SA was never active in Dachau.

HERR BÖHM: Mr. President, for the present I have no more questions to put to this witness.

MAJOR BARRINGTON: Witness, you probably know it already, but if you do not, you may take it from me that in the last eight months this Tribunal has heard a great deal of evidence about concentration camps. Do you deny, now, that even in 1933 concentration camps were regarded throughout Germany with terror?

SCHÄFER: I did not quite understand the question.

MAJOR BARRINGTON: I will state it again. Do you deny that even in 1933 concentration camps were regarded by people throughout Germany with terror?

SCHÄFER: Anyone who is arrested always naturally connects a personal horror with his arrest, for the loss of freedom alone compels him to have a feeling of that sort. But there was no reason, at that time, to be horrified by the thought of such internment.

MAJOR BARRINGTON: You have spoken, this morning, about the Reichstag deputy, Herr Gerhard Seger. He wrote a book on the Oranienburg Concentration Camp. I am not going to talk on that book, but do you remember that the title of it was *A Nation Terrorized*? Do you remember that title?

SCHÄFER: No.

MAJOR BARRINGTON: Do you consider that that was a reasonable title to give a book on Oranienburg?

SCHÄFER: No.

MAJOR BARRINGTON: Would it have been a reasonable title to give about the concentration camps at Wuppertal or Hohenstein?

SCHÄFER: I cannot make any statements in that respect. I never knew Wuppertal and as far as Hohenstein is concerned, I only know that the severest measures were taken there when abuses were discovered. Later I learned that the leading men of the Concentration Camp Hohenstein received very long terms of penal servitude and imprisonment.

MAJOR BARRINGTON: You know, too, that those severe penalties were reduced in the most serious cases to about half the sentence? Don't you know that?

SCHÄFER: No. That is unknown to me.

MAJOR BARRINGTON: You know that the number of people who were sentenced in Hohenstein was 25 and that the official report about it said that they were not all those who took part in the excesses, but only the most prominent ones? Did you know that?

SCHÄFER: I do not know the particulars. I know only that at that time very severe and strict measures were taken.

MAJOR BARRINGTON: And did you know at that time about the atrocities which were going on in Wuppertal and in Hohenstein? You knew about it at that time, did you not?

SCHÄFER: No.

MAJOR BARRINGTON: You knew that those camps, or at any rate you know now that those camps were run by the SA? Is that right?

SCHÄFER: No. I did not know that either.

MAJOR BARRINGTON: You did not know they were run by the SA?

SCHÄFER: No. I did not know that.

MAJOR BARRINGTON: Witness, I want you to look at a document—which is Number 787-PS, My Lord, in Book 16a, at Page 16. That is a letter written by Dr. Gürtner, the Reich Minister of Justice, to Hitler, and he describes at the beginning of the letter the maltreatment of prisoners in Hohenstein, including torture by a drip apparatus. If you look toward the end of the letter—I should think it is about 10 lines from the end—you will see he is talking about the principal SA offender, one Vogel, and he says: "By his actions he supported the convicted SA leaders and men in their deeds."

That shows that Hohenstein atrocities were done by SA men, does it not?

SCHÄFER: I am afraid that in one brief minute I cannot read through a document five pages long. I should like to say only that I learned afterward that severe measures were taken against the SA leaders and against the SA men who had perpetrated crimes in Hohenstein. I should also like to point out that it was the Minister of Justice, Dr. Gürtner, himself, who took me over into his Penal Execution Administration as an SA leader known to him personally. That shows that he did not generalize the matters which in this letter he is reporting to the Führer as an isolated case. These are isolated cases, and the criminals concerned in them received their due punishment.

MAJOR BARRINGTON: Witness, if you say you do not know what went on in Hohenstein and Wuppertal at that time, let me ask you this: You knew Gürtner fairly well. Did you not?

SCHÄFER: Yes.

MAJOR BARRINGTON: You knew Kerrl fairly well, did you not?

SCHÄFER: Yes.

MAJOR BARRINGTON: Kerrl was Lutze's uncle, was he not?

SCHÄFER: I know that he was a relative of Lutze; what relative I do not know.

MAJOR BARRINGTON: And he was a very fervent Nazi, too, was he not—Kerrl?

SCHÄFER: Oh, yes.

MAJOR BARRINGTON: Did you not talk with him about these concentration camps, these other concentration camps? You were

the commandant of the first concentration camp at Oranienburg. Didn't you talk to him about the others that were springing up, the other concentration camps?

SCHÄFER: No.

MAJOR BARRINGTON: Did you talk to Gürtner about them?

SCHÄFER: There was no reason for that, either.

I should like to explain in this connection that it was just the Prussian Minister of Justice, Kerrl, who after numerous visits to Oranienburg selected me on the basis of the fact that Oranienburg appeared to be under a decent and orderly command and, at that time, appointed me to be commandant of the penitentiary camps.

MAJOR BARRINGTON: We will come to that in a minute. I am suggesting to you now that it was just because of the interest that Kerrl took in you that he did in fact appoint you to your position with the "Strafgefängenenlager," later. It was just because of that I am suggesting that you might have talked the whole problem out with him. Did you or did you not?

SCHÄFER: Only insofar as it concerned the Camp Oranienburg.

MAJOR BARRINGTON: I see.

SCHÄFER: I remember . . .

MAJOR BARRINGTON: Did you talk to Count Helldorf, the Police President, about the general problem of concentration camps?

SCHÄFER: Also only insofar as it concerned Oranienburg, and in that case, extensively.

MAJOR BARRINGTON: I see. Now you say that none of these terrors and atrocities went on in Oranienburg; is that right?

SCHÄFER: Yes.

MAJOR BARRINGTON: Now, I have here an affidavit which Rudolf Diels has sworn this morning since you started your evidence, and I will read a little of it to you, and you can tell me if it is true or not.

My Lord, this is Document Number 976; it becomes Exhibit GB-595.

[Turning to the witness.] Rudolf Diels says:

"I received, from various individuals, complaints about ill-treatment by SA men in concentration camps. I learned that SA guards had badly ill-treated the following persons in the Concentration Camp Oranienburg: Mr. Ebert, son of the former Reichspräsident; Ernst Heilmann, the leader of the Prussian Social Democrats; Reichstag President Paul Loebe; and Oberpräsident Lukaschek."

Then he goes on to say:

"I myself gained confirmation of these ill-treatments on the occasion of an inspection tour through Camp Oranienburg. At that time the commandant was SA Führer Schäfer. For a short time, conditions improved after my intervention; then they deteriorated again. I myself did not succeed in removing Schäfer, since he was backed by the SA Leadership."

Is that true or is it not? Did your men ill-treat Herr Ebert, Herr Heilmann, Paul Loebe, and Lukaschek? Did they ill-treat them or did they not?

SCHÄFER: May I be permitted to give the following explanation on this point . . .

MAJOR BARRINGTON: Say yes or no.

SCHÄFER: That I cannot do.

MAJOR BARRINGTON: Kindly give an explanation.

SCHÄFER: I cannot make a statement in that form. Herr Loebe was never an inmate of Oranienburg; Herr Lukaschek, to my knowledge, was never an inmate of Oranienburg either. Herr Diels is definitely mistaken in these cases. It is true, however, that the son of the Reich President, Ebert, was an inmate, and it is also true that Herr Heilmann was an inmate there. But I should like to explain that both of those gentlemen, Ebert as well as Heilmann, were maltreated by other inmates after their arrival, and I personally saw to it that they were separated from the group of inmates who had maltreated them.

Ebert was soon released, after a few weeks of internment. He and Heilmann never complained to me personally. I learned of their ill-treatment at the hands of other inmates from a third party and I took steps immediately to prevent such things from happening again.

MAJOR BARRINGTON: You said before the Commission, Witness, that it was your endeavor in the Oranienburg Concentration Camp to try to give the inmates a life consistent with human dignity. Do you remember saying that to the Commissioner, "a life consistent with human dignity"? And is that the kind of life you gave to Ebert and Heilmann?

[The witness made no response.]

MAJOR BARRINGTON: I presume the answer is yes, is it not?

SCHÄFER: I cannot answer that question so simply, either. I did not say that for Heilmann and Ebert I brought about conditions consistent with human dignity, but I distinctly remember saying just now that I saw to it that they were not subjected to further maltreatment at the hands of other inmates.

MAJOR BARRINGTON: I did not ask you what you said just now; I asked you what you said before the Commission. And you said before the Commission that you endeavored to give the inmates a "life consistent with human dignity," did you not?

SCHÄFER: Yes, of course.

MAJOR BARRINGTON: Do you remember saying it or not?

SCHÄFER: Yes.

MAJOR BARRINGTON: Did you give Heilmann and Ebert a life consistent with human dignity?

SCHÄFER: Yes.

MAJOR BARRINGTON: You did?

SCHÄFER: I never withheld from them anything consistent with human dignity. Of course, they led a life like that of any other inmate in a camp of that sort.

MAJOR BARRINGTON: Yes, but you said . . .

SCHÄFER: And it is surely quite understandable . . .

MAJOR BARRINGTON: You know that this was supposed to be a camp for prominent persons in considerable numbers; according to your own evidence, and you said that you wanted to give them all a life of human dignity. But let us not waste any time on this. Let me show you your own book.

My Lord, that is Document Number 2824-PS, and it is Exhibit USA-423. That is the book written by the witness, entitled *Oranienburg Concentration Camp*, published in 1934.

I want you to look first of all, Witness, at Page 23.

SCHÄFER: Yes, I have the page.

MAJOR BARRINGTON: Now, there is a page where you were writing in rather a sarcastic vein about the people who came into the camps. Do you see the very short passage where you say—and I think this sums up perhaps your whole attitude as to the object of your camp: "The moment had at last come when our old SA men could refresh the memory of some of these provocateurs who had been especially in the foreground politically." Do you see that?

[The witness made no response.]

MAJOR BARRINGTON: Well, the translation may not be exactly as it comes in your book; but do you see the passage? It is marked between brackets.

SCHÄFER: Yes, I have found the passage.

MAJOR BARRINGTON: Well, what do you mean by your old SA men refreshing the memories of some of these provocateurs? I thought you said just now that it was the other inmates of the

concentration camps who refreshed their memory. It is your own SA men, is it not, who refreshed the memory of Ebert and Heilmann?

SCHÄFER: I would like to . . .

MAJOR BARRINGTON: Well, you wrote it, you know. Let me refresh your memory a bit. Turn to Page 173.

My Lord, I am sorry that these passages have not been translated. I only had them looked up this morning.

THE PRESIDENT: You ought to let him answer the other question you put to him on Page 23.

MAJOR BARRINGTON: I beg Your Lordship's pardon. I did not realize he wanted to say something.

Witness, you wanted to say something on the passage on Page 23. Will you?

SCHÄFER: Yes, yes. This sentence is taken out of its context. To understand this sentence clearly, one would have to read the whole paragraph. The way in which it is taken out of its context—and please do not misunderstand me—it becomes, in your sense, in the sense of the Prosecution . . .

MAJOR BARRINGTON: Well, give the Tribunal briefly the sense of the context. Tell us what the sense of the context is.

SCHÄFER: I cannot, of course, explain the whole context, since you only read this one sentence to me. But I should like to say one thing, that when I spoke of human dignity, I did not mean it in an ambiguous but in the perfectly straightforward sense; and also that this sentence, taken out of its context, does not prove the opposite.

MAJOR BARRINGTON: Well, I will leave that passage then. Will you now turn to Page . . .

THE PRESIDENT: What do you mean, what is the context, what is the context from which it is torn? What do you mean by "refreshing their memories"?

SCHÄFER: May it please the High Tribunal, may I perhaps for my own information quickly reread the context. I no longer have my book so completely in mind, and to answer this question, I must first read through these lines; then perhaps I can give the answer which Your Lordship desires.

THE PRESIDENT: You are saying, are you not, you don't know what you mean by "refreshing their memories"?

SCHÄFER: Yes.

MAJOR BARRINGTON: Let me help you a little by referring you to another passage not very far away from that. Just turn to Page 25, and you will see a passage in between brackets there.

"Rarely have I seen such marvellous educators as my old SA men, some of whom were themselves of proletarian origin and who took on with extraordinary devotion these Communist swash-bucklers who acted in a particularly insolent manner." Isn't refreshing the memory of the provocateurs the same thing really as the education—the marvellous education which your old SA men gave to them? What is the education? If you don't know what you mean by "refreshing their memories," what did you mean by "marvellous education"?

SCHÄFER: I understand your meaning—you expect me to admit that maltreatment actually did take place. I think I understood you correctly, but I should like to state . . .

THE PRESIDENT: Answer the question, please. The question is: What did you mean by the education that you last spoke of?

SCHÄFER: I mean an education through personal example, not an education through maltreatment or similar misdeeds.

MAJOR BARRINGTON: Look back again to Page 23, and you will see another passage in brackets. "To conceal . . ."—Page 23, have you got it?

SCHÄFER: Yes.

MAJOR BARRINGTON: To the effect, "To conceal the fact that some of the prisoners had not been treated too gently, meanwhile, would be stupid as well as completely incomprehensible; incomprehensible inasmuch as such treatment was in accordance with an urgent necessity." What was the urgent necessity of not treating the prisoners too gently? Are you going to say it was purely disciplinary treatment? It is the same page as the first bracket I read, you know, from the same page as "refreshing their memory." Well, I will leave that passage and turn now to Page 173.

SCHÄFER: May I give you an answer to this? I wrote quite freely and openly about these matters in this book, and I do not wish to deny that there were a very few isolated cases in which it became necessary to treat inmates who acted in a certain way—to treat such inmates accordingly. I have no reason to conceal now, and I did not conceal in my book, that such incorrigible rowdies—I have no other name for them—had of course to be taken to task accordingly.

MAJOR BARRINGTON: You were writing your book in some spirit of exultation over a Nazified Germany in 1934, weren't you? Turn to Page 173 . . .

SCHÄFER: I should like to say something on this point too . . .

THE PRESIDENT: The Tribunal would like to know how you did treat them. You said in certain cases inmates had to be treated

accordingly. "Accordingly" meaning, I suppose, not too gently; is that what you meant?

SCHÄFER: My Lord, the question can simply be answered in this way: If an inmate believed—and there were such cases—that he had to impose his own will by means of brutality, then it was my duty to call his attention emphatically to the fact that at that moment he did not have the right to do so.

MAJOR BARRINGTON: Tell the Tribunal what it was—be brief, but tell the Tribunal what it was that you had particularly against Ebert and Heilmann. What was your complaint against them that needed treatment?

SCHÄFER: Ebert and Heilmann did not receive any special treatment, in that sense, and we had no reason whatever for treating them in any special way. They did not receive any special treatment, as I said, but . . .

MAJOR BARRINGTON: Go on.

SCHÄFER: Both of them were treated in a normal fashion, and they cannot claim that they received any other treatment. At any rate, I know of none.

MAJOR BARRINGTON: Let's see what the normal fashion was. Turn to Page 173. Have you got Page 173? Read the part in brackets.

SCHÄFER: Yes.

MAJOR BARRINGTON: I will read the translation: "And then next day, in fatigue dress, Ebert with a shovel and Heilmann with a broom, ready for work in the forecourt of the camp. Nothing was so comforting to the prisoners in the camp as the sight of their prominent fellow-internees going to work in the same way. They were on a par with them." That is what you call the same treatment, the normal treatment, was it?

SCHÄFER: Every inmate of the camp received fatigue clothing for work to save his own clothing. Each one received trousers and a coat and we did not and could not make an exception in the case of Ebert and Heilmann. Moreover, as far as I remember today, both of them asked to participate in manual labor, a request which was granted them.

MAJOR BARRINGTON: You know, I suppose, that Heilmann eventually died a cripple in a concentration camp, don't you?

SCHÄFER: No, I do not know that.

MAJOR BARRINGTON: You and your SA men created and operated Oranienburg as a result of orders issued originally by Göring, did you not, as Minister of the Interior for Prussia? That is where your orders came from, through SA channels?

SCHÄFER: Yes.

MAJOR BARRINGTON: And you have told the Tribunal that the SA who were looking after the camp under you were put under the orders of the Police, and that they, in fact, became deputy policemen for the purpose, is that your evidence?

SCHÄFER: Yes.

MAJOR BARRINGTON: Tell me this. Why do you suppose that Göring chose SA men to do this job? Was it because the ordinary police would not do it?

SCHÄFER: No. A little while ago I explained that the police forces at our disposal were not sufficient to insure a revolution without bloodshed, which the Führer had demanded in his order, and for this purpose therefore the Prussian Ministry of the Interior used the selected SA men as auxiliary police.

MAJOR BARRINGTON: Supposing that the ordinary police had been sufficient, are you telling the Tribunal that if the ordinary police had run these concentration camps at Oranienburg, Wuppertal, and Hohenstein—are you telling the Tribunal that these excesses would have occurred if the ordinary police would have run them? Would you even have had these isolated incidents that you talked about if the ordinary police would have run them?

SCHÄFER: There were police officials in Oranienburg from the first day of the camp's existence. I do not know how it was at Wuppertal, but I should like to say that no SA man or SA leader who participated in any isolated instance of an outrage did so on the strength of an order, but on his own account. His action was not covered by any order, and it did not protect him from the punishment which he received.

MAJOR BARRINGTON: I suggest to you, Witness, the SA were chosen to run Oranienburg for the very simple reason that the SA alone could be relied on by the Movement to run it on sufficiently brutal lines. Do you agree, or don't you?

SCHÄFER: No, I cannot agree with you.

MAJOR BARRINGTON: If you have forgotten what Göring thought about the ordinary police at that time, let me read you a short passage from a speech he made on the third of March 1933, which must have been just exactly about the same time that he gave the order to found Oranienburg Camp.

My Lord, it is Document Number 1856-PS; it is in Document Book 16a at Page 28, and it is Exhibit USA-437.

[Turning to the witness.] Now this is what Göring said just at the time that he was ordering Oranienburg to be started by you. He said:

"Fellow Germans, my measures will not be crippled by any judicial thinking. My measures will not be crippled by any bureaucracy. Here I do not have to administer justice; my mission is only to destroy and exterminate, nothing more. This struggle will be a struggle against chaos and I shall not conduct it with the power of any police; a bourgeois state might have done that. Certainly I shall use the power of the State and the Police to the utmost, my dear Communists, so do not draw any false conclusions. But the struggle to the death, in which my fist will lie heavily upon your necks, I shall conduct with those down there—and they are the Brown Shirts."

Did you ever hear or read that speech at that time? It doesn't look as if Göring thought much of the ordinary police when he ordered Oranienburg to be started, does it?

Are you telling the Tribunal that after that speech Göring intended to create a camp which would be mild and humane and just, as you tried to describe in your evidence?

SCHÄFER: I do not know this speech, but I see that it is said to have been delivered on 3 March 1933. At that time Camp Oranienburg was not in existence, it was not then about to be set up and it had not been planned.

MAJOR BARRINGTON: It came into existence the same month.

SCHÄFER: At the end of March, yes.

MAJOR BARRINGTON: Now, Witness, I put it to you that the truth about Oranienburg is this, in a sentence:

When you first established Oranienburg Concentration Camp it was an ordinary brutal SA concentration camp, but late in the summer of 1933 you decided to use it as a show camp to demonstrate to foreign countries how mild and just the concentration camp system was. Is that right or wrong?

SCHÄFER: No, that is not correct; it is not correct in any way. I could today—and in my present situation, it will carry most weight if I say so publicly—I could call as witnesses here the first inmates of the Camp Oranienburg who were living there at the time I was commandant; I could call them to testify that I was not prepared to create a model camp simply for the sake of outward appearances. A decent direction of a camp of that sort represented my innermost convictions, and I should like to say that this was not merely a question of common sense, but a matter of feeling.

And may I add another thing: I went through the political struggle in Germany, which was very bitter, and I well knew that by creating martyrs one does not strengthen one's own position. It is quite logical, therefore, that I could never take an interest in creating martyrs.

MAJOR BARRINGTON: Now, didn't you write your book as part of this idea of having a show camp to convince foreigners? Isn't that part of the idea of your book? It was written to convince foreigners anyway, was it not? You said so to the Commissioner, you know.

SCHÄFER: Quite true, I said so; but may I complete this explanation? I said at that time exactly what I am saying now. I wrote this book deliberately to refute the lying reports—and I cannot call them anything else—which had appeared about this camp abroad, to refute them as a matter of duty. That, in my opinion, was a right which I was entitled to claim.

MAJOR BARRINGTON: Who commissioned you to write this book? Was it Göring? Did Göring suggest that you should write this book?

SCHÄFER: I can say in all frankness that no one commissioned me to write this book, but...

MAJOR BARRINGTON: Did you consult Göring?

SCHÄFER: No. I think that Herr Göring probably sees me for the very first time today; and I am seeing him for the first time at such close quarters. We never discussed these matters.

MAJOR BARRINGTON: Did you consult the Prussian Ministry of Justice when you wrote your book?

SCHÄFER: No. I have already stated quite clearly that I did not discuss this book with a third party in any way, but that I wrote it because an enormous number of these newspaper reports were sent to me, and because I myself thought it necessary to vindicate Camp Oranienburg. I considered it to be my duty...

MAJOR BARRINGTON: Now, tell me about these newspaper reports. Were they adverse criticisms of Oranienburg only, or of other camps? Was Oranienburg the only one they criticized? Perhaps it was.

SCHÄFER: These articles? I did not hear the translation of the first part of your question.

MAJOR BARRINGTON: You told us that you had many articles in the press which were adverse and which required refuting. Were they adverse to Oranienburg only, or to other camps?

SCHÄFER: Naturally I could only reply to the articles which dealt with Oranienburg; I did not concern myself with other camps.

MAJOR BARRINGTON: I did not ask you that. Were there any other articles about other camps? Did you see any articles about other camps?

SCHÄFER: I do not recall any. I received only articles which concerned Oranienburg.

MAJOR BARRINGTON: Who sent them to you then? Göring?

SCHÄFER: They came from all sorts of people, from various classes of the population and also from foreigners who were interested in bringing their press to my attention.

MAJOR BARRINGTON: Well now, one of the articles was written in *The Times* newspaper, the English paper, was it not? And you reproduced it in your book. That article was very adverse to Oranienburg.

My Lord, there are extracts from that article in Document Book 16a, at Page 35, and it is Document Number 2824(a)-PS.

[Turning to the witness.] I just want to point out to you two or three short extracts, because I am going to suggest to you that they were perfectly true—this is at Page 112 in your book, I think:

“We got to Oranienburg Concentration Camp. We had to stand fallen in at attention for over three hours. Anyone who tried to sit down was beaten. Each of us got a small mug of coffee and a piece of black bread, our first food that day.”

Then, a bit further on:

“Prominent prisoners were beaten more often than the others, but everyone got his full share of blows.”

And a little further on:

“They also sometimes rubbed black shoe polish into the prisoners all over, and checked up next day to see if it had all been washed off.”

And further on again:

“Most of the prisoners were not allowed to mention the blows they had received, but every night we could hear their cries. Those who were released had to sign two papers, a white one which stated that the treatment in the camp was good, and a blue one.”

Now that article also mentioned, among the well-known prisoners, a Dr. Levy. Is that correct? Do you remember Dr. Levy?

SCHÄFER: Yes.

MAJOR BARRINGTON: And in your book, after publishing this *Times* article, you published a letter from Dr. Levy to *The Times* on 25 September 1933—that was about six days after the article—in which Dr. Levy denied that there were any atrocities at Oranienburg. Can you find that letter?

SCHÄFER: Yes.

MAJOR BARRINGTON: That letter of Dr. Levy's was written in Potsdam, was it not? It says “Potsdam” underneath the envelope.

SCHÄFER: Yes, I can see that in the book it says, "Potsdam, the 25th of September." But may I explain something in this connection?

This article which you read in extracts just now refers to boys of the social welfare organizations of the Jewish community in Berlin, who were taken to Oranienburg at the time. These boys were really criminal elements of which the Jewish community had rid itself by paying the necessary amount of money to put them in a special educational home. It is absolutely incorrect...

MAJOR BARRINGTON: What has that got to do with Dr. Levy? I said, was Dr. Levy's letter written from Potsdam? Are you telling the Tribunal that that letter was written voluntarily, or did you get it out of him by threats? You could have got it out of him by threats easily, could you not? You could, couldn't you?

SCHÄFER: May I ask you to listen to the end of my explanation. I am coming to Dr. Levy now. It was Dr. Levy—and I can give this assurance here quite openly and publicly—who at that time personally asked to see me and requested that these boys of the Jewish social welfare, who were not at all behaving themselves, be segregated in a section of their own. Dr. Levy was a well-known defense lawyer who was at that time interned in Oranienburg. He was released again soon after his arrival. I personally remember that Dr. Levy, when he left Oranienburg, said good-bye to me in a very cordial manner. I am not at all of the opinion that he was forced at Potsdam to write this article or this letter to me which then appeared in *The Times*. On the contrary, I would assume that Dr. Levy put "Potsdam" on top of the letter in order to make it distinctive, because the name Levy was not a rare name in Germany at that time. Perhaps in that way he wished to make it clear that the defense lawyer Dr. Levy from Potsdam was the author of the letter. I cannot think of any other explanation and I am quite sure that it would be possible, even today, to question Dr. Levy. At that time he was in the prime of life; I am sure he is still alive today, and it must be possible to summon him and hear him on this question. But I can never believe that Dr. Levy allowed himself to be forced to write an article of that sort. But even assuming that he was forced, who should have forced *The Times* to print a report which was not in agreement with their opinion?

MAJOR BARRINGTON: I am not going to argue with you about that. My suggestion is perfectly clear, that Dr. Levy's letter was a transparent attempt on your part to refute the *Times* article, which you knew to be true. We won't argue that any more. You evidently disagree. But you will agree to this, won't you, that Dr. Seger seems to have agreed with the *Times* article in his book, doesn't he? In his book, *A Nation Terrorized*, he seems to be very much of the

same idea as the *Times* article? Look at another letter in your book now . . .

SCHÄFER: May I give you an answer to that too. The book written by Seger is not called, *A Nation Terrorized*, but it is called *Oranienburg*. And I should like to say this at once, Herr Seger knowingly committed perjury when, at the beginning of his book, he used the form of oath customary in German courts, and then had his statements refuted in every case.

MAJOR BARRINGTON: I understand what your position is on that and I am sure the Tribunal does too, but just look at one more letter in your book before I finish. Turn to Page 241. Have you got it? Now there toward the bottom of the page is a letter from an inmate which you published in much the same way as Dr. Levy's letter, I suggest, to show how good conditions were. And you see over the page, on Page 242, he says in this letter: "Dear Mr. Schäfer: The days at Oranienburg will always be among the best memories of my life." Do you see that passage? "The days at Oranienburg will always be among the best memories of my life."

SCHÄFER: Yes.

MAJOR BARRINGTON: Don't you think that that is too good to be true, or do you support that today?

SCHÄFER: May I say the following: It is true, quite true. I admit that this letter was written in a mood of exuberance and joy at being free again. But I do not doubt that the author of the letter quite truthfully meant what he wrote in this letter to me. One ought to hear him personally on this matter.

MAJOR BARRINGTON: He may have had the best intentions, but why should he say that the days in a concentration camp, where his liberty was taken away, were among the best memories of his life? Can any man be . . .

SCHÄFER: Perhaps I might be permitted to say that before the concentration camps existed there were men—and I belonged to them—who stood in line in front of the unemployment agencies and who suffered very great misery, men who here in the concentration camp had enough to eat for the first time. That I should like to make quite clear.

MAJOR BARRINGTON: They had enough to eat, and you remember you told the Commissioner that you had them weighed and they all gained in weight. If you will look at the last two pages of your book I think you will see that you published there a table or a list of the weights of the prisoners, showing how much they had gained while they were in the camp. Have you got that?

My Lord, that is Document Number 2924(b). It is on Page 17, I think—Page 32, immediately after the *Times* article.

[Turning to the witness.] Now that is a list, isn't it, which shows the name of the prisoner, or his Christian name and the initials of his surname, and the weight on a certain date and then, after a certain period, what he had gained. Well, now, I am going to suggest to you that those weights are so fantastic that they can't possibly be true. Just look down, you will see that you have had some of them printed in bolder type than the others. Look at Hermann H. from Wriezen. Have you got it?

SCHÄFER: Yes.

MAJOR BARRINGTON: On the 26th of June he weighed 54 kilograms; on the 6th of September he weighed 68. That is an increase of 14 kilograms or 2½ English stones in two and a half months. And look down further, you will see Erich L., who gained 15 kilograms in six months. And further down, Paul S., who gained 15 kilograms in four months; and if you look over the page you will see Fritz T., who started at 55 kilograms and very nearly gained half his own weight in three months, 19 kilograms in three months; that is 3 English stones in three months. Don't you think those are rather fantastic figures, impossible to believe? Well, I'll put it another way to you; I'll make another suggestion, see if you will accept this explanation. If the *Times* article was true about the poor food and conditions, and if my suggestion is right that you afterward decided to have a show camp and to improve the conditions, isn't this list of weights quite consistent with the prisoners having first of all lost weight under the bad conditions and then gained it again rapidly when you improved conditions? Do you like that explanation? I am not saying it is right, but that is another explanation; or are you maintaining that these figures are correct? Are you maintaining that these figures are correct?

SCHÄFER: Yes.

MAJOR BARRINGTON: I notice that you don't include Dr. Levy's weight in here; you don't include Dr. Seger's weight, do you? Or perhaps they lost weight, did they?

SCHÄFER: Perhaps they maintained their weight. This is only a list of weights, only an extract from the list of weight increases. You are assuming right from the beginning that these are fantastic figures. I would like to say, however, that even today I stand by whatever is set down in this book, and this list which is reproduced here is accurate and correct, and I would like to suggest to you that you ask a medical man what possibilities of gaining weight a man has who through years of unemployment has been exhausted and run down who then once again enters a nutritional phase in which he receives daily his regular meals and the things to which he is entitled. I am not a medical man, but I believe that without

difficulty a physician will confirm to you that within four months a man can gain that amount of weight. In May of this year, I myself lost 50 pounds through insufficient food in the camp. In the course of . . .

MAJOR BARRINGTON: Well, I suppose then that these men must have been very disappointed when they were given the generous Christmas amnesty, weren't they?

SCHÄFER: About Christmas 1933, conditions in Germany had already changed essentially. I believe I may say that things were considerably better than in the year before.

MAJOR BARRINGTON: That is all the questions I have, Mr. President.

THE PRESIDENT: Dr. Böhm, have you any questions to ask the witness?

HERR BÖHM: Witness, was Hohenstein a Prussian camp?

SCHÄFER: No, Hohenstein, as far as I know—I hope I am not mistaken in my geography—is in Saxony.

HERR BÖHM: Was Wuppertal a camp of the State?

SCHÄFER: That I do not know.

HERR BÖHM: Do you know that Vogel, who was mentioned earlier, was an official of the Gestapo for the Land of Saxony?

SCHÄFER: No. I heard his name for the first time today; I do not know it.

HERR BÖHM: Do you know that in his application he requested the quashing of the proceedings, not in his capacity as a member of the SA, but in his capacity as an official of the Gestapo?

SCHÄFER: I gathered from this letter, which I had just now for a few minutes, that he did this in his capacity as an official.

HERR BÖHM: Do you know that the SA suffered 300 casualties in killed and 40,000 in wounded during the struggle for power?

SCHÄFER: The figure of men killed is known to me. The exact figure of those wounded I do not know; I know only that it exceeded 10,000 by far.

HERR BÖHM: Is it not perhaps possible, after all, that many a member of the SA thought of the 300 killed and the 40,000 wounded comrades at the time when political opponents were taken to the Camp Oranienburg?

SCHÄFER: That cannot be denied, but no one was justified in taking any action which from the beginning was prohibited by the decree of the Führer; on the other hand one must realize that the seizure of power occurred at a time when political tension was at its highest.

HERR BÖHM: Did anybody commission or order you to write the book *Oranienburg*?

SCHÄFER: No. As I have already said, I received no commission and no order for it.

HERR BÖHM: Mr. President, I have no further question to put to this witness.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken until 1400 hours.]

Afternoon Session

[The witness Schäfer resumed the stand.]

THE PRESIDENT: The witness can retire, Dr. Böhm.

[The witness left the stand.]

HERR BÖHM: Mr. President, as next witness I should like to examine the witness Gruss. He is the witness who is to be questioned concerning the people who went over from the Stahlhelm to the SA.

[The witness Gruss took the stand.]

THE PRESIDENT: Would you state your full name, please?

THEODOR GRUSS (Witness): Theodor Gruss.

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.

HERR BÖHM: Witness, how old are you?

GRUSS: 64 years old.

HERR BÖHM: Were you a member of the Party?

GRUSS: No.

HERR BÖHM: Or any of its branches?

GRUSS: No.

HERR BÖHM: Were you a soldier?

GRUSS: Yes, in the first World War.

HERR BÖHM: What was your rank?

GRUSS: Gefreiter (Corporal).

HERR BÖHM: And what was your rank in the Stahlhelm?

GRUSS: I was Chief Treasurer of the Stahlhelm.

HERR BÖHM: From when to when were you in the Stahlhelm?

GRUSS: From 1919 until it was dissolved in 1935.

HERR BÖHM: What was your task after the dissolution of the Stahlhelm in November 1935?

GRUSS: I had to carry out the liquidation of the Stahlhelm.

HERR BÖHM: And how long did you do that?

GRUSS: Until 1939.

HERR BÖHM: How was the transfer of the Stahlhelm to the SA carried out?

GRUSS: At the end of April 1933 the first Bundesführer, Reich Minister Franz Seldte, removed the second Bundesführer, Duesterberg, from his post in violation of the Bund statute and assumed dictatorial command of the Stahlhelm. One day later, Seldte, in a radio speech, declared his entry into the Party and placed the Stahlhelm under Hitler. In June 1933, Hitler, in an agreement with Seldte, issued an order according to which

- (1) The Stahlhelm Youth, the so-called Scharnhorst Bund, was to be incorporated into the Hitler Youth;
- (2) The Young Stahlhelm and the sports units were placed under the Supreme SA Leadership;
- (3) The rest of the Stahlhelm remained under the leadership of Seldte.

A few weeks later, in July 1933, a new order came from Hitler. He ordered that now the entire Stahlhelm was to be placed under the Supreme SA Leadership and directed that the Young Stahlhelm and the sports units were to be reorganized in view of their incorporation into the SA. On 4 July 1933, the leadership of the Stahlhelm undertook reorganization of the Bund and established:

- (1) The Wehrstahlhelm, which was made up of the Young Stahlhelm, the sports units, and all Stahlhelmer up to the age of 35.
- (2) The remainder of the Stahlhelm (Kern-Stahlhelm), made up of all members over 35 years of age.

Then the Wehrstahlhelm was incorporated into the SA as a separate formation with its own leaders, the field-gray uniforms, and the Stahlhelm flags. This incorporation was completed around the end of October 1933.

At the beginning of November another order was issued by Hitler according to which the SA Reserves I and II were to be set up. The SA Reserve I was to be made up of units of the Stahlhelm, by the men from 36 to 45 years of age. The SA Reserve II was to include the older age groups, that is, men over 46. But it never played any role, and was just registered in the lists.

On the other hand the units of the Stahlhelm were set up to form the SA Reserve I and were transferred to the SA, again with their own leaders, as separate units and in Stahlhelm uniforms. This operation was completed by the end of January 1934. I believe it was on 24 January that Chief of Staff Röhm reported to Hitler that the entire Stahlhelm had been incorporated into the SA.

Just as previously the Wehrstahlhelm was placed under the SA groups, the SA Reserve I was now also placed under the command of the SA groups, which meant in both cases . . .

THE PRESIDENT: Isn't this all set out in detail in the Commission evidence?

HERR BÖHM: No, Mr. President. The examination of this witness by the Commission was not conducted in the way the examinations are generally carried out. This witness was only very briefly examined by the Commission because for one thing his state of health was very poor at that time, and there is no other alternative now except to examine this witness more fully before the Tribunal.

THE PRESIDENT: The only topic he is dealing with is the merger of the Stahlhelm in the SA in 1933, isn't it? That is the only evidence he is giving and surely that is adequately dealt with in the Commission evidence.

HERR BÖHM: Yes, Mr. President.

THE PRESIDENT: Is there anything else that you want to get from him?

HERR BÖHM: Yes.

THE PRESIDENT: What is it? But you aren't getting it at present, you are getting the way in which the Stahlhelm was merged in the SA.

HERR BÖHM: Mr. President, the members of the Stahlhelm consider it very important that the manner in which they were transferred into the SA should be presented to the Tribunal; how they were transferred by way of orders and that, as they assert, they in no wise volunteered for the SA, and I believe in this connection I may...

THE PRESIDENT: I quite understand that, but you aren't telling me, are you, that that wasn't stated in the evidence in the Commission, that they were taken over compulsorily by the SA.

HERR BÖHM: Yes, but I wanted the individual events as they actually occurred to be presented here to the Tribunal.

THE PRESIDENT: Well, we have got the summary of the evidence before us and it seems to me that the evidence he is giving now is the same as the evidence he gave then.

HERR BÖHM: It is true that a great part of the evidence given was the same, Mr. President, but he had just finished his testimony in this connection and I would have come to the next question anyhow.

[Turning to the witness.] Did the units of the SA Reserve I continue to exist until the collapse in 1945?

GRUSS: Not all of them. A large part of these units was in the course of years, particularly at the beginning of the war, transferred to the active SA. Here they were either assigned to the

Front SA or attached to the Front SA as reserve groups, while the rest of the SA Reserve I units remained as before.

HERR BÖHM: Why did this incorporation of the SA Reserve into the SA take place?

GRUSS: The SA, particularly at the beginning of the war, began to show gaps. These gaps were filled through the transfer of the SA Reserve I. The primary purpose, however, was to have the Stahlhelmer, who were always recognized as an opposition, under better supervision of the SA.

HERR BÖHM: Why were you yourself not put into the SA?

GRUSS: I was already too old at that time, and besides, I was a Freemason.

HERR BÖHM: Over and beyond the orders given, was pressure exerted in connection with the incorporation of the Stahlhelm into the SA?

GRUSS: Yes, to a large extent. First of all the transfer did not take place on a voluntary basis. It was done on orders; for example, in the case of the Wehrstahlhelm—and this is how it was done in most cases—the Wehrstahlhelmer were called together for a rollcall, they were told that they had been transferred, and then an SA Führer who was present took over the Wehrstahlhelm. No one was asked whether he wanted to be transferred. Immediately upon the incorporation of the Stahlhelm, it became apparent that the majority of the Stahlhelmer resented and resisted this incorporation. Stahlhelmer who did not want to join the SA were in many cases threatened with arrest. There are cases where punishment in the form of police arrest for ten days and longer was inflicted in this connection. Furthermore, the Stahlhelmer were told that by staying away from the SA an order of Hitler's would not be obeyed and this implied hostility to the State, which always had serious consequences. Whoever was charged with hostility to the State was reported to the police as politically unreliable and was especially watched by the police. It could at any time happen that he might be arrested without any reason and put into prison or a concentration camp. Being pronounced an enemy of the State also had the very serious consequence that the means of subsistence were nearly always either seriously curtailed or even withdrawn. Civil servants who as Stahlhelmer did not want to be in the SA were pronounced enemies of the State and removed from their positions, frequently even with loss of pension. About the same applied to employees in private industry. They always lost their positions because the heads of a concern did not want to employ men who were enemies of the State. We in the Bund Leadership tried at the time in many hundreds of cases

to help those Stahlhelmer who applied to us for aid, by taking these cases to the labor courts. But in most of the cases we did not succeed in having these people reinstated in their positions. The court mostly confined itself to granting them a compensation. The tribulations which a Stahlhelmer who did not want to belong to the SA had to undergo were in some cases so great that I recall with certainty several cases of suicide of Stahlhelmer who no longer could stand the strain.

HERR BÖHM: Do these observations of yours extend all over Germany?

GRUSS: Yes.

HERR BÖHM: Could it be true that deceptive maneuvers also took place when the Stahlhelm was incorporated?

GRUSS: Yes, in my opinion, deceptive maneuvers did take place. For example, I have already mentioned that the Wehrstahlhelm as well as the SA Reserve I were permitted to be incorporated as separate formations with their own leaders, and in the field-gray uniform. After a short time, however, these promises were simply broken and the Wehrstahlhelm as well as the SA Reserve I had to don the brown uniform of the SA. Thus they were no longer recognizable in the SA as former Stahlhelmer. Then there was one point which especially caused a lot of dissatisfaction. The Stahlhelmer had been promised that after the transfer they could remain members of the Stahlhelm—this was the so-called double membership. They were allowed to participate in the activities of the Stahlhelm as long as it did not interfere with their service in the SA. But this promise also was withdrawn very soon and this caused the greatest difficulties to the Stahlhelmer who wanted to remain loyal to their Bund, and entailed many arrests and punishments of all kinds.

HERR BÖHM: At the time when Seldte turned over the Stahlhelm to Hitler, did he represent the will of the Stahlhelm Bund?

GRUSS: No, he did not. The vast majority of the Stahlhelmer did not approve the measures of Seldte. There were very heated quarrels in the Stahlhelm on account of this and if the Stahlhelm did not break away at the time it was only because the Stahlhelmer said: "We did not take an oath to the person of Seldte. We swore allegiance to the Stahlhelm and to the front-line soldiers."

HERR BÖHM: What ranks did the Stahlhelmer receive in the SA and what significance did they have?

GRUSS: Here too one could speak of a deceptive maneuver inasmuch as the Stahlhelm leaders had been expressly promised that they would serve in the SA with the same ranks. But this promise was not kept either. The Stahlhelm leaders were set down

one or two ranks. Shortly thereafter, they were even relieved of their commands and held in reserve. Only a few of them still remained in positions of command. Most of them had really no longer anything to do in the SA, but they could not get out of the SA. According to my observation, no Stahlhelm leaders got beyond the rank of a Standartenführer in the SA unless they were special exceptions, that is, men who distinguished themselves through exceptional activity on behalf of National Socialism. With regard to ranks, the National Socialist Reiter Korps, which included many Stahlhelmer, occupied a special position. But as regards the leaders, the Reiter Korps was more or less left alone. Here most of the Stahlhelm leaders up to Standartenführer retained their command, although there were among these Stahlhelmer many who were in opposition.

HERR BÖHM: Was the attitude of the Stahlhelmer transferred to the SA different from the attitude of the ordinary SA?

GRUSS: Yes, by its very nature the Stahlhelm was something entirely different from the SA. Anyone who joined the Stahlhelm did so voluntarily and of his own volition. Not everyone was accepted in the Stahlhelm. Everyone was first carefully looked over. Then the Stahlhelm had a Bund Charter, a constitution, which gave its members the right to elect on a completely democratic basis those leaders whom they wanted, or to remove those leaders whom they did not want. The two Bund Leaders themselves had to submit from time to time to the assembly of members, who then decided about their re-election.

The main characteristic of the Stahlhelm, however, was the carrying on of the tradition of the front-line comradeship formed in the field—that unique comradeship which in all circumstances demands that “I must give everything for my comrade and help him always.” That was, as we called it, front socialism. No difference was made between rich and poor, between rank and position. We Stahlhelmer were all equals.

It must be added that the people who joined the Stahlhelm generally came from the moderate middle-class, or I might say from the conservative part of the population. These people were not in favor of extremes and radicalism. They stood for a moderate and peaceful development and, taken all in all, one should realize that the Stahlhelm was made up of quite a special class of people and that this had to result in much friction with the SA.

HERR BÖHM: Did the Stahlhelmer bring military views with them into the SA?

GRUSS: Yes, but only to the extent that within the Stahlhelm there was often talk of the first World War, in which almost

all of us had participated. But we were not a military organization, as was often asserted of the Stahlhelm because it had a military command. However, it was quite impossible to lead a mass movement of one and a half million members without such commands, which to the Stahlhelmer, as old soldiers, had become second nature.

But otherwise we really never thought that there would be another war. We had had enough of the first World War and considered it our task to spread the idea among the people that problems could be solved without war and bloodshed. Not only in Germany did we represent this point of view. We established contacts abroad as well, especially with the foreign organizations of front-line soldiers, because we thought that these veterans would understand us best when we said that there must never be another war.

HERR BÖHM: Was the idea of soldierly comradeship designed to serve the preparation of a war of aggression?

GRUSS: No; from what I just said it should be clear that the Stahlhelmer never thought of a war of aggression; the idea of soldierly comradeship served the sole purpose of spreading the virtues of comradeship formed in the field among wide circles in order that it might peacefully lead to a better understanding among nations.

HERR BÖHM: What were the views of the Stahlhelm toward the political parties of Germany?

GRUSS: The Stahlhelm was opposed to all radical political tendencies. It did not follow the principle of extermination and destruction. It tried again and again to unite these extreme tendencies with a more moderate one based on enlightenment, persuasion, and propaganda. Proof that the political opponents of the Stahlhelm did after all understand this was shown in the spring of 1933 when many persecuted members of the SPD and KPD sought protection and aid in the Stahlhelm. They were accepted by us, but as a result the Stahlhelm found itself involved in serious conflicts with the Party. The Party could not approve that people persecuted by it should be protected by the Stahlhelm. Typical of this were the events in the spring of 1933 in Brunswick, where an Ortsgruppe of the Stahlhelm held a meeting. The SA surrounded the place where the meeting was being held and arrested all the members. Upon investigation, it was shown that of approximately 1,500 participants over 1,000 were former members of the SPD and the KPD. We had accepted them when they had proved to us that they were decent people and that the majority of them had been at the front with us.

HERR BÖHM: Were the Stahlhelmer opposed to trade unions?

GRUSS: No. Here too the Stahlhelmer were only opposed to the excesses. The Stahlhelm itself had its own union, the Stahlhelm Mutual Aid. It included almost all the workers who were members of the Stahlhelm, and I wish to point out that 25 to 30 percent of the members of the Stahlhelm were workers. However, in the summer of 1933 the Stahlhelm Mutual Aid was compulsorily dissolved.

HERR BÖHM: Did the Stahlhelm carry on anti-Semitic propaganda?

GRUSS: There were many opinions and views represented in the Stahlhelm. Everyone could actually think what he liked; but I never heard of an order by the leaders of the Bund against Jews, and no such order was ever given. Besides, that was quite impossible because the Second Bundesführer, for example, was Duesterberg who was, as we all knew, of Jewish origin, and in spite of this, Duesterberg was the best-liked and most popular Stahlhelmführer. In the central office of the Bund in Berlin one of my closest associates was a Stahlhelmer who was married to a Jewess. We did not concern ourselves about that at all. We had many Jews in the Stahlhelm because we had not adopted the radical racial theory of the Party and were always opposed to it. In addition to Duesterberg we had other Jews as Stahlhelmführer. There were Jews, half-Jews, and Freemasons in the Stahlhelm, therefore there could not have been any anti-Semitic tendency in the Stahlhelm, with the exception of a few circles who did not, however, have the upper hand.

HERR BÖHM: What was the effect of this Stahlhelm training when the Stahlhelm was transferred to the SA?

GRUSS: It was doubtless this pronounced Stahlhelm training which caused the majority of the Stahlhelmer to resist the incorporation. There were three points in particular which the Stahlhelmer could never understand, and which always separated him from the SA. There was, first, the autocratic Führer principle. In the Stahlhelm there were only elected Führer, which did not exist in the SA. Then the Stahlhelmer could not agree with the radicalism which was to be observed in the SA, and furthermore they could not get used to the idea of totalitarianism.

HERR BÖHM: Well, now I should like to ask you: why did the Stahlhelmer not leave the SA again?

GRUSS: Well, if that had been possible, large numbers of them, believe me, would have left again, but leaving the SA was almost impossible. There were really only two possibilities of leaving the SA. One was honorable discharge and the other was expulsion.

Honorable discharge was awarded when one could prove without doubt, for example, that one was very seriously ill, but only a very small fraction of the Stahlhelm could take advantage of this opportunity to leave the SA. For many Stahlhelmer only expulsion was possible because the SA had recognized very early from the opposition of the Stahlhelm that these were elements hostile to it. As a result, expulsion was ordered in many cases if they wanted to harm the Stahlhelmer seriously.

To the examples which I had given earlier in connection with the term "enemy of the State" I should like to add the following: Expulsion from the SA was recorded on the papers of the Stahlhelmer. If the Stahlhelmer wanted to accept a new position, it was immediately to be seen that he had been dismissed from the SA, and that was such a serious offense that no one wanted to have him.

Stahlhelmer who wanted to join the Reichswehr were not accepted if they had been dismissed from the SA.

The result was, if you take into consideration what I have said before, that there were so many serious difficulties that many Stahlhelmer who were otherwise brave and courageous men hesitated to leave the SA because they could not take on themselves the responsibility of endangering the livelihood of their family.

HERR BÖHM: And over what period of time did these observations of yours extend?

GRUSS: Up to the time of the war.

HERR BÖHM: And from whom did you learn the things which you have told us here?

GRUSS: In my position as Treasurer of the Bund, I spoke constantly with many Stahlhelmer about these matters. In addition, I had to read innumerable reports.

HERR BÖHM: Did you, as liquidator of the Stahlhelm, maintain any contact with the transferred Stahlhelmer beyond the settlement of business matters?

GRUSS: Yes, I did.

HERR BÖHM: Were you permitted to do so?

GRUSS: No; I was allowed to settle the business affairs of the Stahlhelm, but I was warned by the Gestapo against any attempt to continue the Stahlhelm in a camouflaged form. I repeatedly had clashes with the Gestapo on that account. But I constantly tried, because many of my old comrades kept telling me that I must do so because there was no one else left.

HERR BÖHM: And of what did your activity consist in holding the Stahlhelm together?

GRUSS: I spoke to many individual Stahlhelmer myself. They came from all parts of Germany to see me in Berlin. I was in contact with many of them by correspondence. Furthermore, I mailed circulars camouflaged as business letters to the old Stahlhelmer from which they could...

THE PRESIDENT: *[Interposing.]* What have we got to do with this, Dr. Böhm?

HERR BÖHM: The purpose of it is to show the Tribunal what the nature of the ideas and the ideologies of the men in the Stahlhelm was.

THE PRESIDENT: Well, you are defending the SA against a charge of being a criminal organization. You are now trying to show us what the ideology of the Stahlhelm was. You have been nearly an hour over this witness already. Practically everything he has said is written down in this summary of his evidence, the summary which we have before us, his evidence to the Commission.

HERR BÖHM: Yes, but I must give the Tribunal some idea about the attitude of this witness and the one and a half million men who came from the Stahlhelm to the SA. As to the few remaining questions—there are four or five—I shall try to be as brief as possible.

You mean to say then, Witness, that this continuation of the Stahlhelm after July 1934 was illegal?

GRUSS: Yes, because it was not permitted.

HERR BÖHM: And about how large was the circle of persons with whom you were in contact in this connection?

GRUSS: I myself was in contact with only a few hundred former Stahlhelmer, but these were only the liaison men. Behind them were the many thousand in the various cities.

HERR BÖHM: Were there other contacts among the Stahlhelmer?

GRUSS: Yes. Aside from the contact with me, everywhere in Germany in the various towns independent groups of Stahlhelmer had been formed which sometimes were of quite considerable size. For instance, in Berlin I often participated in meetings where there were 150 to 200 Stahlhelmer. In order that the Gestapo...

THE PRESIDENT: Dr. Böhm, if this is intended to show that this witness knew the circumstances about the Stahlhelm, surely you can leave that to re-examination if it is challenged. Why should you anticipate that they will challenge this witness that he doesn't know anything about the Stahlhelm? Presumably he does. Until it is challenged, you can leave it to re-examination.

HERR BÖHM: I shall ask my last, or last but one, question.

Do you know, Witness, that transferred Stahlhelmer participated in crimes which were charged against the SA, for example, the persecution of the Jews?

GRUSS: No, I know nothing about that, although I should have known about it if it were true. It would have been a quite remarkable fact if it had been established that Stahlhelmer had participated in the persecution of Jews. I refer to the statements which I made about the nonexistence of an anti-Semitic tendency in the Stahlhelm.

HERR BÖHM: Did you observe that the antagonistic attitude of the Stahlhelmer in the SA was general, or were there indications that considerable numbers of Stahlhelmer gradually changed their opinion?

GRUSS: This antagonistic attitude of the Stahlhelmer, in the case of the great majority, remained unchanged until the end. Actually, I should go so far as to say that the longer the Third Reich lasted, the stronger this opposition became among the Stahlhelmer. I do not believe that there were many Stahlhelmer who abandoned their opposition during the course of the years. Of course, there are always some such cases among a large number of people, but they were only exceptional cases.

HERR BÖHM: Mr. President, I have no more questions to put to this witness at the moment.

DR. HANS GAWLIK (Counsel for the SD): Witness, do you know whether the Stahlhelmer who were in opposition were watched by the SD?

GRUSS: I know nothing about their being watched by the SD. I always heard that only the Gestapo and the local police watched the Stahlhelmer.

DR. GAWLIK: The son of Duesterberg made an affidavit, Number Stahlhelm-4, stating that the Stahlhelmer who were in opposition had been watched by the SD. Are these statements with regard to the SD incorrect?

GRUSS: I am of the opinion that the son of Duesterberg must have been mistaken in this case. I myself never heard that the SD persecuted or watched the Stahlhelm.

DR. GAWLIK: Thank you.

COLONEL H. J. PHILLIMORE (Junior Counsel for the United Kingdom): Witness, you have spoken about the radical and extremist tendencies of the SA.

GRUSS: Yes.

COL. PHILLIMORE: You mean, do you not, that they were terrorists and gangsters?

GRUSS: When I said here radical and extremist tendencies, I meant those groups of people in the SA who already at that time had severely damaged the reputation of the SA. But they were only groups; by that I mean that it was not the whole SA, but only parts of it.

COL. PHILLIMORE: There were groups in every town in Germany, weren't there?

GRUSS: I cannot say whether they were in every town in Germany, but there were no doubt such groups in many cities.

COL. PHILLIMORE: You are saying, aren't you, that the Stahlhelmer were forced to join the SA throughout Germany?

GRUSS: Yes.

COL. PHILLIMORE: That was done by threats by the local SA leaders who took them over, isn't that right? That's what you are saying?

GRUSS: Yes.

COL. PHILLIMORE: Can there be any doubt that those threats and those arrests you spoke about were ordered by the SA leadership?

GRUSS: According to my judgment, these threats, arrests, and everything connected with them, were initiated by the SA leadership. Of course, in view of the large number concerned, it may have happened that also the Party or other formations of the Third Reich participated, but in the main, however, this pressure was exercised by the SA itself.

COL. PHILLIMORE: And you have spoken of the boycott of a man who was dismissed from the SA. Are you saying that that was the case all over Germany, if a man was dismissed, he was boycotted?

GRUSS: At any rate, in those cases of which I knew, and there were very many, such a boycott was carried out. I know for example of such a boycott in a small town. There the conditions were entirely . . .

COL. PHILLIMORE: I do not want instances. And you say that a man would not be able to join the army? That can only have been, can it not, that the SA leadership communicated his name to the army as having been dismissed?

GRUSS: It is possible that the SA gave these names to the army, but I do not know exactly. I only know one thing—that the Stahlhelmer who wanted to join the army, for example former officers, were not accepted if their papers showed that they had been dismissed from the SA.

COL. PHILLIMORE: I just want to ask you one or two more questions about the SA. Do you know Minister Severing?

GRUSS: Like every other German, I know Minister Severing from the time when he was a minister. I do not know him personally.

COL. PHILLIMORE: Do you know of him as a man of integrity?

GRUSS: I personally consider Severing a man of integrity.

COL. PHILLIMORE: Will you listen to his description of the SA in the early days, before the seizure of power.

GRUSS: I do not know this description.

COL. PHILLIMORE:

"Wherever the SA was able to exercise its terror unhindered it did so in the following manner: They had indoor battles against people who thought differently. Those were not the ordinary little brawls between political opponents during elections; that was organized terror."

Is that a fair description of the SA during the years before the seizure of power?

GRUSS: I believe that on the whole Severing describes it correctly.

COL. PHILLIMORE: Do you know the witness Gisevius?

GRUSS: No, I do not know him.

COL. PHILLIMORE: Will you listen to his words:

"During the early part of the struggle for power, the SA constituted a private army for carrying out the orders of the Nazi Party. Whoever had not entirely made up his mind had it made up for him by the SA.

"Their methods were primitive but effective. One learned the new Hitler salute very quickly when, on the sidewalks beside every SA marching column, a few stalwart SA men went along giving pedestrians a crack on the head if they failed to perform the correct gesture at least three steps in front of the SA flag; and these Storm Troopers acted the same way everywhere."

Again I ask you, is that a correct description of the behavior of the SA as you knew it?

GRUSS: Well, to that I must say I am not really competent to pass judgment on the SA of the early period. My observations were made from 1933 on; I might say I was bound to make them officially because I was Bund Treasurer of the Stahlhelm. But before that time I was a bank director and not so greatly interested in the SA. But I will admit that . . .

COL. PHILLIMORE: Well then, I will put to you one more, my last question.

THE PRESIDENT: Are these statements in evidence?

COL. PHILLIMORE: Yes, My Lord. The first statement I put is from Minister Severing's evidence in the record (Volume XIV, Page 273). The second statement is from Gisevius' evidence (Volume XII, Page 271).

THE PRESIDENT: The nature of this witness' evidence has been that the Stahlhelmer were incorporated into the SA by force. He has not said anything about the SA being an orderly or properly run organization.

COL. PHILLIMORE: My Lord, he has spoken of their radical and extremist tendencies and by inference one can assume that he was speaking of the SA.

THE PRESIDENT: Do you mean that is what he said about the SA?

COL. PHILLIMORE: Yes, one can give it no other meaning.

THE PRESIDENT: If he said that about the SA, that is not giving evidence on behalf of the SA as an organization and you are not entitled to challenge him about that. If he had been giving evidence saying that the SA was a perfectly well-behaved organization, then this cross-examination might be relevant; but if he has not said that I do not quite see how the cross-examination is relevant.

COL. PHILLIMORE: My Lord, witness after witness has appeared for the SA before the Commission.

THE PRESIDENT: Yes, but not this witness on this aspect of the matter. Let us deal with this witness. This witness has said nothing before us which shows that the SA was an orderly or well-behaved organization.

COL. PHILLIMORE: My Lord, but he has said that the SA was a most disorderly organization. It is my submission on cross-examination that I cannot be asked to refrain from continuing to follow on that evidence, unless your Lordship feels it is a waste of time of the Tribunal. In my submission it is of great importance when you have to judge the evidence of a large number of these witnesses for the SA who have appeared before the Commission. Your Lordship, it will be very short. I want to quote one further statement about the period after 1933. It is by the witness Gisevius (Volume XII, Page 272).

"The SA organized huge round-ups. The SA searched houses. The SA confiscated property. The SA cross-examined people.

The SA put people in jail. In short, the SA appointed themselves auxiliary police . . . Woe unto anyone who got into their clutches. From this time dates the 'Bunker', those dreaded private prisons of which every SA Storm Troop had to have at least one. Robbing became the inalienable right of the SA. The efficiency of a Standartenführer was measured by the number of arrests he had made, and the good reputation of an SA man was based on the effectiveness with which he 'educated' his prisoners."

[Turning to the witness.] Is that a fair description of the activities of the SA in the months immediately following the seizure of power?

GRUSS: Well, I must say that most of what the author says came to my ears daily at that time in Berlin. But remember that this concerns the SA which was under the Chief of Staff Röhm, and that later the SA was subjected to a purge. I believe that the SA later . . .

COL. PHILLIMORE: Yes, but I will come to that in a minute. But that is a fair description of what was happening in Berlin in the early months of 1933? And, if you had to make a report about this, can you say whether that is a fair description of what was happening in every town in Germany?

GRUSS: I should like to say, according to my recollection, that Herr Gisevius did not exaggerate. There is a good deal of truth in what he says.

COL. PHILLIMORE: Now, I want just to ask you about the Jews. You have said that the Stahlhelm members were not anti-Semitic. Was it because the SA was anti-Semitic in its outlook, was that one of the reasons why you say Stahlhelm members did not like joining it?

GRUSS: No, it was like this, rather: The Stahlhelm training—the moderate democratic concept of the Stahlhelm—excluded any anti-Semitic propaganda, because anti-Semitic propaganda would have been radicalism and such radicalism did not exist with the vast majority of Stahlhelmer.

COL. PHILLIMORE: Do you know the witness Hauffer? He gave evidence before the Commission.

GRUSS: Yes, I know Hauffer. He was in Dresden formerly.

COL. PHILLIMORE: He said this in his evidence: "We disapproved completely of the Party's policy against the Jews." Was that right?

GRUSS: Yes.

COL. PHILLIMORE: And the Party's policy was the policy of the SA and the SA leadership, wasn't it?

GRUSS: Yes, that is true.

COL. PHILLIMORE: Now with regard to the joining of the Stahlhelm, the incorporation of the Stahlhelm in 1933. It is not true to say that all Stahlhelm members were compelled to join, is it?

GRUSS: I said before that certain age groups of the Stahlhelm had to join and these age groups were transferred as a whole and without exception.

COL. PHILLIMORE: Certainly in the case of anyone over 35, he could have stayed out, couldn't he?

GRUSS: Yes, if they had been asked beforehand, but they were not asked. They were given orders and had to join.

COL. PHILLIMORE: You know the witness Waldenfels who appeared before the Commission? Do you know him, a senior civil servant?

GRUSS: Yes.

COL. PHILLIMORE: He refused to join and he retained his post right up to the war, isn't that correct?

GRUSS: That is correct, but that is the same as my case. Waldenfels was above the age of those who were incorporated into the SA.

COL. PHILLIMORE: Well, he was under 45 at the time, wasn't he?

GRUSS: Whether he was under 45 at the time, I do not know, but he is an elderly man, and therefore I assume that he was not affected by the transfer.

COL. PHILLIMORE: He is an elderly man now. He was born on 10 August 1889, according to his evidence. The witness Jüttner has said, you know, that even if pressure was put on a man to join, there was nothing whatever to stop him withdrawing. Now I know you say he would be boycotted, but in fact the number in the SA fell, didn't it, from 4½ million to 1½ million between 1934 and 1939?

GRUSS: I have heard of that.

COL. PHILLIMORE: Wasn't that because people were withdrawing?

GRUSS: No; as far as I can see the situation, first of all after 30 June 1934 all followers of Chief of Staff Röhm were removed from the SA, and there were very many of them. I cannot give a figure, but at all events there were very many. Then, furthermore, hundreds of thousands of SA men were released from the SA, not to return to private life, but, as far as I can recall, to be assigned to other branches of the Party. Only very few of the Stahlhelmer were affected by this release. I know that very well,

because Stahlhelmer came frequently to me and said that they hoped to be able to get out of the SA now, but after some time they came back to me and said it was not possible since the Stahlhelm had to remain in the SA so that it could be controlled better.

COL. PHILLIMORE: Once they were in the SA did these members of the Stahlhelm obey orders and perform the same actions as anybody else in the SA?

GRUSS: They had no other choice if they did not want to expose themselves to the extraordinary difficulties which I have described. But it is a fact that often it was the Stahlhelmer who were the ones to refuse to obey orders for which they could not take the responsibility.

COL. PHILLIMORE: I have no further question.

THE PRESIDENT: Dr. Böhm, have you any re-examination?

HERR BÖHM: No.

THE PRESIDENT: Witness, in 1933, when the Stahlhelm were incorporated into the SA, can you give me the approximate numbers of the Stahlhelm and the approximate numbers of the SA?

GRUSS: I can only give the approximate strength of the Stahlhelm. I would estimate it at about one million—that is, those people who were incorporated into the SA from the Stahlhelm. I do not know the strength of the SA.

THE PRESIDENT: Do you know approximately how many Stahlhelmer there were in the SA on 1 September, on or about 1 September 1939?

GRUSS: No, I cannot say that.

THE PRESIDENT: Do you know how many Stahlhelmer there were at the end of the war, approximately?

GRUSS: If you mean how many Stahlhelmer there were in the SA at the end of the war, I cannot answer that question, either. But there may have been about 500,000 to 600,000 Stahlhelmer at the end of the war. As everything in Germany was in great confusion, one can only make an estimate.

THE PRESIDENT: Then you really can't give any approximately accurate figures for the Stahlhelm after 1934?

GRUSS: Do you mean the Stahlhelm as it continued to exist after 1934 as a Bund, or the Stahlhelm which was transferred into the SA?

THE PRESIDENT: I meant the Stahlhelm which were transferred to the SA.

GRUSS: Well, there must have been about one million.

THE PRESIDENT: Then the witness may retire, and the Court will adjourn.

[A recess was taken.]

MAJOR F. ELWYN JONES (Junior Counsel for the United Kingdom): If Your Lordship pleases, would Your Lordship allow me to mention one brief matter? During the SS case I submitted Document Number 4043-PS, which was a statement by a Polish priest as to the killing of the 846 Polish priests and clergymen at Dachau. The Tribunal did not accept the document at the time because it did not appear to be in satisfactory form. Now the Polish delegation wishes me to submit a further certificate from a Dr. Pietrowski, who said that the priest's statement was made to him, in his presence, and in accordance with the stipulations of Polish law, and that is what constitutes in English law a solemn declaration. I discussed this matter with Dr. Pelckmann and he has no objection to the document going in in its present form.

THE PRESIDENT: The Tribunal will consider the matter. You may put in the document.

MAJOR JONES: Thank you. There are copies in Russian, French, and German.

THE PRESIDENT: Dr. Böhm, have you another witness?

HERR BÖHM: May I be permitted to call the witness Jüttner?

THE PRESIDENT: Yes.

[The witness Jüttner took the stand.]

Will you state your full name, please?

MAX JÜTTNER (Witness): Max Jüttner.

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.

HERR BÖHM: Herr Jüttner, from 1934 until 1945 you were Chief of the main office "Leadership of the SA," and beginning with 1939 you were, simultaneously, permanent Deputy Chief of Staff of the SA. You are familiar with all questions concerning the SA even before 1933, are you not?

JÜTTNER: I only assumed my responsibilities in the Supreme SA Leadership 1 November 1933. From the records and from conversations with the Chief of Staff, Röhm, and my comrades, I am

however informed on all essential matters concerning the SA even before this time.

HERR BÖHM: What did you do until your appointment to the SA leadership? What was your profession and political background?

JÜTTNER: Originally, I was a professional officer from 1906 until 1920. After my honorable discharge from the Army I entered the Central German Mining Company. There I started as a common laborer in the mines, but in the course of the years I worked my way up to a high office position of a large concern. Politically I belonged after 1920 to the German National People's Party for several years. Later I belonged to no party; but from 1920, I had, besides my job, a leading position in the Central German Stahlhelm.

HERR BÖHM: What were the reasons for your appointment into the SA leadership?

JÜTTNER: My appointment into the SA leadership was connected with the incorporation of the Stahlhelm into the SA. The Central German Stahlhelm enjoyed a good reputation even among its political opponents. My especially good relations with the miners and also with the trade unions were well known to Röhm. The Central German Stahlhelm was especially successful in the social field. All this might have contributed to my appointment. I left the mining industry voluntarily and became a professional SA Führer. In the summer of 1934 I was taken into the Party.

HERR BÖHM: That means, you came from the Stahlhelm into the SA?

JÜTTNER: Yes.

HERR BÖHM: Besides you, did other leaders of the Stahlhelm get into important positions in the SA?

JÜTTNER: I am unable to give you complete figures on that without referring to statistical material. But some time ago I compiled from memory the names of 60 higher and intermediate SA leaders who were formerly members of the Stahlhelm. That means that many former Stahlhelm members were given leading positions in the SA. In the course of time all key positions in the Stahlhelm: the Leadership Office, the Chief of the Office of the Chief of Staff...

HERR BÖHM: Is that in the Stahlhelm or in the SA?

JÜTTNER: In the SA. All key positions in the SA were filled, in the course of time, with Stahlhelmer. They could be found in the Leadership Office, in important positions in the Personnel Office, as Chief of the Office of the Chief of Staff, as Head of the Training Department, and also in the group staffs and as leaders of units.

HERR BÖHM: Can it be said that the positions held by former Stahlhelmer in the SA were such that they were of little influence on the bulk of the SA?

JÜTTNER: That cannot be said. These SA leaders who came from the Stahlhelm and who held these positions, had considerable influence on the education, training, and activity of the SA.

HERR BÖHM: About half an hour ago, a witness by the name of Gruss was examined here who was never a member of the SA, who did not know the conditions in the SA from personal experience, but who testified on a series of questions to which, in my opinion, only an SA man could supply the answers. Did you, during your membership in the SA from the year 1934 until the dissolution of this organization, ever observe any opposition on the part of the SA members who had come from the Stahlhelm?

JÜTTNER: I can answer this question clearly and unequivocally with "no." Numerous SA men came to me in the first few months who had formerly belonged to the Stahlhelm. Like myself they felt regret that their fine old organization was no longer in existence, but they, as well as I, hailed the fact that they were now permitted to participate in this great community of the SA.

HERR BÖHM: Did you ever hear of any opposition on the part of these people who had come from the Stahlhelm? Did other SA men complain about this?

JÜTTNER: If I understand you correctly, you are talking of men who were already in the SA?

HERR BÖHM: Yes, men who transferred or were transferred from the Stahlhelm into the SA in the years 1933 and 1934.

JÜTTNER: These men, as far as I know, never opposed the SA. I know of no such opposition.

HERR BÖHM: What was the strength of the SA in the year 1933?

JÜTTNER: In 1933 the SA had 300,000 men.

HERR BÖHM: And how many members were transferred into the SA in the years 1933 and 1934?

JÜTTNER: You mean members of the Stahlhelm?

HERR BÖHM: Yes, members of the Stahlhelm.

JÜTTNER: When the Stahlhelm was incorporated into the SA, the Stahlhelm had approximately 1,000,000 members, perhaps a little more. More than half of these were incorporated into the SA, about 550,000 men. This figure is identical with that which the former Bundesführer Seldte has given.

HERR BÖHM: Do you differentiate between the Kern-Stahlhelm and another formation of the Stahlhelm? Would you say

that the total of the men coming from the Stahlhelm who were taken over into the SA was approximately 1,000,000?

JÜTTNER: After the Stahlhelm was dissolved—I believe that occurred in 1935—it is quite possible that altogether 1,000,000 men came into the SA from the Stahlhelm.

HERR BÖHM: Well, then the ratio in the years 1933 and 1934 was such that the SA consisted of two-thirds Stahlhelmer and of one-third SA men?

JÜTTNER: Added to this in 1933-1934 was the SA Reserve II—the Kyffhäuserbund. Therefore, the above-mentioned ratio of two-thirds to one-third is not quite correct. But if the original figure, the original strength of the SA as of January 1933 is taken into consideration, then what you have just said is true.

HERR BÖHM: Then, shortly after 1933, the SA experienced a tremendous increase, that is from the original figure of 300,000 it grew to about 4,500,000 men by 1935; is that correct?

JÜTTNER: By 1934 that is true, yes.

HERR BÖHM: Then the Supreme SA Leadership tried to reduce the SA since many people had joined who really had no business there, and by 1939 approximately 3,000,000 men were again eliminated from the SA, so that in 1939 the SA had approximately 1,500,000 members left; is that correct?

JÜTTNER: Yes; that is quite correct. The figure of 1,500,000 had however already been reached several years before. The reduction of the SA was brought about through eliminating:

(1) The SA Reserve II, the Kyffhäuserbund, with about 1,500,000 members.

(2) After the death of Röhm, the NSKK.

(3) Very many SA men who were active in the Political Leadership, such as Blockleiter, Zellenleiter, and so forth.

(4) Chief of Staff Lutze eliminated all those men who for professional or other reasons could not serve or did not wish to serve.

HERR BÖHM: Did you notice that in the course of the reduction of this number from 4,500,000 to 1,500,000 particularly many Stahlhelm members or former Stahlhelm members were eliminated from the SA?

JÜTTNER: In this connection I might perhaps refer to the Stahlhelm in Central Germany, of which I was the head. There, in the large industrial region around Halle, my old Stahlhelm organization after 1935 was actually the nucleus of the SA, which shows that still very many Stahlhelmer had remained in the SA.

HERR BÖHM: And those were the Stahlhelmer who remained in the SA till the end, till the SA was disbanded?

JÜTTNER: Yes; and they were not the worst ones.

HERR BÖHM: If now in 1935 and the following years the individual SA man who had come from the Stahlhelm had had the desire to leave the SA, could he have done so?

JÜTTNER: He could have done that without difficulty.

HERR BÖHM: Would it have resulted in particular difficulties for him?

JÜTTNER: As far as the SA was concerned none whatsoever.

HERR BÖHM: The witness Gruss asserted among other things that such a case would have made it impossible for him to join the army as an officer for example, because his papers would have carried the remark: "Discharged from the SA." Is that correct?

JÜTTNER: The witness Gruss seems to have confused matters. He who was punished with discharge from the SA because he had committed an offense of some kind, did, it is true, receive an entry on his papers, "Discharged from the SA," and the effect was the same as a previous conviction in ordinary life.

HERR BÖHM: Well, then you are able to say, in order to make a long story short, that by far the larger part of the Stahlhelmer who entered the SA in 1933, or at the latest in 1934, were and remained loyal comrades of yours; is that correct?

JÜTTNER: They were and remained my best comrades.

HERR BÖHM: What was the attitude of the Chief of Staff toward the Party leadership and the State leadership?

JÜTTNER: Röhm was a strong personality. His word carried great weight in the Party leadership. As a Reich Minister...

THE PRESIDENT: Dr. Böhm, the Tribunal would like to know whether your case is that the SA, after the incorporation of the Stahlhelm, was a voluntary organization or was involuntary, so far as the Stahlhelm was concerned.

HERR BÖHM: If I understood the question correctly, Mr. President, I can say that the Stahlhelm was a voluntary organization, and that it came into the SA on account of an order.

THE PRESIDENT: There seems to be a certain difference of view between the two witnesses that you have called. The Tribunal wants to know what your case was, whether your case is that the SA, after incorporation of the Stahlhelm, was a voluntary organization.

HERR BÖHM: After the Stahlhelm was incorporated into the SA, it was of course deprived of its voluntary character, and the organization, that is, each and every member of the Stahlhelm, became a member of the SA.

THE PRESIDENT: And was voluntary, you mean, or was involuntary?

HERR BÖHM: The Stahlhelm was incorporated into the SA on account of an order and after its incorporation lost its character as an independent organization: it became SA, and each and every former member of the Stahlhelm became a member of the SA.

THE PRESIDENT: What I want to know is whether you contend, having become members of the SA, it was voluntary or involuntary?

HERR BÖHM: That is, in my opinion, in connection with Paragraph 6 of the Resolution of 13 March 1945, a legal question. I contend that they became members of the SA on the strength of order and not, in the last analysis, of their own volition. I repeat, on the strength of an order.

THE PRESIDENT: You say they were involuntarily incorporated into the SA, involuntary members of the SA?

HERR BÖHM: That is not exactly right, Mr. President. I am saying that they involuntarily got into the SA on the strength of the order, certainly the majority of them.

THE PRESIDENT: Dr. Böhm, I don't doubt what the witness said. I heard what the witness said, and I heard what the last witness said. Mr. Biddle wants to know what your case is. Are you saying that the Stahlhelm, after it has been incorporated into the SA—those members of the Stahlhelm who were incorporated into the SA were involuntary members or were voluntary members? It is for you to make up your mind which case you are putting forward. Possibly it might make my meaning more clear for your case—they could resign from the SA or they could not resign?

HERR BÖHM: That was not supposed to be the subject of my presentation of evidence, Mr. President. I wanted to show, first of all, that the Stahlhelm was incorporated into the SA on the strength of an order, in other words, involuntarily. This was probably the consensus of opinion among the bulk of the Stahlhelm. Whether and to what extent they could or could not resign later is the point I want to clarify through this witness.

THE PRESIDENT: All right, go on, Dr. Böhm. At some stage no doubt you will be able to tell us which of the witnesses you adopt.

HERR BÖHM: Witness, I should like you to continue with your testimony on the question: What was the attitude of the Chief of Staff toward the Party leadership and the State leadership? You said that Chief of Staff Röhm was a strong personality and that consequently his word carried great weight in the Party leadership. Now I should like you to continue, please.

JÜTTNER: Röhm was Reich Minister, and as such he endeavored to exert his influence on the Government in order to pursue his aims. Chief of Staff Lutze was only a Reichsleiter in the Party. In spite of that fact he had no influence on the Party leadership. In the last few years, already before the war, he avoided Gau- and Reichsleiter meetings. Lutze did not become a Reich Minister; therefore he had no influence whatsoever on the conduct of Government affairs. Chief of Staff Schepmann was neither Reichsleiter nor Reich Minister. When after 30 June 1934 the SA was reduced to insignificance, the influence of the Chiefs of Staff on Party and Government leadership had disappeared.

HERR BÖHM: And what was the relation of the Chiefs of Staff to the Leadership Corps of the SA? Were the latter kept informed of everything that was planned and intended to be achieved?

JÜTTNER: At the leaders' meetings and at training courses in the SA schools, the Chiefs of Staff kept their Leadership Corps informed as to their aims and tasks, especially about the educational tasks of the SA. At the leaders' meetings there was always an open discussion.

HERR BÖHM: What do you think of the Leadership Corps before and after the death of Röhm?

JÜTTNER: I know the Leadership of the SA, its aims, and the SA leaders, especially the higher SA leaders, very well. I do not propose to gloss over anything. A small fraction of SA leaders who had turned out to be mere troopers was eliminated. Even those SA leaders had in the past, during the first World War as brave soldiers, and later as members of the Free Corps under the government of Ebert and Noske, deserved well of their country. Their attitude and their way of life, however, were opposed to the principles of the SA, therefore they had to leave. But the rest, that is the bulk of the SA Leadership Corps, were decent and clean, and irreproachable in their sense of justice and duty.

HERR BÖHM: Tell us about the professional Leadership Corps.

JÜTTNER: As to the active leaders, the Obergruppenführer and the Gruppenführer, I know their history, their way of life and their political and ethical attitude. Apart from the insignificant number who had to leave, these SA leaders were irreproachable. Not one of them had a police record, not one of them was what one might call a failure, all of them had a civil profession before they were taken into the Leadership Corps of the SA. Their way of life was simple and modest. They received, however, in relation to comparable positions of civil servants or business men, extremely low salaries. All incomes from other sources were charged against them; there was no one in the SA who was allowed more than

one source of income; no one could enrich himself personally owing to his position, and only he could spend money on social activities who had means of his own. Of the Gruppenführer and Obergruppenführer who in 1939 were active in the SA Leadership Corps or with the SA Gruppen, half the number lost their lives in the war. They gave their lives in the belief that they had fought for a just cause. They were patriots, and they committed no wrong or ungodly acts. And even today, I pride myself on having belonged to such an upright leadership corps.

HERR BÖHM: Were the SA leaders paid?

JÜTTNER: Up to 1933 there were no paid SA leaders. Only the leaders of the so-called Untergruppen, of which there was one in each Gau, received a remuneration of about 300 marks a month. After 1933 a wage scale was established. In 1940 there was a small increase in pay. The maximum basic salary for an Obergruppenführer was 1,200 marks a month. From Scharführer up to Obersturmbannführer inclusive, all SA leaders, with the exception of the auxiliary personnel, were honorary workers. Of the entire Leadership Corps, including the nominal leaders, roughly two percent were paid.

HERR BÖHM: How was the SA Leadership Corps organized?

JÜTTNER: In the SA we differentiated between:

- SA leaders,
- SA administrative leaders,
- SA medical leaders.

The SA leaders formed the leadership staffs and led the units. The SA administrative leaders handled the budget, financial matters, and the audit. Together with the administrative leaders of the other branches and of the Party they formed a special leadership body and had to follow the directives of the Reich Treasurer. The medical leaders were physicians and pharmacists; they were charged with the medical care of the SA.

The administrative and medical leaders had no influence whatsoever on the running of the SA, and they had no right to that. Besides, the SA had leaders for special purposes, the so-called "ZV" leaders and honorary leaders, some of whom are among the main defendants here.

HERR BÖHM: Was not one of the main defendants an honorary leader?

JÜTTNER: Yes, I believe several of them were honorary leaders, such as Göring, Frank, Sauckel, Von Schirach, Streicher, and, to my knowledge, perhaps Hess and Bormann.

I might add in this connection that the honorary leaders were never informed about the business affairs of the SA. They had

neither the opportunity nor the authority to exert any influence on training, leadership, or use of the SA. They had merely the right to wear the SA uniform and, at meetings and festivities, to take their positions in the ranks of the SA leadership. Even Hermann Göring—who in 1923 headed the SA temporarily when it numbered but a few thousand men—no longer exerted any influence on the SA after that time, nor did he have any time to do so. His nomination as chief of the “Standarte Feldherrnhalle” was only a formal honor, similar to the honors that were extended in the days of the Kaiser to military leaders of merit, or members—even feminine members—of royal families.

Herr Frank was appointed leader of the SA for the former Government General by Chief of Staff Lutze. That too was and remained only a formal honor, because the administration itself was carried out by a special administrative staff under Brigadeführer Peltz, and later Kühnmund. He did not receive any orders concerning the administration of the SA in that region from the Chief of Staff. Such orders went to the administrative staff who, in turn, were responsible to the Supreme SA Leadership.

The “ZV” leaders for special purposes whom I have mentioned could temporarily be called in for duty if they were willing. They were advisory duties, for example on legal and social questions.

HERR BÖHM: Of what types of people did the SA in general consist?

JÜTTNER: From the beginning, the SA was made up of former soldiers of the first World War, that is, soldiers and young idealists who loved their country above all. The SA was not, as the witness Gisevius asserted, a mob of criminals or gangsters, but rather, as Sinclair Lewis is said to have written, pure idealists. Many clergymen, many students of theology, belonged to the SA as active members, some until the very end.

Each and every SA man will be able to confirm that never at any time were criminal actions demanded of him, and that the SA leadership never pursued criminal aims.

HERR BÖHM: Are you in a position to give us figures with respect to those members of the SA who came into conflict with existing laws?

JÜTTNER: In some of the internment camps where thousands of former SA members from all parts of the Reich are interned, investigations were made and the result can very well be applied to judge the entire SA. It was found that of the SA men interned, not even 1 percent—to be exact, 0.65 percent—had previously been punished as criminals. Opposed to that are the findings of the Reich Bureau of Statistics establishing that 1.67 percent of the entire population of the former Reich was subject to previous convictions.

HERR BÖHM: But how can you explain that in the years 1933 and 1934, for example, excesses and abuses were committed by members of the SA, such as are asserted in the Indictment?

JÜTTNER: These excesses cannot and shall not be excused. They are excesses such as occur in every revolutionary movement, for example the German revolution in 1918, or similar incidents in the past in other countries. These excesses were revolutionary actions of dissatisfied political fighters.

HERR BÖHM: Are not there perhaps still other explanations for these excesses?

JÜTTNER: One can give a whole series of circumstances, which do not excuse such excesses, but perhaps might explain them:

(1) Before 1933, especially under the government of Schleicher, the police took especially severe measures, and one-sided measures, against the SA. The result was distrust of the police. Conditions were such that in the year 1933 riots and civil war threatened in the interior of the country. Thus it is quite understandable, although not excusable, that many a man felt that he, rather than the police who were considered unreliable, was responsible for the protection of his new State, and in that way let himself become involved in excesses.

(2) Before 1933 a campaign of wild hatred against the SA was conducted. Almost all other political parties participated in this campaign of hate. There were demands to commit violence, posters with the slogan, "Beat the Fascists where you can find them," groups were organized which shouted in chorus "Down with the SA," SA members were molested at their places of work, the children of SA members were annoyed at school; there were boycotts of businesses whose owners were SA members, and there were attacks on individual SA men and also on Stahlhelmer. For example, in my home district of Halle, where I still was at that time, 43 from the ranks of the Stahlhelmer and SA men were killed.

All these circumstances caused a certain amount of anger and indignation, which was understandable, and so many a man believed himself entitled to square old accounts with political opponents after 1933.

As a third reason or circumstance which led to these excesses, I must state the fact that after 1933 there was a rush to join the SA. The fundamental decency of all these individuals could of course not be established and, as has been proved, dark elements and provocateurs sneaked in with the intention of damaging the reputation of the SA. The excesses, therefore, were not just the final note of the political conflict before 1933, but rather in many

cases were committed by just such provocateurs. The organization as such is not guilty in that respect. It disapproved of such evil-doers, and the leadership strongly condemned such cases when they were reported to them.

HERR BÖHM: Now tell us, what did the SA leadership do in order to prevent such excesses as occurred throughout the year 1933?

JÜTTNER: The SA leadership in Prussia worked together with the Prussian Minister for the Interior and his deputies in order to prevent such excesses. Chief of Staff Röhm made people available for the auxiliary police and selected men from the SA for the Feldjäger Corps, which was first established in Prussia and proved exceptionally useful.

Secondly, the SA leadership, in order to gain and justify confidence, devoted itself to ridding its own ranks of provocateurs. Those dismissed from the police and auxiliary police were at the same time removed from the SA. Anyone who was proved guilty of any excesses was punished. The SA leadership of its own accord further set up an SA Patrol Service in order to watch the deportment of its men in the streets and in public life. And finally it was always the main concern of the SA leadership to have the great number of unemployed put to work, to take them off the streets and put them in proper jobs. The numerous social measures of the SA leadership, such as for example the many institutions for professional reconversion, the projects for the cultivation of swamps, and similar things were directed toward the same end.

HERR BÖHM: Was the number of the excesses or misdeeds that took place and for which SA members were responsible, a large one?

JÜTTNER: In comparison with the strength of the SA, these misdeeds that were ascertained were infinitesimally rare, and in addition to that, another point should not be forgotten. In all of these excesses the SA was always accused, for at that time everyone in a brown shirt was taken for an SA man, regardless of whether he was a member of the SA or not. All that was of necessity bound to create in world opinion a distorted picture of the SA. It was bound to create prejudices detrimental to the SA, because the SA was blamed for many excesses in which SA members did not in the slightest participate.

HERR BÖHM: Is it known to you that steps were taken to quash proceedings before civil courts against SA men for such excesses?

JÜTTNER: As far as I know, no such steps to quash legal proceedings before civil courts were undertaken by the SA leadership. On the occasion of a general amnesty the SA leadership naturally demanded the pardoning of its own members too.

HERR BÖHM: After the action against the Jews in November of 1938, the Supreme Party Court, however, opposed the conviction of SA members who had participated in the shooting of Jews. Do you know about this request?

JÜTTNER: I do not know this request, but I have heard about it here in custody.

HERR BÖHM: And what is your position toward this request?

JÜTTNER: If I remember the contents quite clearly, the Supreme Party Court demanded that first of all the man who was responsible for this action be called to account.

HERR BÖHM: Do you consider this attitude of the Supreme Party Court correct?

JÜTTNER: I agree with this demand wholeheartedly. It is only to be regretted that the Supreme Party Court did not prevail. But the demand that men who had shot others should go scot-free, that is, escape being sentenced by regular courts, cannot be justified under any conditions.

HERR BÖHM: Well, was such a demand ever made by the SA leadership or by members of the SA?

JÜTTNER: The guiding principle of the SA leadership, especially in these actions of November 1938, was that those who had been found guilty were to be punished, not only by the SA but also by the regular courts. As far as Chief of Staff Lutze learned of such cases he always, to my knowledge, advocated such procedure and initiated the necessary steps. The SA even had an agreement with the judicial authorities that if an SA man committed a misdeed and was to be brought before a court, the SA leadership would be notified so that they could suspend this man from service at once and, as the case might be, could prohibit him from wearing the SA uniform and even punish him on their own initiative. This principle was favored and applied in the action of November 1938 by Chief of Staff Lutze.

HERR BÖHM: What was the opinion and the attitude of the SA on the Jewish question?

JÜTTNER: The SA demanded that the influence of the Jews in national affairs, in the economy, and in cultural life, be reduced in accordance with their position as a minority in Germany. It advocated a *numerus clausus*.

HERR BÖHM: And what was the reason for this demand or this attitude?

JÜTTNER: This demand, which was not only that of the SA, became general in Germany when after the first World War, in 1918 and 1919, great numbers of Jewish people emigrated from

Poland to Germany and entered into the economic and other spheres of life, where they gained considerable influence in an undesirable manner. Through certain large judicial proceedings all this profiteering and this disintegrating influence had become known, and it caused much ill-will and resulted in a movement of opposition. Even Jews who had lived in Germany for a long time, and societies of German citizens of the Jewish faith, took position against these influences in a decided manner. So one can readily see that the demand of the SA was well-grounded.

HERR BÖHM: Did the SA incite others to active violence against the Jews?

JÜTTNER: No, in no way. Never did the Chiefs of Staff, Röhm, Lutze, or Schepmann treat the Jewish question in their speeches, or issue any directives in that respect, much less incite others to violence. The concept of a so-called "master race" was never fostered in the SA; that would have been quite contrary to reason, for the SA received its replacements from all strata. The extermination of a people because of its type was never given any support by the SA, and actions of violence against Jews were not favored by the SA. Quite the contrary, the leadership always objected most strongly to actions of that kind.

THE PRESIDENT: Perhaps that will be a convenient time to break off. How long do you think you are going to be with this witness?

HERR BÖHM: Mr. President, I believe I will need another hour to interrogate the witness, perhaps an hour and a half.

THE PRESIDENT: The Tribunal will adjourn.

[The Tribunal adjourned until 14 August 1946 at 1000 hours.]

TWO HUNDRED AND THIRD DAY

Wednesday, 14 August 1946

Morning Session

[The witness Jüttner resumed the stand.]

HERR BÖHM: Witness, yesterday we left off in your examination with the manner in which the Jewish question was handled by the SA. Now I should like to ask you how the participation of members of the SA in actions against the Jews in November 1938 can be explained?

JÜTTNER: The participation of SA members in this action consisted of irresponsible actions by individuals which were in gross contradiction to the directive of Staff Chief Lutze's executives. Staff Chief Lutze was in Munich in the old city hall. There, in connection with the speech made by Dr. Goebbels, he immediately assigned the chief of the administrative office, Obergruppenführer Matthes, to go to the Hotel Rheinhof, where a part of the SA leaders present had already retired, in order to give these SA leaders strict orders not to participate in any action against the Jews. About an hour later, when he received the news that the synagogue in Munich had been set on fire, Lutze, in my presence, repeated this order to the SA leaders who were still present in the Munich city hall and said that it was to be passed on to all units immediately. This was actually done, which is confirmed by the fact that in many places no actions were carried out at all, and numerous SA men state under oath that they received this order.

HERR BÖHM: Then how did it come about that, in spite of that, members of the SA participated in the destruction of Jewish establishments?

JÜTTNER: As was ascertained afterwards, certain individuals let themselves be misled by agencies which were undoubtedly under the influence of Dr. Goebbels. As an actual fact, compared with the SA, relatively few real members of the SA participated in this action, although public opinion later blamed the SA for this entire action. And here again it so happened that everyone in a brown shirt was considered an SA man. That the SA was in no way the sponsor of this action may also be seen from the fact that, as I have read in the press in the last few months, in certain trials, for example

in Bamberg, Stuttgart, and, I believe, in Hof, people were convicted who had destroyed synagogues and yet did not belong to the SA. The fact also that in many places SA men upon instructions from the leadership offered to afford protection to Jewish installations against plundering by shady elements, *et cetera*, created a popular impression that the SA had committed these misdeeds. In any event, Staff Chief Lutze one or two days later gave voice to his indignation to Dr. Goebbels about the action itself and the unjustified accusation against the SA, and strongly condemned the irresponsible way in which the SA men had been incited to commit these misdeeds. Soon after he issued an order that in the future SA men were not to place themselves at the disposal of other agencies for any tasks or actions unless he himself had given express approval. Staff Chief Lutze punished the guilty ones whom he discovered, and if the case warranted it, they were turned over to the regular courts for judgment.

HERR BÖHM: Had things been different up to that time when Lutze took this particular line? Was the Political Leadership in a position to use SA members for its own purposes?

JÜTTNER: The Political Leadership only had authority to use the SA for certain tasks, which included the following: participation in Gau and Kreis rallies; demands for the use of the SA in cases of disaster, and also for propaganda purposes; for collection drives for the Winter Relief, for collecting clothing and the like. These were the usual demands which the Political Leadership made on the SA in the course of the year. So far as I know, at no time did the Political Leadership make any other demands of an illegal nature of the SA. But Lutze issued this order to prevent those offices which were under Dr. Goebbels' influence from leading SA men astray in the future.

HERR BÖHM: Very well. Now, the Prosecution has submitted a document in this Trial, under Number 1721-PS. This is a report from Brigade 50 to Group Kurpfalz. I should first like to show this document to you, and then I should like to ask you whether you made any official inquiries about this matter.

[A document was handed to the witness.]

JÜTTNER: We made official inquiries after the action. No actions and misdeeds such as are indicated in the report were communicated to us from the area of Group Kurpfalz. Moreover, I consider it quite out of the question that these matters which are reproduced here are in accord with the facts.

HERR BÖHM: Now I must put a number of questions to you which would have been superfluous if the witnesses Lucke and Fust could have been interrogated in this Court. Lucke is the person who

made this report, and Fust is the one to whom it is supposed to have been sent.

Is it customary in the SA, when making reports of action completed, to repeat in the report the order which is being reported as executed?

JÜTTNER: In my entire activity as chief of the main office of the Higher SA Leadership and as permanent deputy of the Chief of Staff of the SA, I have never observed that in reports on action taken the original orders were repeated verbatim, as has been done in this alleged report. Moreover, I should like to say that the leader of this group, who was Obergruppenführer Fust, at the time he allegedly gave this order, which is repeated here, was in Munich in the old city hall, and then in the Hotel Rheinhof. He received this prohibition from Staff Chief Lutze and transmitted it to his group by telephone in the presence of Obergruppenführer Matthes. Fust is an uncommonly decent and disciplined man. When he returned to Mannheim he convinced himself, as I know, of the fact that this order had been transmitted and that in accordance with his instructions SA men had been furnished to guard Jewish installations.

Moreover, the head of the leadership division of this Group Kurpfalz, a certain SA leader by the name of Zimmermann, confirms that the Gruppenführer gave the order to do exactly the opposite of that which is contained in this document as a group order, and that he, too, saw SA men acting as guards for Jewish establishments; and SA men at present in internment camps, who headed units in this group, testify that they never received an order like the one which is here alleged to have been given by the group.

HERR BÖHM: Was it customary in SA phraseology to say "Jewish synagogues"?

JÜTTNER: No, there was no expression like that. If one spoke of Jewish churches one said "synagogues." The concept "Jewish" was included, just as when you speak of a mosque the concept "Mohammedan" is inseparable from it. In the same way in our terminology, if you speak of synagogues, you do not say "Jewish synagogues" but just "synagogues."

HERR BÖHM: And in the order there is mention of an "Aryan population." Was that possible or was it customary in this connection?

JÜTTNER: This, too, is completely pointless. If this order had been given, one would not have said "adjoining houses which are inhabited by Aryan people," but one would undoubtedly have said "those houses which are inhabited by Germans or persons of German blood," but "Aryan people" would never have been used in this connection.

HERR BÖHM: Does it sound probable or credible that in the year 1938, at a time when National Socialist power was consolidated 100 percent, an order should be given that riots and plundering were to be prevented?

JÜTTNER: This speaks quite clearly against the authenticity of the report submitted here. To assume an occasion for plundering and riots in such a connection would have been quite inexplicable, and moreover there was no reason at all for mentioning that here.

HERR BÖHM: Would it have been possible that the group, in an order to the brigade, might have ordered that a report of action taken be sent to the brigade leader?

JÜTTNER: That would have been quite senseless. The brigade could not send a report of action taken to itself.

HERR BÖHM: But that is expressed in the report or rather in the repetition of the report.

JÜTTNER: Yes, and that speaks against the authenticity of this report which is reproduced here.

HERR BÖHM: And for that reason what would you gather from the way in which the order is set up?

JÜTTNER: I conclude from it, to put it briefly, that this order was never given, and that the man who invented it had no idea of the wording used in commands by the SA.

HERR BÖHM: Was it customary and in accord with the transmission of orders in the SA that orders were not transmitted through official channels, but that matters were handled in the way stated here, according to which the Standartenführer would have been alerted, following which they would have been given very exact instructions and a report would have been made when they started to carry out the order?

JÜTTNER: Quite apart from the fact that a report on action taken would never have been made in the form presented here, it was customary with us for orders to be transmitted through official channels; then action was taken. It is absolutely pointless to emphasize especially, or to report, that the execution of the order has begun, because every order involves its own execution. A report would have to be given only if certain difficulties were encountered in executing the order.

HERR BÖHM: And what do you conclude from the improbable, and in part impossible, style of this photostat of 11 November 1938, as a whole?

JÜTTNER: I believe I have stated already that this document here itself belies its authenticity, and that we are dealing with a

forgery. When I look at this document more closely I arrive at the conclusion that even chronologically the execution . . .

THE PRESIDENT [*Interposing.*]: Could you give me the number of the document?

HERR BÖHM: It is 1721-PS. USA-425.

THE PRESIDENT: Do you not think we have heard enough about it now? We have heard considerable argument that it is not authentic.

HERR BÖHM: Mr. President, the point is that since the two witnesses who would have been competent in this matter could not be brought here, the matter must be clarified in such a way that there is no doubt about this forgery. For if this report of action taken were true and correct, the SA would be tremendously incriminated by it.

THE PRESIDENT: I know that, but the witness has been telling us that for the last 10 minutes.

HERR BÖHM: In connection with Document Number 1721-PS, an order of the Supreme SA Leadership was submitted as a document under the same number, an order which is signed by you and which says:

"In connection with the actions against the Jews originating among the people, valuable objects had to be safeguarded here and there by the offices of the Party and its branches for the protection of German public property. I order that such objects be turned over without delay to the nearest office of the Secret State Police and receipts be given therefor.

"If, in connection with these actions, the offices of the Party and their branches should become aware, or have been aware, of thefts which unfortunately may have occurred, a report is to be submitted without delay to the nearest police station. The same procedure is to be observed upon the appearance of suspicious objects. The offices of the Police are to be aided to the fullest possible extent in the performance of their duties."

Because of this order, you are charged with having known that the objects which are mentioned herein were to be turned over to a certain place from which they were never to return to their legal owners.

Now, I ask you: What was the origin of this order? Could one or can one gather from the contents of this order, which emphasizes that the offices of the Police are to be aided as much as possible in carrying out their assignment, that it was your intention not to return stolen property to Jews?

JÜTTNER: I already became acquainted with this order, which was just read to me, in the preliminary interrogations before the Commission. According to my memory, it dates from 29 November. At that time, on 29 November, I knew exactly that Adolf Hitler, but above all Hermann Göring, Rudolf Hess, and also Lutze, condemned this action of November 1938 very severely. The order which bears my signature is not contested by me. It is a copy of a directive of the office of the Führer's Deputy, Rudolf Hess, and therefore is traceable to him. Since I knew that Rudolf Hess himself, as a truly law-abiding person, condemned this action very strongly, I had to assume from his order that its purpose was to restore the stolen property to its original owners, namely, the Jews. Any other assumption was entirely out of the question for me, and it was also obvious to me that this property was to be given up to the police offices immediately as trustees, for the Police represented the guardians of law and order, at least in my eyes, and not offices which were called upon to withhold or steal other people's property from them.

HERR BÖHM: Now I should like to turn to a different subject. The witness Schellenberg has alleged that in 1943 and 1944 the SA leadership tried to take over not only the guarding of concentration camps, but also of work camps and prisoner-of-war camps. What have you to say to that?

JÜTTNER: May I ask in what year that was supposed to have been?

HERR BÖHM: In 1943 and 1944.

JÜTTNER: In the year 1943, from May to August, I led the SA as deputy of the Chief of Staff. During this period, as before, I never tried to put tasks into the hands of the SA which were incumbent on other agencies, such as the Reichsführer SS, and especially not tasks of a police nature. I neither aspired to take over tasks of this sort, nor did I have negotiations carried out for this purpose. Moreover, after I learned of this charge against the SA from the Indictment during my imprisonment, I discussed this matter with Herr Schellenberg. Herr Schellenberg told me that the transcript of his testimony must rest on a misunderstanding. He had meant to say conversations between the SA and the Reichsführung SS about questions of municipal and country guards. Conversations of that nature are not disputed by me. They dealt with the apportionment of time in service, so that there would be no conflict should members of the SA, who were obliged on a legal basis to serve in the municipal and country guard, have to perform SA service at the same time. This adjustment of schedule was the reason for these conversations. The SA had absolutely nothing to do with taking over the guarding of concentration camps, or later

the guarding of prisoner-of-war camps and work camps either, nor did I ever learn that individual SA men were legally conscripted for tasks of that nature.

HERR BÖHM: Please comment on the question of how the SA stood toward the Church?

JÜTTNER: On the Church question, the SA left the individual complete freedom of choice. Staff Chief Röhm was a Church member. Moreover, I recall that in 1934 he issued an order to the SA in which he prohibited SA men from taking sides in any Church controversies, for the reason that this might possibly disturb the solidarity of the SA. I personally was always a member of the Protestant Church and still am a member today. As deputy of the Chief of Staff I was a Church member also. The great majority of the SA men were Church members. Many members of the SA—in any case not merely isolated members—were active in Church councils even up to the end, a fact well known to us, which we never tried to prevent. Staff Chief Lutze issued an order everywhere that SA duty was not to be performed when religious services were being held.

HERR BÖHM: Can one say that the SA adopted the principle of positive Christianity as its own?

JÜTTNER: I believe I can answer that absolutely in the affirmative.

HERR BÖHM: The beginning of the war in 1939 has been connected with the activities of the SA. What reasons can you give to prove that the work of the SA did not serve as a preparation for war?

JÜTTNER: I assume that primarily it is the practical activity of the SA which is meant. These things which the SA did in the past can be judged correctly only if we bear in mind the situation that existed at the time. It cannot be judged according to the picture which has been formed now as a result of the war. The situation which prevailed in Germany at the time, if I am correctly informed, Mr. President, has been sufficiently described in this courtroom. But I should like to emphasize that the German male population of that day had been physically very much run-down because of the prevailing distress. They were hardly fit for training, much less for efficient service, even in their professions. The degree of their physical fitness and morale had reached a frightfully low level, and the only aspiration of the SA was to contribute to the development in Germany once more of a physically efficient, brave, and reliable body of men, suitable for service, who would be ready and willing to serve the Fatherland in all emergencies. In 1933 Germany was threatened with civil war and revolts. Behind us we had the Polish

insurrections. Because of her central position Germany, more than other countries, was intent on the protection of her boundaries, and necessarily so; and finally, this country, which is so poor in raw materials, was forced to prevent natural catastrophes by all possible means so that greater damage would be averted. For that purpose a well-trained, healthy body of men was necessary who were physically able and ready for military service. The SA had set itself the task of training these men.

HERR BÖHM: Did the SA, until the outbreak of war, believe in peace, and how could you prove that this belief of the SA in a peaceful development actually did exist?

JÜTTNER: The SA truly did not want a war. Hundreds of thousands of former combat soldiers of the first World War were in the SA. These men were familiar with war and its unspeakable sacrifices. They did not want war. For the sake of their country's life, but also for the sake of their own existence, they wanted a peaceful development. In 1939, until the days of August, until the end of August they were . . . I myself was busy here in Nuremberg as parade leader for the Reich Party Rally, to prepare the games and the big military review for the Reich Party Rally. They did not think of war, they were not enthusiastic about the war, rather did it strike them with dismay. We always believed in peace, because of many historical events in the past: the naval agreement with England, treaties with Poland, trade agreements with other states, friendly relations with the southeastern states of Europe, and above all, the events of international reconciliation at the Olympic Games in 1936. We believed in peace because of the co-operation between the veterans' organizations of the European countries, which was always strongly supported by the SA; because of the constantly increasing understanding between the youth associations of the various states; because of the regular international labor meetings at Hamburg. We knew of the friendly courtesy visits which the great statesmen of other European nations paid to Adolf Hitler, we were acquainted with the publication of prominent foreigners about the Third Reich, and finally it was the Munich Agreement, which we took up and welcomed with enthusiasm, which seemed to assure peace.

HERR BÖHM: Did the SA leadership have any influence on politics?

JÜTTNER: After the death of Röhm none at all. The SA was completely unsuited for exerting any influence on politics, both by its organization and its leadership. Even the misuse of the SA for war-mongering purposes was quite out of the question. Militarism such as the glorification of military activities, uniforms, drilling, jingoism, or the creation of a warlike spirit, was never approved by

the SA; Röhm's attitude toward neighboring countries and Lutze's attitude toward war in general, in themselves speak for that.

HERR BÖHM: Would the SA have had to follow an order for war propaganda?

JÜTTNER: I have already declared in my interrogation before the Commission that the SA did not observe any blind obedience. Demands for war propaganda never reached the SA from any quarter. Consequently the SA never carried on any war propaganda, either in its courses or in the training of its units.

HERR BÖHM: A few days ago the Prosecution placed an affidavit by Prime Minister Dr. Wilhelm Högner, among other things, in my mail box, and since I have no other opportunity to define my attitude as to this affidavit except here and now, I should like to put a few questions to you dealing with these matters.

This affidavit states:

"As early as 1922—I believe it was the so-called Coburg Convention—the SA dominated the streets with its armed bands and attacked the peaceful population, especially political..."

THE PRESIDENT [*Interposing.*]: Is the affidavit in evidence?

HERR BÖHM: This affidavit was put in my mail box 3 days ago. I would have no reason to present this affidavit, Mr. President, but since I received it...

THE PRESIDENT: I asked you a perfectly simple question. Cannot you give me an answer to it? I asked you if it was in evidence.

HERR BÖHM: This document has not been submitted in evidence, Mr. President, but I shall not have another possibility of commenting on this document from any aspect if I do not take advantage of this opportunity.

THE PRESIDENT: Either you want to put it in evidence or you do not. If the document is not yet in evidence there is no need to go into it.

HERR BÖHM: No, I only wanted to ask a few questions based on this document.

THE PRESIDENT: You cannot do that until you have put the document in evidence. If you want to put it in evidence, then you must put it in evidence. If you do not want to, then—just listen to me.

It is not true to say that you had no opportunity of dealing with the document. You can deal with it in re-examination. If the document is put in in cross-examination you can deal with it then. Otherwise, if you want to put it in evidence now, subject to its admissibility, you can do it and take the responsibility for it.

HERR BÖHM: Yes, that would be true if this affidavit were submitted in cross-examination, but it is not . . .

THE PRESIDENT: If it is not submitted we shall not look at it, we shall not know anything about it.

HERR BÖHM: Mr. President, I gather from that that if this affidavit is not submitted in cross-examination, it cannot be submitted afterwards either. Then the procedure is quite clear and I do not need to have anyone comment on it.

THE PRESIDENT: Yes. At any rate, if there was an application by the Prosecution to submit the affidavit in rebuttal you would have an opportunity of answering it after that, in these circumstances.

HERR BÖHM: Then I should like to ask the Tribunal to permit me to call the witness whom I had provided for that and who is now on the witness stand, so that I might interrogate him about the contents of this affidavit.

THE PRESIDENT: No, either you put it in evidence yourself now or else you wait for re-examination.

Sir David, I do not know what all this is about. Dr. Böhm does not seem to know what the position is.

SIR DAVID MAXWELL-FYFE: My Lord, it may be—I did not quite catch the name of the deponent, but it may be that this is one of the affidavits with regard to which I applied to the Tribunal a day or two ago, and I was going to put them in after the Defense's documents in general rebuttal.

Yes, My Lord, it is an affidavit from the Prime Minister of Bavaria, which is one of those I mentioned to the Tribunal a few days ago.

THE PRESIDENT: Well, you can put it in on cross-examination, can you not?

SIR DAVID MAXWELL-FYFE: My Lord, I can quite easily.

THE PRESIDENT: Would that not be the most convenient course; then Dr. Böhm can re-examine upon it. He has had an opportunity, apparently, of looking at it.

SIR DAVID MAXWELL-FYFE: Yes, My Lord, I will do that.

HERR BÖHM: Mr. President, the thing I wanted to avoid is the situation which would have arisen if the document had been submitted after the testimony of my last witness so that I would not have had another opportunity to refute this document.

Herr Jüttner, now I should like to put my final question to you. Did the political aims of the SA have a criminal character?

JÜTTNER: The things which the SA did and the aims which its leaders pursued need never fear the light of day. The SA leadership did not pursue any criminal aims and did not even know of any criminal aims of any other agencies. The SA, as an organization, never carried out any actions which could justify its defamation as a criminal organization. The SA, Mr. President, had many followers in the Reich, that is, in the former Reich, and even beyond its boundaries. The SA had opponents as well. Many of these opponents raised their voices, and out of hate or envy created prejudices against the SA. Not the truth—only prejudices of the kind which, as is well known in history, have caused the downfall of many a brave man, could lead to a situation where five or six million men who belonged to the SA in the last two and a half decades would be stamped as criminals.

HERR BÖHM: Mr. President, I have no further questions.

JÜTTNER: For these men, for these five or six million men and for the many millions in their families, I can solemnly declare under oath that the SA never had a criminal character.

Mr. President, my entire life has been guided by the rule that one should stand by whatever one has done, whatever the risk may be, and fear nothing, not even death itself, save only dishonor. I consider it to be dishonorable to evade responsibility by putting an end to one's life, or to become untruthful. In this respect, Mr. President, my conscience is clear.

Therefore, with my declaration on the blamelessness of the SA I can stand in front of the Highest Judge.

HERR BÖHM: Mr. President, I have no further questions to put to the witness.

THE PRESIDENT: Does the Prosecution desire to cross-examine?

SIR DAVID MAXWELL-FYFE: Do you say, Witness, that the SA had nothing to do with atrocities against the people of the occupied territories?

JÜTTNER: I do not quite understand the last part of your question. Atrocities?

SIR DAVID MAXWELL-FYFE: Against the people of the territories occupied by Germany, foreign territories occupied by Germany?

JÜTTNER: The SA leadership . . .

SIR DAVID MAXWELL-FYFE: That is a perfectly simple question. You have made your speeches. Now answer "yes" or "no" to the question that the SA had anything to do with the atrocities against the people of the occupied territories.

JÜTTNER: It is my intention to give a true answer; therefore, I cannot have anybody prescribe what I am to answer . . .

SIR DAVID MAXWELL-FYFE: Can't you answer "yes" or "no"?

THE PRESIDENT: You can explain afterwards, you know. If you answer "yes" or "no," you can then give your explanation.

JÜTTNER: The SA had nothing to do with the treatment of peoples of occupied countries.

SIR DAVID MAXWELL-FYFE: I see. Well, now, I want you to look at your report on the SA during the war, which the High Tribunal will find in Document Book 16-B, at Page 113.

My Lord, it is Number 4011-PS, and will become Exhibit GB-596.

Now, Witness, just before you look at that, do you remember saying before the Commission: "At the beginning of the war with Poland the SA Group Sudeten, carried out transports of prisoners of war into the camps. Other SA groups in the East may have been used for similar purposes later on. The SA leadership and the SA as an organization had nothing to do with this question."

Do you remember saying that? Page 336 of the transcript. One of your groups carried out transports of prisoners of war into camps and other SA groups may have been used for similar purposes. Do you remember saying that to the Commissioner? If you would take your mind from the document and just address it to the point as to whether you said that before the Commission, it would help. Do you remember saying that before the Commission?

JÜTTNER: I admitted before the Commission and I will not deny today, that the SA Group "Sudeten," on instructions from the Wehrmacht, transported prisoners of war to the rear in the Polish campaign. But, Mr. Prosecutor, you asked me before about the treatment of the population in the occupied countries.

SIR DAVID MAXWELL-FYFE: I got your answer to that. We must take it by stages. You admit you said that before the Commission, that "the 'Sudeten' Group carried out transports of prisoners of war into camps. Other SA groups in the East may have been used for similar purposes." Do you remember saying that. I am only putting in the record what you said. You admit you said it?

JÜTTNER: I have already said that.

SIR DAVID MAXWELL-FYFE: Right. Now, let's look at your report. This is a report made by you on 23 June 1941, and you see that after a general paragraph—My Lord, if you would turn to Page 116, it is Page 4 of the original document; and, Witness, if you would go on to the heading "Section 4 A"—you say:

"The SA men who have remained in the communications zone primarily care for the maintenance of the SA organization. All units, even the smallest ones, are active, and the

men willingly sacrifice their spare time for duty in the Party. This includes assistance to the political leaders in the educational and orientation tasks, propaganda and counter-propaganda, preparations for meetings, control of the population in the frontier areas."

Is that correct, what you wrote in 1941?

JÜTTNER: It is exactly true. The communications zone is of course the homeland, not occupied territories.

SIR DAVID MAXWELL-FYFE: Turn to Page 117 of the English version, My Lord.

I think it is Page 123, Witness, of your version. Have you got 123? It is Page 5 of the original. It is the next page, Page 5. You see under "C":

"The duty achievements of the SA, which deal with direct support of the Armed Forces and which benefit the power of German arms, have developed in all directions. At the time this report is written or in the previous weeks the following were employed: ... SA men from 21 groups for guarding prisoners."

Where were the 21 groups guarding prisoners?

JÜTTNER: In the Reich area during the Polish campaign.

SIR DAVID MAXWELL-FYFE: This is 1941, the Polish campaign had been finished for nearly 21 months. You see, you say that that is "at the time the report is written, or in the previous few weeks..."—where were they guarding the prisoners then?

JÜTTNER: This report is a summary of the activity of the SA during the war from the very beginning, and everything of a positive nature which the SA had also done earlier is enumerated there again.

SIR DAVID MAXWELL-FYFE: Did you not hear what I put to you, and can you not read your own report? This says: "At the time this report is written, or in the previous few weeks..." that is, in June 1941. It says they were guarding prisoners. I am asking you, where were they guarding prisoners?

JÜTTNER: That must not be taken to mean that 21 SA groups were used to guard prisoners of war; it only says there that 21 groups have detailed SA men...

THE PRESIDENT: The question was: Where did you say they were guarding prisoners? There is nothing about the number 21. Where was it that they were guarding prisoners?

JÜTTNER: In prisoner-of-war camps in the Reich area, where individual SA men were drafted into the Wehrmacht for a short term, for the purpose of guarding prisoners of war.

THE PRESIDENT: What do you mean by the Reich area? Do you mean Germany as it was before the war again?

JÜTTNER: Yes. It is possible that there were also prisoner-of-war camps in West Prussia and the Government General. However, that escapes my knowledge.

THE PRESIDENT: And in the Baltic provinces?

JÜTTNER: I know nothing about that.

SIR DAVID MAXWELL-FYFE: Well, we can refresh your memory in just a moment. Not to leave this document, if you will look at the next page, on page . . .

THE PRESIDENT: Before you pass on to that . . .

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases.

THE PRESIDENT: The passage just before "B," perhaps you ought to put it to him.

SIR DAVID MAXWELL-FYFE: I am ready for it, Your Lordship.

[Turning to the witness.] If you will look just before "B," you will see the words "Numerous SA leaders and subleaders were furnished to the German Labor Front for duty in the Todt Organization"; is that right?

JÜTTNER: May I ask again what page that is?

SIR DAVID MAXWELL-FYFE: It is about ten lines before the bit I put to you about the 21 groups guarding the camps. It says: "Numerous SA leaders and subleaders were furnished to the German Labor Front for duty in the Todt Organization."

JÜTTNER: We did give men to the Organization Todt for labor, but they resigned from the SA when they went.

SIR DAVID MAXWELL-FYFE: Were they looking for forced labor?

JÜTTNER: No, we gave them to the Organization Todt, and they were thereby withdrawn from the authority of the SA.

SIR DAVID MAXWELL-FYFE: Now, would you look at Page 6 of the original, and you will see a heading, "The premilitary training." Now, you see what is said there, and this is the second year of the war. This is the second paragraph, after the one dealing with the SA war defense groups:

"This educational work is primarily to assist the fighting spirit, to retain and fortify the willingness to fight, and to harden the National Socialist community idea in German men to become an uncompromising testimonial to their comradeship in arms."

Then you give an account of the training, including "signals and target practice, instruction and practice in handling rifles, as well as shooting on the range and in the field, and furthermore throwing hand-grenades," and so on.

Now, Witness, you are very familiar with these complications. I suggest to you that that training which is set out in your third report in the second year of the war is exactly the same training as is set out in your reports in the training directives of 1934, 1938, and 1939. It is the same training as the SA had been giving to its membership for the last 7 years, almost word for word, isn't it? Isn't that exactly the same words contained in all your training directives?

JÜTTNER: No, that is not correct.

SIR DAVID MAXWELL-FYFE: All right.

JÜTTNER: Before the war...

SIR DAVID MAXWELL-FYFE: I will put the training directives in in due course. That is your answer, you say that it is not the same. I suggest that that is a deliberate untruth, and that this report covers the same ground, using practically the same language as your reports in 1934, '38—your training directives in '34, '38, and '39.

Now, consider that that is all; I want the Tribunal to be able to test your veracity: do you still say that that report is not the same as the SA training directives in '34, '38, and '39? Do you or do you not?

JÜTTNER: The important thing is how this service was organized, and the service...

SIR DAVID MAXWELL-FYFE: I am not asking you how the service was handled. I am asking you on the contents of the training directives, and I am putting to you a perfectly clear question. Isn't the training contained in this report, two years after the beginning of the war, exactly the same as the training laid down in the training directives of the years '34, '38, and '39? Now, do you want to maintain your answer that it isn't?

JÜTTNER: Before the war we did not conduct any premilitary or postmilitary training. During the war we did everything to strengthen the armed power of the German people. I cannot answer any differently about this. Consequently, I must arrive at a "no," for what is set down here is something different from what we did in practice before the war.

SIR DAVID MAXWELL-FYFE: All right. That's your answer. In time I shall put the directives before the Tribunal and they shall judge them. Now, turn over to Page 15 of the original.

My Lord, that is Page 127 of the book.

Now, do you see the heading, "Work done by SA in regained territories"? You got that, Page 15?

JÜTTNER: Yes.

SIR DAVID MAXWELL-FYFE:

"Work done by the SA in regained territories. The two SA groups 'Vistula,' with headquarters at Danzig, and 'Warthe' with headquarters at Posen, were formed in the East. The territory of Upper Silesia was assigned to unit Silesia, the territory of Memel and Suwalki to the Baltic provinces (Ostland) unit." I ask you to notice that "Ostland unit."

"Very soon the SA units formed a network of solid strong points for the National Socialist movement. The Vistula unit comprises 15 Standarten with 507 companies (Stürme), the Warthe unit 28 Standarten counting 684 companies. In these regions, as in the period of combat"—note these words—"as in the period of combat, the SA was the assault unit for the Party. It assists in collecting German manpower, in strengthening it and bringing it into alignment according to National Socialist principles. In that respect it was often necessary to start by teaching the German language and then explaining the basic ideas of National Socialism. Many young racial Germans were trained as SA assistant leaders in SA schools. In these regions also the SA service, practically speaking, is directed towards strengthening the defensive forces. It was therefore necessary to overcome the inferiority complexes of the racial Germans, the result of Polish suppression, and to bring their external appearance and bearing into keeping with SA standards. Then only was it possible to begin the real military training. The work of the SA in the West is also similar to that in the East. There it was possible in a short time to bring into the SA an important part of the male population through the recruiting of former German soldiers of the World War. The leaders of the 'Standarten' are predominantly Reich German SA leaders. The 'Sturmbanne' and 'Stürme' are practically without exception led by Alsations who have received special training in a special SA school in the Reich. Reich German SA leaders and men stand at their side to advise and help."

Well, now I am going to ask you quite a lot about the East, but I will just leave the West with this one question. Did you mean by that paragraph that the SA was doing its best to help in the Germanization of Alsace?

JÜTTNER: The SA built up its organization there and tried to train the men to acquire the decency and outward bearing and

character in keeping with the SA. The question of Germanization, *et cetera*, played no role in our work.

SIR DAVID MAXWELL-FYFE: I would like you to look at the procedure. "The Chief of Staff . . ."—that was Lutze in 1941, he was still alive then; in the next paragraph, it states, "The Chief of Staff visited these territories in the East and West, and gained a clear insight into the service, not only in the main cities, but particularly in the small and smallest garrisons of the SA."

Did the Chief of Staff take his deputy with him on any one of these visits, that is, yourself?

JÜTTNER: I was with him once in the East, but not in the West.

SIR DAVID MAXWELL-FYFE: Perhaps you were fortunate that you went into the Eastern territory. Did you ever go to Vilna?

JÜTTNER: No.

SIR DAVID MAXWELL-FYFE: Let me see if you can help us from your immense knowledge of the SA, which you spoke of this morning. Did you know an SA officer called Hinkst, who was the staff commandant at Vilna?

JÜTTNER: What is the name?

SIR DAVID MAXWELL-FYFE: Hinkst.

JÜTTNER: No, I do not know him.

SIR DAVID MAXWELL-FYFE: Just think. You say you don't remember him, the town commissioner at Vilna?

JÜTTNER: No.

SIR DAVID MAXWELL-FYFE: You remember, at Vilna, the old barracks were taken over and were known as the SA Kaserne, the SA Barracks. Did you know that?

JÜTTNER: I have never been in Vilna in my life, and I do not know who was working there for the SA or any other office.

SIR DAVID MAXWELL-FYFE: Did you know that one of the groups formed was a group in Vilna?

JÜTTNER: No.

SIR DAVID MAXWELL-FYFE: It was a very interesting group, but they did not have to do quite as big a job as the SS; however, they killed 10,000 Jews in the autumn of 1941. You say you never heard of that?

JÜTTNER: I did not understand that.

SIR DAVID MAXWELL-FYFE: What I am putting to you is that in September of 1941, 10,000 Jews were killed in Vilna and the people who rounded them up from the ghetto, the people who took them out to be killed, were the SA Detachment in Vilna.

JÜTTNER: I deny that quite emphatically. The SA had nothing to do with these matters and the SA did not take part in it. We had no SA in Vilna.

SIR DAVID MAXWELL-FYFE: Then we will just have a look at this affidavit. Will you look at this affidavit?

THE PRESIDENT: Did you sign this document that was just put to you—this report?

JÜTTNER: Yes.

SIR DAVID MAXWELL-FYFE: Would you look at Document Number D-964, which is an affidavit by M. Szloma Gol. My Lord, that is GB-597. I am so sorry, My Lord, that is Page 55. I beg Your Lordship's pardon.

This gentleman says:

"I am a Jew and lived in Vilna, Lithuania. During the German occupation I was in the Vilna ghetto. The administration of the Vilna ghetto was managed by the SA. The Town Commissioner of Vilna (Stadtkommissar) was an SA officer called Hinkst. The Landkommissar for Vilna was an SA officer called Wolf. The adviser on Jewish questions was an SA officer called Murer."

Do you remember an SA officer called Wolf or an SA officer called Hinkst in Lithuania?

JÜTTNER: I have never heard either the name Wolf or the name Hinkst and I emphatically deny that we had any SA group in Vilna.

HERR BÖHM: I beg your pardon, Mr. President. These charges which are being alleged against the SA are all so tremendous, and are so obviously unknown to the witness, that I must request that this witness Gol be brought here and examined, in case it is intended to make use of this affidavit or its contents. If he is here in Nuremberg, he can be examined before the Court.

SIR DAVID MAXWELL-FYFE: Mr. Gol is here and my friend can ask him any questions that he would like. He can produce the actual articles taken from the dead bodies of the Jews who were shot.

THE PRESIDENT: Is this man here in Nuremberg?

SIR DAVID MAXWELL-FYFE: My Lord, yes, he is in Nuremberg. Of these six affidavits, I have kept four and that covers, I think, the principal allegations. I have kept Gol, Belg, Sigall and Kibart. The other two had to go to their work which has been found for them, and, My Lord, I felt, in view of what they already suffered, it's not quite right to keep them all back. However, I kept four and I submit that the Defense has ample opportunity for any cross-examination.

THE PRESIDENT: Are they all on the same topic?

SIR DAVID MAXWELL-FYFE: My Lord, no. They deal with Vilna, Kaunas and Schaulen, My Lord, three places.

THE PRESIDENT: Sir David, do you propose to use or to read all of these affidavits now, or to use them for cross-examination?

SIR DAVID MAXWELL-FYFE: My Lord, I was proposing to put the main points of them in for cross-examination and show on what the affidavits are based. I did not mean to read them through. From these affidavits I have selected about three points to read.

THE PRESIDENT: Yes, Dr. Böhm.

HERR BÖHM: Before these affidavits are read, I should first like to ask that these affidavits be checked as to their authenticity. The document you will receive is Number D-964.

THE PRESIDENT: We are considering your application at the moment, that the man should be called for cross-examination. Surely that is sufficient.

HERR BÖHM: No, only provided that this document, this affidavit, which was submitted here, is perfectly genuine and has been signed.

THE PRESIDENT: Sir David has said that the man is here. You can ask the witness if it is true.

HERR BÖHM: I have no reason to introduce a witness, Mr. President, who has not deposed an affidavit.

THE PRESIDENT: No one is suggesting that you should introduce him as your witness. Your application is the application which we are now considering, that is, that he should be brought here for cross-examination, but that does not make him your witness.

HERR BÖHM: Mr. President, I requested that he be examined under the condition that he has actually deposed an affidavit.

SIR DAVID MAXWELL-FYFE: The original affidavit is before the witness, and I am told it was sworn to before Major Wurmser. The actual statements which the deponent made before he signed are shown in the original copy.

HERR BÖHM: I am objecting for the reason that my document does not show that it was signed.

THE PRESIDENT: Give us the original. It really would be better, Dr. Böhm, if you would take the trouble to look at the original before you made objections of this sort.

HERR BÖHM: Mr. President, I did not make any accusations. I only asked you to ascertain whether it is signed, for there is no signature on my document.

THE PRESIDENT: Sir David, in the interest of saving time, would it be sufficient if two of these affidavits were used and two of the witnesses were called for cross-examination?

SIR DAVID MAXWELL-FYFE: My Lord, I suggested three, since it covers three towns, Vilna, Kaunas, and Schaulen. I shall willingly restrict myself.

THE PRESIDENT: The Tribunal will allow these affidavits to be used in cross-examination provided the three deponents are called for cross-examination. It would be most convenient if they should be called directly after this witness has been cross-examined and re-examined.

SIR DAVID MAXWELL-FYFE: I see I am in a slight difficulty about Schaulen, because both deponents who had to go are to deal with the Schaulen episode. My Lord, I have a witness . . . I am so sorry, it is my fault, I must admit I said Schaulen; it should have been Kaunas. I will do that, My Lord, I will put the facts in the affidavit and I will only use the affidavits in regard to Vilna and Schaulen, and both the deponents are here.

THE PRESIDENT: Then, the Marshal will have those witnesses ready when the evidence of this witness is finished in order that they may be called for cross-examination if Dr. Böhm wants to question them.

SIR DAVID MAXWELL-FYFE: My Lord, we will do so. They will be here. I want to question the witness here with regard to Vilna.

THE PRESIDENT: Sir David, I see it is now 25 minutes to twelve. Before you do that, we had better recess.

[A recess was taken.]

SIR DAVID MAXWELL-FYFE: My Lord, I have selected three of these witnesses to cover each of the towns: Szloma Gol, who will deal with Vilna; and Kagan, who will deal with Kaunas; and Kibart, who will deal with Schaulen.

My Lord, they are out of Court, so that they will not hear the cross-examination, and are available when the time comes.

HERR BÖHM: Mr. President, I can waive the examination of these witnesses. I have no objection if these affidavits are used, because in this connection I can clarify the facts of the case with the witness Kibart in cross-examination. These people had nothing whatever to do with the SA, and the witness Jüttner will clear up the matter. They were officials in the Ministry for Eastern Affairs, and they were no more regarded as SA men there than one could regard a soldier in the Wehrmacht, for example, as an SA man

once he is a soldier in the Wehrmacht, although he had formerly been in the SA. Therefore, I attach no importance to the examination of these witnesses.

I shall waive the examination of these witnesses.

THE PRESIDENT: Very well.

Then Sir David, we do not think they need be called if Dr. Böhm does not want them.

SIR DAVID MAXWELL-FYFE: My Lord, I am of course entirely in Dr. Böhm's hands, and what the Tribunal approves. I want it known, that the Prosecution has no objection to calling them, and that they are ready to give evidence.

THE PRESIDENT: You can use the affidavits.

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases.

Witness, have you a copy in German of D-964?

JÜTTNER: D-964; yes.

SIR DAVID MAXWELL-FYFE: That is the affidavit of a Mr. Gol. I have read the first and second paragraphs. If you will look at the third paragraph, it says:

"In December 1943, 80 Jews from the ghetto, including four women and myself and my friend Josef Belic were ordered by an SA Sturmführer, whose name I forgot, to live in a large pit some distance from the town. This pit had originally been dug for an underground petrol tank. It was circular, 60 meters in diameter, and 4 meters deep. When we lived in it the top was partially covered with boarding, and there were two wooden rooms partitioned off, also a kitchen and lavatory. We lived there 6 months altogether before we escaped. The pit was guarded by SA guards about whom I give details below."

You will see in Paragraph 5 that he says that the

"SA men threw chains into the pit, and the Sturmführer ordered the Jewish foremen (for we were a working party) to fasten the chains on us. The chains were fastened round both ankles and round the waist. They weighed 2 kilos each, and we could only take small steps when wearing them. We wore them permanently for 6 months. The SA said that if any man removed the chains he would be hanged. The four women, who worked in the kitchen, were not chained."

Then, before we come to the work, I would just like you to look at Paragraph 10, because that describes the guards:

"The work of digging up the graves and building the pyres was supervised and guarded by about 80 guards. Of these, over 50 were SA men, in brown uniforms, armed with pistols

and daggers and automatic guns (the guns being always cocked and pointed at us). The other 30 guards consisted partly of Lithuanians and partly of SD and SS. In the course of the work the Lithuanian guards themselves were shot, presumably so that they should not say what had been done. The commander of the whole place was the SA officer Murer (the expert on Jewish questions), but he only inspected the work from time to time. The SA officer Legel actually commanded on the spot. At night our pit was guarded by 10 or 12 of these guards."

Then he says that the guards "hit us and stabbed us" and that he was knocked over a pile of bodies and that they were only allowed to go sick for two days; if they went sick for more than that they were shot. Then he says in Paragraph 12, that "of 76 men in the pit, 11 were shot at work."

Now I would like you to look very shortly at Paragraphs 6, 7, 8, and 9 which describe the work. Paragraph 7 says that:

"the work consisted of digging up mass graves and piling up bodies on to funeral pyres and burning them. I was engaged in digging up the bodies. My friend Belic was engaged in sawing up and arranging the wood."—Paragraph 8 says—"We dug up altogether 80,000 bodies. I know this because two of the Jews in the pit with us were ordered to keep count of the bodies by the Germans; that was their sole job. The bodies were mixed, Jews, Polish priests, Russian prisoners of war. Amongst those that I dug up I found my own brother. I found his identification papers on him. He had been dead for two years when I dug him up, because I know that he was in a batch of 10,000 Jews from Vilna ghetto who were shot in September 1941."

And then he describes the procedure for making a funeral pyre of layers of wood and bodies and throwing oil over it and burning it.

Are you telling the Tribunal that you never heard of what had gone on in Vilna or that there were any SA personnel concerned in it?

JÜTTNER: I have the following statement to make about this. With the guarding of the ghetto...

SIR DAVID MAXWELL-FYFE: First of all, before you make a statement, will you answer my question: Do you say that you never heard of these happenings in Vilna or that the SA were concerned in them?

JÜTTNER: I maintain that most decidedly. I heard about them today for the first time. Moreover, I had nothing to do with these things and we had no SA in Lithuania. We had only tried to build

up the SA in the former Government General. That consisted of SA candidates and Germans. We did not organize any SA in Lithuania.

Neither the SA leadership nor the SA organization ever had anything to do with guarding ghettos and such atrocities; if they did take place, they must be branded as such. But I can well imagine that a misuse of SA uniforms and membership was practised here too, namely, by Lithuanians.

SIR DAVID MAXWELL-FYFE: I see. Your explanation is that they have mistaken somebody wearing a brown shirt. Is that your explanation? Probably wearing a swastika on his arm to make it more difficult. You are really telling the Tribunal, who have been sitting here for 9 months listening to what has happened in these territories, that your explanation is that somebody has mistaken other people wearing brown shirts. Is that your explanation?

JÜTTNER: It is one of the explanations which I gave before.

SIR DAVID MAXWELL-FYFE: I only want to put in—I need not occupy time by putting it to the witness in view of what he said—Document Number D-975 as an additional declaration of Mr. Gol. It will therefore become GB-598, and it explains the procedure by which the gold teeth were taken out of corpses. My Lord, I do not think it is necessary to go into detail because Your Lordship has heard of how that procedure was carried out so much and the normal way for doing it. We will just say that the man Murer personally took the boxes with him. Now I am going to come to Kaunas or Kovno. I want you just to tell me: Do you say that you do not know an SA Brigadeführer called Kramer, who was Governor of Kaunas?

JÜTTNER: We have not previously mentioned SA Brigadeführer Kramer, Mr. Prosecutor. I do know an SA Brigadeführer...

SIR DAVID MAXWELL-FYFE: We are mentioning him now and I am asking you, do you say or don't you say that you do not know an SA Brigadeführer called Kramer, who was Town Governor of Kaunas or Kovno, a very well-known place?

JÜTTNER: Kovno is quite well known to me, I agree with you there. But the name... I should like to know whether you said Kahmer or Kramer?

SIR DAVID MAXWELL-FYFE: Kramer. He was the German Town Governor and an SA Brigadeführer... Kramer.

JÜTTNER: I know a Brigadeführer Kramer. Whether he was the Town Governor of Kovno I do not know.

SIR DAVID MAXWELL-FYFE: Do you know an SA Hauptsturmführer called Jordan?

JÜTTNER: No.

SIR DAVID MAXWELL-FYFE: And don't you know that the Town Governor's office in Kaunas was exclusively staffed by SA, even the girls in the office belonging to the SA women's section, wearing SA brown shirts with swastika? Do you say that you never heard of that?

JÜTTNER: We had no SA in Kaunas. I do not know of any SA offices there, either. If somebody named Kramer, supposed to be an SA leader, was working there, then he was not working as an SA leader. The SA had nothing to do with the whole matter. I should particularly like to emphasize that once more very strongly.

SIR DAVID MAXWELL-FYFE: Well now, let me put two more of these names to you. Do you know an SA Brigadeführer called Lenzen?

JÜTTNER: A Brigadeführer Lenzen formerly worked with the Reich Sports Leader. I became acquainted with him there.

SIR DAVID MAXWELL-FYFE: Did you know that Lenzen was Commissioner for the Rural District around Kaunas?

JÜTTNER: If Lenzen was Commissioner for Rural Districts he was not used there by the SA, as an SA leader, but came within the organization of the Ministry for Eastern Affairs and so was not under the SA, if he was working there.

SIR DAVID MAXWELL-FYFE: I see. Do you say that you hadn't an SA section, I don't know whether it would be a company or a smaller unit, guarding prisoners of war near Kaunas? You have told us, you see, that you had these units who were supporting the Wehrmacht in these territories. Are you answering that there was not an SA unit guarding prisoners of war near Kaunas?

JÜTTNER: We did not organize any SA units near Kaunas. I cannot say any more than that. We organized SA in the former Government General, but apart from that we organized no SA in the East except in West Prussia, and in what was formerly Posen. Consequently no SA could have been there.

THE PRESIDENT: For the sake of accuracy, Sir David, I don't think he said they had SA units supporting the Wehrmacht in these territories near Kaunas.

SIR DAVID MAXWELL-FYFE: No, My Lord, I think "in the East" were the words, My Lord.

THE PRESIDENT: I thought he said "within the Reich area."

SIR DAVID MAXWELL-FYFE: It was in this report. I will check it. I am so sorry, My Lord, if I have made a mistake. My Lord, what he said, was . . .

THE PRESIDENT: Have you got it there, Sir David? Referring to the 23rd of June 1941, that is the report, he said, "That is the home country. We had 21 groups guarding prisoners of war in the German Reich area. I mean in what was Germany before the war. I know nothing of the Baltic Provinces."

SIR DAVID MAXWELL-FYFE: My Lord, I agree entirely with that. Your Lordship will remember that he goes on to say in the report itself, at the top of Page 127, that there were two groups, one at Danzig and another at Posen. Then he said the territory of Upper Silesia was assigned to unit Silesia and the territory of Memel and Suwalki to the Baltic Provinces (Ostland) unit. That was what I had in mind, that there was a Baltic Province Ostland.

THE PRESIDENT: Well, he said in the report . . .

SIR DAVID MAXWELL-FYFE: Yes, My Lord, I agree it was not quite the same before he put in the report. My Lord, in view of that I will just briefly indicate the contents of this affidavit to Your Lordship as the witness says that, apart from knowing two of the people, he does not know anything about it. First, the deponent says he lived in the ghetto of Kaunas during the German occupation and that he was on the Jewish Council of the ghetto dealing with statistics and supplies. As representative of the Jews . . .

THE PRESIDENT: We have not got this document.

SIR DAVID MAXWELL-FYFE: Oh, haven't you, My Lord, I am so sorry. It is Number D-968, Exhibit GB-599. I am very sorry, My Lord, it is my fault.

THE PRESIDENT: It is in the book, is it?

SIR DAVID MAXWELL-FYFE: It is in the book, it is 61.

THE PRESIDENT: Yes.

SIR DAVID MAXWELL-FYFE: My Lord, he goes on to say: "As representative of the Jews for rations, *et cetera*, I had to deal directly with the Town Governor's office (SA Hauptsturmführer Jordan's section). The Town Governor's office was exclusively staffed by the SA, even the girls in the office wore brown SA uniforms."

Then he says:

"The German Town Governor was called Kramer, and he was an SA Brigadeführer. Jordan was the adviser on Jewish affairs to Kramer. I know their ranks and that they were in the SA, because they signed the orders which were posted on the ghetto."

Then in Paragraph 3 he describes the plundering operation. He says:

"It was done exclusively by SA men, Jordan was with them. They all wore brown uniforms."

They took their property and shot 27 people and then on 13 September, that is in the middle of the raid, Jordan and SA Sturmführer Kepen, with Brigadeführer Lenzen, who was Commissioner for the Rural District of Kaunas, standing by, shot three men in his presence. Then he says:

"On 21 or 22 September 1941 I was in a labor detachment. I saw about thirty SA men in uniform conducting a group of some 300 Russian prisoners of war. The Russians were quite exhausted, they could barely walk . . . Two collapsed and the SA shot them. The SA were beating them all the time. My labor detachment had to bury these Russians."

Then, My Lord, Paragraph 7 just shows a piece of what one might call silly brutality, but it was conducted, making the men march out and carry weights for a distance. You will notice that there were about 100 SA men guarding the Jews, armed with automatic pistols.

Then, in Paragraph 8:

"On 28 October 1941 there was a big 'action' on, in which 10,500 people from the ghetto were shot. The ghetto population was first divided into two groups, those for execution and those who were allowed to stay. The sorting was supervised in the morning by a man called Rauka, who was, I think, in the Gestapo or the SD, and later in the day three prominent SA men, Jordan, Kepen, and Pöschl, came to help him. All these SA men were in uniform. I know the number of those who were shot because my job on the Jewish Council included the rationing, for which we had taken a census of the Jews. A new census was taken after these executions."

And next it says how Jordan told him to go and get 20 bodies of the people he had just shot; and Paragraph 10 says that Jordan asked for 500 intellectuals to work on archives; he was told they were not available. "Thereupon the SA (assisted by others in German uniforms which I cannot identify for certain, but I think it was SD) seized and shot 530 people at random. The SA personnel present included Jordan, Pöschl, and Lenzen." My Lord, that is Kaunas.

Now, My Lord, the next town, the other one with which I wanted to deal, is Schaulen, which Your Lordship will find in Document Number D-969 at Page 63 in the same document book. It becomes Exhibit GB-600 and is an affidavit by a deponent, Leib Kibart.

Now I just ask you, Witness, did you know an SA Sturmführer called Schroepfer, S-c-h-r-o-e-p-f-e-r?

JÜTTNER: I did not know any Sturmführer Schroepfer in the SA.

SIR DAVID MAXWELL-FYFE: Did you know an SA Sturmführer called Bub, B-u-b?

JÜTTNER: Nor him, either.

SIR DAVID MAXWELL-FYFE: Did you know a man in the SA whose rank, unfortunately, I haven't got, called Gewecke, G-e-w-e-c-k-e, who became District Commissioner for this area 130 miles south of Riga?

JÜTTNER: Likewise unknown to me. The district commissioners, and all commissioners in general, were not appointed by the SA but by the Ministry for Eastern Affairs, and we had no influence of any kind thereon.

SIR DAVID MAXWELL-FYFE: Kibart says he was in the SA and I am just asking you to try and remember if you know him. There is no doubt that he exists. We have got captured documents signed by him. But I want to know, did you know him, Gewecke?

JÜTTNER: I understood you thoroughly, but apparently you misunderstood me previously because you are stating that I did not know Kramer and Lenzen; I merely said...

SIR DAVID MAXWELL-FYFE: I didn't say that, Witness, and don't let's have any misunderstanding. I was just making quite sure by informing you that there was no doubt that Gewecke was there because his name appears in captured documents, and I wanted you to be quite sure you didn't know him before you gave your answer. You didn't know him?

JÜTTNER: No, I do not know him.

SIR DAVID MAXWELL-FYFE: My Lord, then I will again state it quite shortly: In the first two paragraphs the deponent says that he is a leather worker, and where he was working. In the third he says that he was cursed and beaten by the SA when he was at work. Then in Paragraph 4 he says that Schroepefer was there first, and afterward Bub. And in 5 he said:

"It is hard to judge, but I estimate that there must have been 700 to 800 SA men there at the beginning, but they decreased in numbers later. I knew them as SA because they wore brown uniform with swastika armlets. Later on they used other Germans in the locality as auxiliaries."

Then in 6 he says:

"There were 4,500 Jews in the ghetto, which was very much overcrowded. In August 1941 the SA therefore surrounded the whole ghetto, and numbers of them went into the houses and took out women, children, and old men, and put them into lorries and drove them away. I saw all this myself. It was done exclusively by SA. I saw them take children by the hair

and throw them into the lorries. I did not see what happened to them but a Lithuanian told me afterward that they had been driven 20 kilometers away and shot. He said he had seen the SA make them undress and then shoot them with automatic pistols."

Then Paragraph 7 says they were shot if they took food into the ghetto and describes the shooting of a master baker who had four or five cigarettes and some sausage, and the hanging of this baker. Then Paragraph 8 deals with Gewecke, and My Lord, I ask the Tribunal to note:

"The district commissioner in whose courtyard I worked was called Gewecke. I saw him every day. He was in the SA. The SS took over from the SA in September 1943, and the ghetto then became a working camp."

Now, My Lord, if Your Lordship would be good enough to turn to Page 107, you will see a report by Gewecke, from Schaulen. My Lord, that is Document Number 3661-PS, which will become Exhibit GB-601. It is dated the 8th of September 1941, from Schaulen, where he was District Commissioner, to the Reichskommissar for the Eastland (Ostland). My Lord, I understood—I may be wrong—that Ostland included Lithuania, Esthonia, and Latvia only, but that is the position. This is a complaint about an SS Standartenführer called Jäger coming into Gewecke's activities, and after explaining that he had managed to acquire—or rather, that his agent had been acquiring some Jewish silver and gold articles, he then says—My Lord, this fresh incident merely demonstrates that Jäger does not consider himself bound by the instructions issued by the Reichskommissar and by the District Commissar regarding the seizure of Jewish property, and that he meddled in matters...

HERR BÖHM: This document which is now being presented refers to an SS Standartenführer Jäger. I do not think the case of the SS is being discussed, and I request that the document be presented when the SS is dealt with, because it has nothing to do with the SA.

SIR DAVID MAXWELL-FYFE: My Lord, the evidence is that the signatory of this document is a member of the SA. He was acting as commissioner, and my friend can make what argument he likes on that. He was a member of the SA and here he is protesting against the SS coming in and taking Jewish property, exactly the thing which the evidence states the SA have been doing in this area. My Lord, that is why I submit the document, as a useful corroboration.

HERR BÖHM: This man was not a member of the SA in that territory, but was working as a commissioner.

THE PRESIDENT: We have just had evidence that he was, and the witness in the box says he doesn't know, so I don't know on what authority you say that he was not.

HERR BÖHM: It may be that he was one, but not in his capacity as a member of the SA, but rather as a member of the Ministry for Eastern Affairs. The SA had nothing to do with it.

THE PRESIDENT: That is a matter which the Tribunal has got to consider. We will consider the evidence of this witness, who says there was no SA in this particular place at the time. We will also consider the evidence of the deponent in the affidavit, who says that this man Gewecke was there in SA uniform with a lot of other SA men. That doesn't make this document inadmissible, which is a captured document.

SIR DAVID MAXWELL-FYFE: My Lord, the next paragraph is the only matter which I want to trouble the Tribunal with: "If the SS continues to overreach itself in this fashion, I, as District Commissioner, must refuse to accept responsibility for the orderly confiscation (Erfassung) of Jewish property."

THE PRESIDENT: Now I suppose that Dr. Böhm's argument upon that would be that this witness, Gewecke, was acting as District Commissioner and not as a member of the SA.

SIR DAVID MAXWELL-FYFE: My Lord, that is a perfectly proper argument for Dr. Böhm to advance. Of course it is important, when Your Lordship has these affidavits in which this man is dealt with, that one should be able to tie it in with a captured document. That is really what I wanted to do.

[Turning to the witness.] Well, now I come to a point that you have mentioned several times, for a moment. You said that the only SA organization in this area was a unit formed by the Defendant Frank in the Government General, I think in April 1942; that the SA unit of the Government General was formed under the orders of Lutze and the command was taken over by the Defendant Frank. That is right, isn't it? And you said that he had a special staff for the actual carrying on of the unit which, I think, was in the hands of two men called Selz and Friedemund, if I caught your evidence right. Is that so?

JÜTTNER: No, that is not right. In the first place, the names were not Friedemund...

SIR DAVID MAXWELL-FYFE: If those are not the names, please blame me. I took them down as I understood them. You tell us the right names. It is my fault entirely if I got them wrong. What were the names?

JÜTTNER: The correct names were Pelz and Kühnemund, and this operation staff was not under the former Governor General

Frank, but directly under the Chief of Staff, who managed affairs, Frank being merely appointed leader of the SA there, as I have already described. As to the other affidavits, I trust I shall have an opportunity to state my views later.

SIR DAVID MAXWELL-FYFE: My Lord, Your Lordship will find—it is in evidence, in Document Number 3216-PS, USA Exhibit 434, the extract from *Das Archiv*, giving that foundation of the unit in the Government General.

What I want you to tell the Tribunal, Witness, is: What was the purpose of forming a unit in the Government General?

JÜTTNER: There were two purposes; but first of all, may I put a question with reference to the affidavits of Kovno, Schaulen, and Riga; I have an explanation to make which is necessary in order to establish the truth. I wanted to ask whether I may do so now, or should I do so after dealing with the question which has just been asked?

THE PRESIDENT: The Tribunal thinks that it will be better for your counsel to put questions to you in re-examination upon that evidence.

SIR DAVID MAXWELL-FYFE: Now, I want you to tell me, as shortly as you can, what was the purpose of forming a unit of the SA in the Government General in 1942?

JÜTTNER: There were two purposes. First of all, to keep the Reich Germans who were working in the Government General united in a comradesly way, as far as they were members of the SA, and secondly, to bring people of German origin, who appeared inclined and well-adapted later to join the SA, into the community by making them familiar with the German language, German customs, and so forth, and with the comradeship which we practised in the SA.

SIR DAVID MAXWELL-FYFE: I want to get that clear. You said it was an entirely peaceful purpose in the Government General. Do you adhere to what you have told the Tribunal that there were no other SA formations operating in the eastern territories, and particularly, I ask you about the territory Ostland, that is, as I understand it, including the old countries of Lithuania, Esthonia, and Latvia... I have already put certain evidence to you, but I want to get this clear. Are you prepared for your proof to be judged on the fact—on your answer to this question: Do you say that there were no SA units operating in Ostland?

JÜTTNER: I am prepared to answer that question very clearly. The Supreme SA Leadership did not set up an SA organization in this territory of Ostland, which, if I understood you correctly, you

just described as Lithuania and Latvia. A German SA was not formed there. If any SA were supposed to have been formed there, then it was a wild organization which had nothing to do with the SA leadership in the slightest. I know nothing about an SA having been organized there.

SIR DAVID MAXWELL-FYFE: That's your answer. My Lord, I wonder if the Tribunal would look for a moment just at a part of the Document Number 1475-PS, which is also R-135, and it is in Document Book 16-B, Page 81, Exhibit USA 289—My Lord, it comes just after Page 81 in the book. It's 81-A—it should be, My Lord. Would you give the witness a copy? My Lord, that is the protest of the Reichskommissar for Ostland to the Defendant Rosenberg, and the Tribunal is probably familiar with that a bit. The first page is a protest against killing off so many Jews in the "Cottbus" project because they would have been useful for slave labor, and, in any case, the locking of men, women, and children into barns and setting fire to them doesn't appear to be a suitable method for combating bands. That is the effect of that. Now, My Lord, there is a catch to that. On the next page, the report of the 5th of June 1943, from the General Commissar of White Ruthenia to the Defendant Rosenberg, through the Reich Commissioner for Eastland, and, My Lord, it may be that the territory is slightly out of that mentioned, but at any rate, I'll make it perfectly clear. My Lord, it begins by saying: "The result of the operation, 4,500 enemy dead and 5,000 dead, suspected of belonging to bands," who apparently were the people who had been locked up and burned in barns. Then, My Lord, below it gives the booty, and then the next paragraph:

"The operation affects the territory of the General District of White Ruthenia in the area of Borissov. It concerns in particular the two counties of Begomie and Pleshtchamizy. At present the police troops, together with the army, have advanced to Lake Palik and have reached the whole front of the Beresina. The battles are continuing in the rear zone of the army."

Then there is another note to the effect that only 492 rifles were taken from 4,500 enemy dead. That is an obvious conclusion. Now, My Lord, it is the next sentence: "By order of the Chief of Band-Combating, SS Obergruppenführer Von dem Bach"—My Lord, that is the officer who gave evidence before the Tribunal some months ago—"units of the..."—Witness, I ask you to note this—"units of the Wehrmannschaften have also participated in the operation. SA Standartenführer Kunze was in command of the Wehrmannschaften." Now, Witness, are you going to tell the Tribunal that the SA Wehrmannschaften were not a section of the SA and that the Standartenführer Kunze was not operating as a member of the SA?

JÜTTNER: Yes, I shall be very willing and glad to give a clear answer to that. First of all, it does not say "SA Wehrmannschaften." It says "Wehrmannschaften." Secondly . . .

SIR DAVID MAXWELL-FYFE: Just a moment. Are you suggesting that Wehrmannschaften doesn't mean SA Wehrmannschaften? That it is not a unit of the SA—is that your answer?

JÜTTNER: In this case, it was not a unit of the SA, I maintain that very definitely. If such Wehrmannschaften existed at all, they were not Wehrmannschaften which had been formed or organized by the SA.

Secondly, if SA Standartenführer Kunze commanded these Wehrmannschaften which had presumably been formed there, then in no case did he command them in his capacity as SA leader, but rather in connection with the Eastern Administration.

SIR DAVID MAXWELL-FYFE: But he was in command of the Wehrmannschaften. Are you saying that when you have a well-known SA formation, the Wehrmannschaften, commanded by an SA Standartenführer, you are telling the Tribunal that they weren't operating as SA at all, is that your evidence? You really ask the Tribunal to believe that? All right, I am putting another document to you. My Lord, if you will turn to Page 64-A, you will find . . .

JÜTTNER: In this connection I must add that it is not merely that I want to make the Court believe this, but it was actually so. SA Wehrmannschaften is a clearly defined term. There were Wehrmannschaften elsewhere, too, which had nothing to do with the SA, and apparently these here were of such a kind.

We did not have any Wehrmannschaften there. Standartenführer Kunze was not acting as an SA leader. The SA leadership and organization had nothing to do with these things, or with the events described in Schaulen, Riga, and Kovno.

SIR DAVID MAXWELL-FYFE: Now, Witness, just do be careful before you answer this: Do you say that there were no SA Einsatzkommandos securing forced labor inside the Government General? That is a simple question. Do you say that there were no SA Einsatzkommandos collecting forced labor inside the Government General?

JÜTTNER: The SA had no Einsatzkommandos.

SIR DAVID MAXWELL-FYFE: Now, I suggest to you that is absolutely untrue.

JÜTTNER: The SA leadership, that is . . .

SIR DAVID MAXWELL-FYFE: I will ask you to look at Document Number D-970, My Lord; that will become Exhibit GB-602, and Your Lordship will find it at Page 64-A. My Lord, this is a report to the Defendant Frank, as Governor General, dated the 25th

of September 1944. The subject is: The Prior of the Carmelite Monastery of Czerna, who was shot at by one of the SA Einsatzkommandos mentioned. Let me quote:

"The incident under consideration took place in connection with the operation to obtain people for carrying out special building plans in the district of Ilkenau. It came to the knowledge of the Commander of the Security Police and SD in Cracow via the branch office of Kressendorf and the sub-agency of Wolbron. As the place where the deed was committed lies within the area of the Einsatzstab of Ilkenau, the investigations were carried out by the Regional State Police Headquarters at Kattowitz—branch post Ilkenau. The results of the investigations provided the following facts:

"The possibility of carrying out the planned building operations in the area in question within the period laid down, was made doubtful by the fact that the various communities did not provide the number of workers imposed on them.

"As a result, the construction staff at Kattowitz ordered a special detachment composed of 12 SA men to bring in workers from the various villages. The execution of this task by this SA Einsatzkommando was in every case carried out by them in such a way that they first approached the village mayor and presented the demand."

Then it goes on to describe how, when it was refused, they searched the houses. Some of the inhabitants offered resistance when the houses were searched which had to be broken by the use of arms.

"In view of the fact that partisans had several times appeared in this area during recent times, the SA men reckoned that partisans were living in the villages during the day disguised as civilians. Besides that, when workers were obtained, the local conditions were taken into account."

That's the first one, collecting forced labor from this village. Now, we have another SA Kommando:

"The Prior of Czerna Monastery was seized by members of the SA Einsatzkommando in Novojewa Gora. He was told to remain with the men of the SA Einsatzkommando for the time being. While the members of the detachment were in a house in order to search it for workers, the Prior—according to what the Kattowitz Regional State Police Headquarters established—used this opportunity, which seemed suitable to him, to escape. As he did not stop when challenged several times and after some warning shots had been fired, but on the contrary ran even faster and tried to escape, arms were used.

"The Prior had been arrested because he was alleged to have made negative statements to other workers about the Ost-wall—Eastern Defensive Line—and the building undertaking, which tended to influence the laborers' already weak will to work in a still more unfavorable manner. It was intended to take the priest first to the construction staff at Nielepice and from there to the office of the Security Police . . ."

Now, note the last paragraph, and this is:

"According to the report of the Regional State Police at Kattowitz: Steps are to be taken to insure that in future such operations are carried out not by SA men but by police officials."

Now, Witness, why did you tell the Tribunal ten minutes ago that there weren't any SA Einsatzkommandos and that they never searched for forced labor in the Government General? Why did you say that; you knew it was untrue, why did you say it?

JÜTTNER: That is not untrue. On the contrary, I shall repeat this statement once more and adhere to it, namely, that the SA did not have Einsatzkommandos. These SA men here were probably called in by the office furnishing this report and conscripted for emergency service—I have no other explanation—as auxiliary police, and the reporting office simply designated these conscripted auxiliary police detachments in its own terminology as SA Einsatzkommandos. The term did not originate with us. We had no such units, nor did we form any, and the responsibility for the actions which were carried out here did not lie with the SA, but with the office which employed the men.

In addition, I can say that we repeatedly stated our objections to the police department of the Government General with regard to the too frequent use of SA members in the Government General for police purposes. We did not want that, we did not want to have any police duties performed by the SA. However, they were called in as auxiliary police officials from time to time by virtue of a legal provision. If it says at the end: "In the future SA men are no longer to be used, but police officials," then this undoubtedly means, not auxiliary police officials, but regular police officials.

SIR DAVID MAXWELL-FYFE: But the Police have made objections to the SA doing this work, and have also objected to the brutal methods with which they carried it out.

Do I gather, from that long answer of yours, that you do know that SA men were being used as auxiliary police in the Government General? Is that what you are telling the Tribunal?

JÜTTNER: We repeatedly received reports from SA Leader Kühnemund, who was working there, that SA men had been conscripted for police service by virtue of legal provisions.

SIR DAVID MAXWELL-FYFE: At any rate, that is something.

Now I want you to tell me this. You said, in your report on the war, that the SA had been used for guarding prisoners of war. Did not the SA also guard forced labor camps?

JÜTTNER: I never knew that we are supposed to have guarded labor camps.

SIR DAVID MAXWELL-FYFE: Well now, let me give you the names of some of the camps which I suggest you guarded:

Sakrau, a forced labor camp at which the inmates were all Jews; Mechtal; Markstadt; Faulbrück; Reichenberg; and Annaberg.

JÜTTNER: This is the first time that I have heard these names in connection with labor camps.

SIR DAVID MAXWELL-FYFE: Your Lordship will find, at Page 131 of Book 16-B, an affidavit by Rudolf Schönberg. That will be Exhibit GB-601, My Lord. He speaks of the SA guarding these camps, and of the conditions. He finishes by saying: "All I wish to say here is that the SA in no way lagged behind the SS in their murderous and criminal methods at that time already," which was in 1940.

Let me put another point to you. Do you remember the SA guarding a labor camp at Frauenberg, near Admont? That was a labor camp for shirkers and drunkards, of about 300 prisoners. Do you remember the SA guarding that?

JÜTTNER: That is completely unknown to me. I have never heard about it.

SIR DAVID MAXWELL-FYFE: I put in the document—there is no doubt that it is a personal report to Himmler. Now just have a look at it.

My Lord, it has a certain melancholy interest in that it deals with the selection of Auschwitz as a concentration camp.

My Lord, the point that I am dealing with, and it is only on this one point—I beg your pardon, My Lord, the affidavit should have been Number GB-603, and this is Exhibit GB-604.

[Turning to the witness.] Now, will you look at that?

THE PRESIDENT: What page is it on?

SIR DAVID MAXWELL-FYFE: I am sorry, My Lord, Page 132, the next page. That is a report from an SS Oberführer called Glücks, whose name I think we are not unfamiliar with. It is a report to Himmler of 21 February 1940, in which the man Glücks deals with five possible concentration camps which Himmler might

consider using, or rather, six possible concentration camps. The third of these is a place called Frauenberg, and he says:

"Frauenberg is a labor camp set up by the Provincial Welfare Union of Styria for shirkers and drunkards. It consists of five wooden huts and can take 300 prisoners.

"The labor prisoners are exclusively Styrians who are paid for their work by the Provincial Welfare Union of Styria during their time in the camp 27 to 57 pfennig an hour, less food.

"The SA—about 20 men—do the guarding. The labor prisoners are employed in two quarries and on building roads."

Then it says:

"The whole place is now State property; formerly it belonged to the Admont Foundation."

Now, Witness, how would it come about that these SA men were employed in guarding a labor camp, and you, the Deputy Chief of Staff, would know nothing about the fact that SA men were employed in labor camps? How could you be ignorant of these facts? Just explain to the Tribunal; how could you be ignorant?

JÜTTNER: If these men were employed, then they acted as conscripted auxiliary policemen. Just as National Socialist Motor Corps (NSKK) men or any other citizens could be legally conscripted as auxiliary policemen, SA men, too, were conscripted as auxiliary police by virtue of legal provisions. Those were state measures which had nothing to do with the SA, which could not be influenced by the SA, and about which the SA did not even know. It was impossible for the SA leadership to know about the fate of every individual man, as it is being expressed in your question. That was quite out of the question. They were not SA men, but men who had been conscripted into the Police.

SIR DAVID MAXWELL-FYFE: I suggest it to you, and I put in evidence of the way the SA were occupied during the war years.

I now want to ask you a little about the training which brought them into the condition where they could do these pieces of work.

Do you deny that the SA was the bearer of the military thought of Germany?

JÜTTNER: Such questions were already asked of me during the preliminary interrogations. You are always confusing defensive thinking with military thinking. The SA represented and stood for defensive thinking. That has nothing to do with military service or military training.

SIR DAVID MAXWELL-FYFE: And you say that had nothing to do with the cultivation of the offensive spirit, do you?

JÜTTNER: In no way, not in the least.

SIR DAVID MAXWELL-FYFE: Why did your friend Lutze, of whom you have told us so much, in his lecture in 1939 put the two things together so strongly?

My Lord, it is only a short reference from a document that is already in: 3215-PS, which is Exhibit USA-426, and, My Lord, it is in the original SA Document Book.

This is an article by Lutze, as head of the SA, on SA military training, dated 11 March 1939, and he says:

"The men never forgot the mission of the Führer to promote the military*) training of the German men and to revive the military spirit of the German people."

And he quotes the very well-known passage from *Mein Kampf* which, I am sure, Witness, you know by heart:

"The sports detachments of the SA shall be the bearers of the military thought of a free people."

And he gives Hitler's words:

"Give the German nation six million bodies perfectly trained in sport, all fanatically inspired with love for the Fatherland, and trained to the highest offensive spirit."

In a sentence, aren't these words of your chief Lutze the spirit and aim under which you worked to train the SA from 1934 to 1939?

JÜTTNER: I really am surprised that the prosecutor, after these many months of the Trial, has not yet discovered the difference between defensive thinking and military training. That was discussed in detail during the preliminary proceedings before the Commission. Lutze did not write about military training; he wrote about defensive education. That is something quite different from military training.

We did what every country expects from its patriots, we educated, we trained people physically and morally, nothing more, but we did not make any preparation for war, such as you are trying to foist upon me now.

SIR DAVID MAXWELL-FYFE: If that was as you say, why was it that as early as 25 July 1933 the SA Command was ordering no publicity about technical, signal, and motorized companies or separate air wings, "because they might be taken as an infringement of Versailles"?

My Lord, that is Document Number D-44, Exhibit USA-428; that is the first document in the book, My Lord.

*) The German original says "Wehrerziehung" and "Wehrgeist" (defensive training and defensive spirit).

Why was your leadership such that what the SA was doing in the way of these technical units would be construed as an infringement of Versailles, and any publicity was to endanger the person publicizing it with prosecution for high treason, if you weren't doing military training?

JÜTTNER: About that, too, I have already testified before the Commission. That order was connected with Röhm's endeavors to create a militia, and the details must become apparent from the record. If the Tribunal wishes me to do so, I shall repeat what I stated for the record.

THE PRESIDENT: Just answer the question.

SIR DAVID MAXWELL-FYFE: Why were you afraid that the SA training and formation of technical units would be considered an infringement of the Treaty of Versailles if they were not military?

JÜTTNER: Röhm's negotiations with foreign countries had not been concluded, consequently some unfounded suspicion might have arisen.

SIR DAVID MAXWELL-FYFE: Well, then why was Von Reichenau now suggesting in May 1933 that the Supreme SA Command should combine representation with the Party on the Reich Defense Council? Why were you to be represented on the Reich Defense Council if you were not conducting military training?

My Lord, that is, I think, a new document. It is Number 2822-PS, and it becomes Exhibit GB-605. That document was never put in, but Your Lordship will find it in the old SA Document Book. I am afraid that is not paged, but it has the Number 2822-PS. It is "Strictly Confidential," dated the 26th of May 1933. From the Chief of the Ministerial Office in the War Department to the Supreme SA Command. Your Lordship, it is very short. It is from Von Reichenau. I don't know what his rank was then. I think he was a General or a Field Marshal later.

"In addition to my letter of 22 May 1933, may I bring to your attention that the desire has been transmitted to me from the Bureau for Defense Policy of the NSDAP also to be represented in the Reich Defense Council.

"I want to submit for consideration that this representation be combined in personal union with the representation of the Supreme SA Command, so that possibly one suitable person be charged with both representations."

Why was the SA Supreme Command making representations to be represented on the Reich Defense Council if it was not doing military training?

JÜTTNER: The representation on the Reich Defense Council has nothing whatever to do with military training. At that time, as I have

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already testified before the Commission, provision had been made that in the event that we should not be able to pay the reparation costs and would have to expect an invasion from the West, all Germans capable of military service would be evacuated from the left bank of the Rhine. The task of carrying out this evacuation was given to the SA, through the Party. To that extent the SA and the Party were both interested in what was discussed in the so-called Reich Defense Council.

HERR BÖHM: Mr. President, may I disturb you for a moment?

This document contains a confirmation of the fact that this was turned down by Röhm. It might be well to put that to the witness, too, that it was turned down by Röhm. It says here: "To Krüger—No; talked to Reichenau about it. Röhm." Therefore he turned it down.

THE PRESIDENT: We had better adjourn now, I think.

[The Tribunal adjourned until 15 August at 1000 hours.]

TWO HUNDRED AND FOURTH DAY

Thursday, 15 August 1946

Morning Session

[The witness Jüttner resumed the stand.]

THE PRESIDENT: Sir David, I have one or two announcements to make. The Tribunal will sit in closed session this afternoon. There will be no open session after one o'clock today. The Tribunal will not sit in open session on Saturday.

The affidavit of the Polish priest which was offered the other day is admitted.

A request has been made to the Tribunal that the report of Colonel Neave be made available to counsel for the SS. The Tribunal have requested Colonel Neave to prepare for its assistance summaries of the evidence of witnesses heard before the Commission, and a report grouping the testimony of the witnesses before the Commission with respect to the points on which they have given evidence. These summaries and the report mentioned are not parts of the record and are not accorded any evidential value by the Tribunal, which has before it, and will consider, the transcript of the entire evidence before the Commission. Counsel for the Organizations and Counsel for the Prosecution may see these documents and may comment on them in their arguments within the time heretofore allowed, but the Tribunal will not grant any delay or any additional time for argument with regard to them.

The Tribunal have also received an application that Dr. Klefisch might make a speech on the law with reference to the Organizations, and a speech in writing has been deposited with the Tribunal on behalf of Dr. Klefisch. The Tribunal do not propose to hear an additional speech on behalf of the Organizations, but it will consider the speech in writing which has been deposited by Dr. Klefisch.

I now turn to a completely different subject. The Tribunal have been informed that some of the defendants have deposited long statements for translation with the Translation Division.

There is no necessity for the defendants' statements to be translated, and they will not be translated by the Translation Division. The Tribunal draws the attention of the defendants and their counsel to the order of 23 July 1946, which was in the following

terms: "In view of the full statements already made by the defendants and their counsel, the Tribunal assume that if it is the desire of the defendants to make any further statements, it will be only to deal with matters previously omitted. The defendants will not be permitted to make further speeches or to repeat what has already been said by themselves or their counsel, but will be limited to short statements of a few minutes each to cover matters not already covered by their testimony or the arguments of counsel." The Tribunal will adhere strictly to this order, and the defendants will not be allowed to make statements which last longer than, as the order says, "a few minutes." These statements will be made by the defendants from their places in the dock.

That is all.

SIR DAVID MAXWELL-FYFE: My Lord, the affidavit of the Polish priest to which Your Lordship referred is Document Number 4043-PS, and now becomes Exhibit GB-606.

Witness, before the Tribunal adjourned, you made a comment on a note of Captain Röhm on Document Number 2822-PS, which was a minute from General Von Reichenau to the Supreme SA Command.

My Lord, it is in Document Book "Y," the original document book.

[Turning to the witness.] Now, you see what that document is, that Von Reichenau is saying that the desire has been transmitted to him from the Bureau for Defense Policy of the Party to be also represented in the Reich Defense Council. He goes on to say, "I want to submit for consideration that this representation be combined in personal union with the representation of the Supreme SA Command, and that possibly one suitable person be charged with both representations."

Now, look at these words which you mentioned yesterday, as suggesting that there was nothing military in the wishes of the SA. Are these the words—follow and see that I get them right. "An Krüger: nein; mit Reichenau am..." and then the figures 16 and 11, "vereinbart als Vertreter," then "Ob.SA.F."—I will repeat that, "der Ob.SA.F. Krüger." Does not that mean now that the two parts of the representation are not to be combined, agreed with Reichenau on the 16th of the 11th, that the representative of the Supreme SA Leadership is Krüger? In other words, that Krüger was to represent the SA Leadership on the Reich Defense Council. Is that not what Röhm has written?

JÜTTNER: Krüger was the Chief of Training and Instruction, and as such...

SIR DAVID MAXWELL-FYFE: First of all, answer my question. Is that not what is there, that Krüger is to be the representative of the SA Leadership on the Reich Defense Council?

JÜTTNER: According to this remark, yes.

SIR DAVID MAXWELL-FYFE: That was the remark that you were trying to make out yesterday showed that the SA were not connected with military matters. It shows they were represented directly on the Reich Defense Council, does it not?

JÜTTNER: I gave reasons yesterday why that was so, namely, for clearing the left bank of the Rhine in the event which I also mentioned yesterday; a withdrawal of the male population, but nothing military.

SIR DAVID MAXWELL-FYFE: My Lord, in the interest of time, I should ask the Tribunal's approval of the following course: I have a certain number of new documents which are of a public nature. I shall propose to put them in without referring to the witness unless there is any point that the Tribunal would like to put to him. Then when we come to documents with which the witness can help the Tribunal, I shall cross-examine on them.

My Lord, I think there would be some saving of time. I hope the Tribunal will approve.

THE PRESIDENT: All right.

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases. If Your Lordship would look at the Document Book 16 B, at Page 53.

THE PRESIDENT: The defense counsel, of course, have these documents, have they not, or will have them?

SIR DAVID MAXWELL-FYFE: Certainly, My Lord, they will be given to them as we go along.

HERR BÖHM: Mr. President, I have not got these documents.

THE PRESIDENT: You are just going to be given them, I think.

SIR DAVID MAXWELL-FYFE: My Lord, the documents will be given to defense counsel as I read them.

THE PRESIDENT: Certainly, that is what I was asking.

SIR DAVID MAXWELL-FYFE: My Lord, this is Document Number D-951, I think it is my fault—I did not give the number. My Lord, that becomes Exhibit GB-607. My Lord, it is a letter, it begins with a letter of Röhm's, then the Chief of Staff of the SA, and it encloses a letter from Blomberg to Hitler. My Lord, it is the second enclosure that is important. That is from Berlin, on 2 March 1934, to the Reich Chancellor:

"I feel it my duty to draw attention once more to the significance of the staff guards of the SA. According to the order of the Chief of Staff, every corps and division (Obergruppe and Gruppe) is to form an armed staff guard with a heavy machine-gun company. This formation is at present taking

place. According to the report of the Sixth Military District Headquarters, the SA Brigadeführer are also said to be considering forming such a staff guard already, and to be engaging SA men for one to one and a half year's service for this purpose. Selection and training have to take place with the aim of appearing in public. Numerically this would amount to 6-8,000 SA men permanently armed with rifles and machine-guns in the area of the Sixth Military District Headquarters. A particularly awkward factor is that the creation of these staff guards relies on so-called SA auxiliary camps (Hilfswerklager), which are mostly situated in the big towns."

And I call the Tribunal's special attention to the next sentence.

"Today I have received the report that in Höchst on the Main, that is, in the neutral zone, the creation of such an armed staff guard is taking place. Such behavior renders illusory all the Wehrmacht's care and that of the Krüger depots within the neutral zone which are influenced by it. As the Chief of Staff is away from Berlin, I am sending this report direct to the Chancellor. Signed, Von Blomberg."

Do you not realize that is two years before the occupation of the neutral zone on the Rhine? Then, if Your Lordship will be good enough to turn over to Page 129, which is Document Number 4013-PS, that will become Exhibit GB-608. That is a letter from the Defendant Rosenberg, from the local editor's office in Berlin to the Munich editor's office, presumably of the *Völkischer Beobachter*.

"The Munich editor's office shall forward immediately in a sealed envelope the following communication to the Chief of Staff. The authorities here have learned that Austrians in Berlin have informed Vienna"—and Your Lordship will note that this is 3 February 1934; the Dollfuss Putsch was in July 1934—"that the SA plans to have the Austrian formations in Bavaria march into Austria around the 8th or 9th of February. Then a military dictatorship would be proclaimed. This morning I had an inquiry from very important English quarters whether it might be possible that, behind the back of Hitler and Habicht, the Austrians in Germany could invade Austria. My informant added that so far the Austrian charges had been laid aside, but this information had come from such a reliable source that they simply had to contact us. I am afraid of a possible provocation by hired elements which, if announced to the world just at that time, could produce conflicts. I explained that the Führer is not following a peace policy with Poland in order at the same time to start military conflicts with Austria. I report this matter so that, if occasion

requires, the Supreme SA Command may take the necessary steps."

Now, My Lord, the next is the Czechoslovakian matter. If Your Lordship turns to Page 65 of the book—that is Document Number EC-366-1. That is Exhibit GB-609. My Lord, it is a report on the 11th of October 1938, dealing with the position of the Sudeten Freikorps in September 1938. It is made by Lieutenant Colonel Köchling, who was the special delegate of the OKW to the Youth Leader of the German Reich. I can give Your Lordship the passages very shortly. On the first page, Your Lordship will see, about the sixth line from the bottom:

"There were an estimated 10,000 to 15,000 men in the reception camps and villages along the active front."

If Your Lordship will turn to Page 66, Line 2 says that the groups were formed into battalions, and so on.

Then, Line 6:

"Supplies had been organized by the SA in conjunction with the NSV, and went smoothly from the very beginning. A very small amount of arms, consisting of Austrian carbines, had been supplied by the Austrian SA."

Then, four lines further on:

"With magnificent camaraderie and unselfishness, the Supreme SA Leadership had looked after the Freikorps materially."

Ten lines on:

"Equipping and feeding remained in the care of the NSV and the SA." Then, My Lord, on Page 67, the fourth line: "Here again the SA helped in part with available signals apparatus."

Six lines from that:

"The building up of the groups and staffs in the manner ordered was only possible owing to the effective support of the liaison officers provided to each group by the OKH."

Then, four lines on:

"In this the liaison officers were particularly well supported by the German SA leaders from the Reich who had been put into the Freikorps battalions by the SA. Without their camaraderie and their readiness to do their duty, the Freikorps could not have carried out its task.

"The leaders appointed to the Freikorps by the Supreme SA Leadership also contributed essentially to the building up of the Freikorps and to its successes."

And then, My Lord, on the next page there is some discussion about the way the work went on and how the SA continued to help.

I think from there, if Your Lordship will turn now to Page 71, you can see what this Freikorps did under this SA guidance.

The last paragraph, My Lord, is:

"The force carried out more than 200 minor undertakings, in which they suffered nearly 100 dead and more than 50 wounded, and captured more than 2,000 prisoners and a great deal of booty of all kinds—see Appendix 1—so that the task which the Führer had demanded as a foundation for his foreign political negotiations may be considered as having been completed."

Now, My Lord, in Appendix 1 Your Lordship will see a list of the casualties, and the prisoners, guns, and equipment that were captured. Of course, the Tribunal will remember that all this happened in a time of peace, when all the defendants have been so anxious to point out to us that no war ever started—that is, before Munich.

Your Lordship will remember that I asked the witness yesterday whether the training of the SA in the middle of the war, in 1941, differed from the training that was given in peace. I only want to give Your Lordships the different documents in which the training is found. I am not going to take them in detail, but I will indicate what they contain in a moment.

My Lord, the first is a memorandum on training, dated 23 February 1934. That is Document Number 1849-PS, and Your Lordship will find it on Page 82 of the document book; that becomes Exhibit GB-610. On Pages 89 to 104 of the book, Your Lordship will find the training course.

Now, My Lord, the next document in order of date is Number 2354-PS, which is Exhibit USA-430 and is in the old SA document book. That is the organization book for 1938, which includes the training of the SA, including the military training, throwing hand grenades, and so on.

My Lord, what I proposed to do was to summarize the points of similarity at the end, and if Your Lordship will check, you can see if my summary is right.

The next document is Number D-925 which will become Exhibit GB-611, which Your Lordships will find on Page 32 of Document Book 16 B. My Lord, that is a list of the contents of the handbook of the SA, and it must be after 1937, because there is a reference to the people's gas masks of 1937 on Page 36. I have not got the exact date. If Your Lordship would merely like to note the sections, they are 8, 9, and 10, under the letter "E." Number 8 is musketry; 9 is training in terrain; and "E" is the training for the attack.

Then there is a lecture of Lutze, which was given in 1938, and that is Document Number 3050-PS, which is a large bundle of

extracts from the SA Mann. My Lord, this is in a special bundle from which we have had translated certain articles, and it is Number 3050-K. As I say, My Lord, it is a lecture of Lutze, of whom this witness has talked so much, given on the 14th of May 1938.

Then, My Lord, the next is a document that Major Barrington put in yesterday. It is Number D-918, which is Page 1 of Document Book 16 B. That is the training directives for 1939; it goes on from Page 1 to Page 21.

My Lord, apart from the training—which is dealt with at length and which, as I say, I will summarize—there is one point on Page 21 which I would be grateful if the Tribunal would note. This is apart from training, but I do not want to go back to the document.

On Page 21 Your Lordship will see, under the letter "H": "Aids to the preparation and carrying out of the training," and under Number 4, "The SA Man." Just a point on that, My Lord.

The last document of this series is on Page 108 of Document Book 16 B, and that is Document Number 3993-PS, which will become Exhibit GB-612. It is a letter from Lutze to the Defendant Rosenberg, dated 30 January 1939:

"Please accept my thanks for your congratulations relating to the Führer's decree which assigns all pre-military and post-military training to the SA."

Now, My Lord, the common factors of these documents are; as can be seen from the documents, first of all, dealing with musketry, the general handling of arms, and all the concomitant matters. Secondly, the use of terrain, including ...

THE PRESIDENT: Sir David, the Tribunal would like you to put that last document that you have been dealing with, 3993-PS, to the witness.

SIR DAVID MAXWELL-FYFE: My Lord, I will certainly do that.
[The document was submitted to the witness.]

Witness, you have seen that document from Lutze to Rosenberg of the 30th of January 1939?

JÜTTNER: Yes, I have got it here.

SIR DAVID MAXWELL-FYFE: And is that correct, that the Führer had decreed, shortly before that, that the pre-military and post-military training should be assigned to the SA?

JÜTTNER: On 19 January 1939 this was decreed by the Führer, but in practice this decree was never applied.

SIR DAVID MAXWELL-FYFE: I suppose you carried out the training which is contained in these directives from 1934 to 1939, did you not?

JÜTTNER: Regarding these matters of which the SA is being accused here, I shall have to speak in more detail, particularly as the right of vindication has been expressly sanctioned by the American Chief Prosecutor, Mr. Jackson, for the Organizations. Therefore, I shall have to come, in detail, to the accusations made here . . .

SIR DAVID MAXWELL-FYFE: I do not think you need worry about . . .

JÜTTNER: . . . and state my opinion . . .

SIR DAVID MAXWELL-FYFE: Just a moment . . .

JÜTTNER: I have not finished yet.

THE PRESIDENT: Do not argue, please; answer the question.

SIR DAVID MAXWELL-FYFE: Do you dispute that these directives that I have mentioned all contained training in musketry, training in the handling of arms, training in the use of terrain, that is, the use of ground, camouflage, reports, methods of attack, reconnaissance, and every one except the first—no, all of them—training in the use of hand grenades and generally training in attack, in battle, in dealing with attack by armored troops, attacks by airplanes—in fact, that they all contained the first stages of military training which every soldier has to go through before he is qualified to be a soldier? And, Witness, before you answer, you may assume that 90 percent of the male population of this Court have gone through military training and they know it from a practical point of view.

Are you saying that these training directives do not contain the ordinary, initial stages of military training?

JÜTTNER: In the first place I do not deny it, and in the second place, that is training which is handled by the military and not by the SA. For instance, throwing of hand grenades, air training, training in the use of arms, were things we never handled. These questions cannot be answered with "yes" or "no." I must go into them in detail if I am to give a truthful and exhaustive answer.

SIR DAVID MAXWELL-FYFE: Witness, what I want to know is this, and the Tribunal will no doubt let you give your explanation: Are you telling the Tribunal that these training directives were issued one after the other for five years from 1934 to 1939 and that that training was not carried into effect? Tell me. You can answer that "yes" or "no." Was that training carried into effect?

JÜTTNER: We carried out training by sport and defensive exercises in order to improve physical condition. I would have to see these directives to be able to state whether we worked in accordance with them or not.

SIR DAVID MAXWELL-FYFE: I do not propose to put them in detail. If Dr. Böhm wants to...

THE PRESIDENT: What the Tribunal wishes to know with reference to the document that they asked you to put to the witness, was how the witness explains his answer yesterday which I took down in these words, "Lutze did not write about military training." That was the answer you gave yesterday with reference to Document 3215-PS. Well, now, we have had put before us a document from Lutze to the Defendant Rosenberg, which thanks Rosenberg for his congratulations incidental to the Führer's decree which assigns all pre-military and post-military training to the SA. Why did you say yesterday that Lutze did not write with reference to military training?

JÜTTNER: Your Lordship, yesterday the matter in question was a newspaper article regarding military training. That article dealt with work the SA was carrying out and that was work of purely defensive education. In the Führer's decree, if I remember rightly, it also says "the pre- and post-military education." It may even say "training"; that I cannot say with certainty, but what is meant is military education. Later, during negotiations regarding the carrying out of this decree which lasted until the war broke out, this conception of pre- and post-military training or education was altered to "training or education outside the military sphere," that is to say, what the Armed Forces were doing was not to be done by the SA. They were merely to prepare everything. They were to prepare the body and mind, so that men who had gone through the school of the SA should become physically fit and capable men, mentally prepared for defensive service. That was the meaning and the purpose of the decree and the innermost meaning of the so-called "SA Defense Badge." An instruction with weapons was not included in that training.

SIR DAVID MAXWELL-FYFE: Are you saying that between the Führer's decree of January and the beginning of the war there was no pre-military training done? When did you start it again?

JÜTTNER: It was supposed to start with the discharge of the men serving with the Army in 1939, in October or November. That is when the decree was to come into force. The beginning of the war prevented its becoming operative. That was mentioned especially in an order by General Von Brauchitsch in the early days of November and also in a letter from Reichsleiter Bormann to the Chief of Staff, where it was stated...

SIR DAVID MAXWELL-FYFE: Witness, I just want to get this clear. When do you say it was to come into operation? Did you say in October? When was it due to start? When was this pre-military training due to start in 1939? When?

JÜTTNER: This training was to start after the beginning of war—in November or October, I am not quite sure about that. Until then preparatory work had been carried out to establish the best procedure.

SIR DAVID MAXWELL-FYFE: Just let us get this clear. Are you telling the Tribunal it did not start?

JÜTTNER: I am telling the High Tribunal that the carrying out of that decree was scheduled to start in the autumn of 1939.

SIR DAVID MAXWELL-FYFE: Then why did you put such an extraordinary untruth in your report of June 1941, which Your Lordships will find on Page 118:

“The pre-military training practiced by the SA since the outbreak of war on a voluntary basis in the SA defense groups has been already explained in detail in Reports 1 and 2.”

These are your first reports of the war regarding the activity of the SA in the war. Then you go on to explain the report including clan target practice, instruction and practice in handling and cleaning rifles, as well as shooting on a range in a field, and further, the throwing of hand grenades under assumed combat conditions. Why did you put such an enormous untruth in your report if what you are telling the Tribunal is true today, that you never started it at all?

JÜTTNER: I neither told an untruth in that report nor did I tell one now. May I ask, does that report refer to the period of the war? Did I understand you correctly to say that it does refer to wartime? Yes, I mentioned to Your Lordship yesterday that, after the beginning of the war, the SA had done everything to increase Germany's armed strength. That was our duty as patriots. We then paid the greatest attention to military physical training, that is to say, no longer to ordinary athletics and other physical training, but particularly to military exercises. But even that was no armed service. If the cleaning of rifles is mentioned, it means we demonstrated it to our men with our small-bore arms.

SIR DAVID MAXWELL-FYFE: My Lord, the report is in. It includes radio training. The pre-military training includes all men over 18 years of age. Your Lordship has the documents to consider.

My Lord, the next group of documents which I have asked Your Lordships to consider relate to the fact that it was stated before the Commission that the *SA Mann*, which is a part of the evidence of the Prosecution, was an unofficial publication with a circulation of 200,000. That was said before the Commission, at Pages 212 and 213. If Your Lordship will be good enough to look first at Page 111 of Document Book 16 B, Your Lordships will find Document Number

4010-PS, which will become Exhibit GB-613. I am sorry, it is Page 117 of the German book.

THE PRESIDENT: And of ours?

SIR DAVID MAXWELL-FYFE: My Lord, it is Page 111 of Your Lordship's. That is a letter from the editor of *Der SA Mann* to the Defendant Rosenberg. Your Lordships will see "Organ of Supreme Leadership, SA of the NSDAP" on the letter heading. It is sent to Rosenberg and it asks him for an article to commemorate their five years of independent publication and eight years of publication as a supplement to the *Völkischer Beobachter*. In the middle of the second paragraph Your Lordship will find the sentence, "A subscriber's list of half a million clearly shows the importance of the SA." That was on the 13th of August 1936.

THE PRESIDENT: You said "the importance of the SA." It is "the importance of the *SA Mann*."

SIR DAVID MAXWELL-FYFE: Certainly, My Lord. I beg Your Lordship's pardon; "the importance of the *SA Mann*."

THE PRESIDENT: Read the first two lines.

SIR DAVID MAXWELL-FYFE:

"In a few weeks, *Der SA Mann*, combat publication and official organ of Supreme SA Leadership, will look back upon an existence of respectively eight and five years."

My Lord, I am obliged.

Then, My Lord, on Page 110, Page 116 of the German document book, there is a letter from the Defendant Rosenberg's staff: "Reichsleiter Rosenberg confirms, with his best thanks, receipt of your letter of 13 August and sends you enclosed the preface asked for."

If Your Lordship will turn back another page to 109, which is Page 115 of the German document book—this becomes Exhibit GB-614—this is a letter from the editor again to the Defendant Rosenberg. Your Lordship will see on the letter heading this time:

"The Press Office of the Supreme Command of the SA, Main Office of the Editor of *Der SA Mann*."

This, My Lord, is 21 April 1938. They have now gone to ten years. There again they are asking Defendant Rosenberg for an article on the subject of the "ideology and combat paper" ("Weltanschauungs- und Kampfblatt") or something similar to it.

In the next paragraph:

"I do hope that you will be agreeable to our wish, and I am convinced that a contribution especially from your pen will

be greeted with particular enthusiasm by our 750,000 subscribers."

Your Lordship will remember the evidence that this witness gave that a few months after that, in 1939, the total membership of the SA was 1,500,000, so *Der SA Mann* went to one in every two.

My Lord, I have already referred the Tribunal to the recommendation by the Chief of Staff, Lutze, in the training directive, D-918, of the *SA Mann*, and, My Lord, as I told Your Lordship, the articles appear in Document 3050-PS, which is Exhibit USA-414. There is a long list of articles that are contained in that document of a military nature, anti-Semitic nature, anti-Church nature, all of which my friend Colonel Storey put to the Tribunal. I do not intend to go over it again.

Now, My Lord, the next document which I had asked Your Lordships to look at is one of the cases of the perversion of the course of justice in the interests of the SA. It is Document Number D-923, which Your Lordship will find on Page 22 of the Document Book 16 B; that becomes GB-615.

It is a long document, but I will take it very quickly and if there are any points, Your Lordship, I will be very willing to deal in detail with it. The German page is 22 also.

My Lord, that is a report that appears on the top of Page 22. There are five sections which are recapitulated in the sixth. The first is a report of the Public Prosecution Provincial Court, Nürnberg-Fürth, dated 21 August 1933, regarding the beating to death of one Pflaumer by the SA. Then, My Lord, there is a post-mortem report. There is a report from the Public Prosecution that the Police were refusing to give evidence in the above case. "This might endanger the well-being of the Reich."

As for the report from the Court of Appeal Public Prosecutor: "The Police Directorate Nürnberg-Fürth refuse permission to Police officials to break official secrecy."

Number 5, rather naively, states in the last sentence:

"Police Directorate refuse permission to Police officials to break official secrecy for the trial. They also need both of the accused"—that is the people who are accused of beating the man to death—"to guarantee the safety of the Party Rally Day."

Then, My Lord, the next document, 6, is a report from the Defendant Frank to the Minister of State for the Interior and, My Lord, it shows that the man Pflaumer, a 29-year-old married mechanic, was beaten up at a guardhouse in August 1933, and then brought to the main Police station by the SA and died there.

And, My Lord, on Page 23 at the top, Your Lordship will see: "The Provincial Court physician also reported that, according to his findings, Pflaumer was beaten to death in a most cruel manner and tortured with blunt objects."

And two lines on, after dealing with the result of the bastinado: "The conclusion had to be drawn that the perpetrators did not cause the injuries to the ill-treated man in self-defense."

And then apparently they say there is some question of doubt, but Your Lordship will see on the evidence there was no doubt that these people were concerned.

Then, My Lord, the next two paragraphs deal with political pressure against proceedings and, My Lord, there then comes a somewhat similar case in Section II. I do not want to complicate the matter. It is a separate case of three Jews beaten up by the SS.

Now, My Lord, on Page 24, the Defendant Frank says in Section III:

"The events described under I and II give me cause for great apprehension."

He goes on to say that people are still indulging in brutality; that members of the SA—in the middle of the next paragraph—"still allow themselves to indulge in the inadmissible ill-treatment of opponents."

And then, at the beginning of the paragraph after that:

"The events show further that unfortunately attempts are still being made to interfere with the legal course of justice."

Then the defendant points to the date of the amnesty. Then, at the beginning of the next paragraph he says:

"Especially in the case of Pflaumer, I consider it an urgent necessity, in the interest of safeguarding the authority of the State and the good name of justice and the Police, to avoid even the slightest appearance that the Police are shielding this crime."

Then he suggests—the last words on that page:

"The misgivings of the chief of the political department of the Nürnberg-Fürth Police Directorate can, however, be taken into consideration by the exclusion of the public during the trial. The carrying out of a trial can furthermore hardly be prevented by refusing to allow testimony. For, in view of the confession of the accused Korn and Stark to date, together with the results of the judicial autopsy, the trial will have to be instituted against them and carried out under any circumstances."

Now, that goes on and you will see that he has requested, and the Public Prosecution are requesting, the Prime Minister to bring up the matter for discussion at the next meeting of the Council of Ministers, and to invite Röhm and Himmler. Then that is done and, My Lord, there is then a significant inquiry on Page 26 from Bornmann, asking how the matter is going on and, My Lord, then on Page 27, Page 27 of the German version too, Document 13 (it is one of the inserts on Page 27):

"The Public Prosecution Provincial Court Nürnberg-Fürth report to Court of Appeal Public Prosecutor, Nürnberg, that the preliminary investigation ended on 19 March 1934. The Police Directorate Nürnberg-Fürth intend to apply for the quashing of the criminal proceedings."

Then, My Lord, in Document 14 that matter is discussed and that is on Pages 27 and 28. Then at the bottom of Page 28, 28 in the German version, you will find a section "Certificate of Opinion." My Lord, that says:

"On mature consideration, I assent to the suggestion of the Police Directorate.

"Firstly, it should be considered whether the proceedings could not be brought to an end by cancelling prosecution of the accused. According to the result of the preliminary investigation, Korn ought accordingly to be accused in any case, while the accused Stark could be released from criminal proceedings. However, an investigation or an extension of the investigation against the persons who took part in this matter (accomplices, possible instigators, and helpers) and finally also those who favored the culprits would, according to such and such a paragraph, be indicated.

"But if the proceedings were carried out in this manner, it would be unavoidable, even if the public were to be excluded from the actual trial, that the public would get to know about the events. This would seriously harm and impair the reputation of the SA, the Party, the Police, and even the National Socialist State."

If Your Lordship would look at the bottom of Page 29, last paragraph . . .

THE PRESIDENT: Before you deal with that, perhaps you ought to read the last paragraph but one on Page 27, beginning at the second sentence in that paragraph, Page 27, the penultimate paragraph.

SIR DAVID MAXWELL-FYFE: My Lord, is that the one beginning, "Therefore . . ."

THE PRESIDENT: Yes, the second sentence, "As the Police forces..."

SIR DAVID MAXWELL-FYFE:

"As the Police forces available were far from sufficient, the SA Sturm for Special Use, which was stationed in Nürnberg in the old Samariter Wache at the Hallplatz Number 4, was appointed to assist the Police in these tasks. In this guard-house the necessary identification and questionings of arrested Communists took place. The leader of this SA Unit was the then Sturmbannführer (SA Major) Eugen Korn, 25 years old, unmarried, commercial employee in Nürnberg. His deputy—" and so on.

I am much obliged, Your Lordship.

My Lord, I call Your Lordship's attention to Page 29, Page 29 of the German text.

"Lastly, it may also be pointed out that this deed was committed relatively shortly after the coming into force of the amnesty decree of 2 August 1933. If it had been committed before 26 July 1933, that is only three weeks earlier, it would have been amnestied like a number of other political excesses. Since the deed did not originate in an ignoble motive, but rather served the achievement of an exceedingly patriotic aim and the advance of the National Socialist State, the quashing of the proceedings, also in view of the relation of the time of the deed to the above-mentioned amnesty, does not seem incompatible with the orderly administration of criminal justice.

"For all these reasons it is suggested, in connection with the request of the Police Directorate, that the proceedings on account of the bodily injuries resulting in the death of the mechanic Oskar Pflaumer, as well as on account of the actions of criminal participation and complicity immediately connected with this, should be quashed."

And, My Lord, in due course that is forwarded by the Defendant Frank, in the next document on Page 30 and on the top of Page 31, and Reich Governor Von Epp says:

"I hereby quash the criminal proceedings."

That is sent by Frank to the Court of Appeal Public Prosecutor.

It is interesting, My Lord, and I would have referred Your Lordship to it, in view of what we have heard about isolated acts unconnected with the SA Leadership, that this man Korn was the Sturmbannführer Korn who was on the staff of the Supreme SA Leadership.

Now, My Lord, I did not intend to take the other ones as I hoped to be able to cut it even shorter, but there are two others which show this same perversion of justice and therefore, I submit, are important.

My Lord, the next is Document Number D-936, which Your Lordships will find on Pages 51 and 52. That will be Exhibit GB-616. My Lord, that is connected with the nine members of the SA who were charged with beating up the editor of the newspaper *The Lower Bavarian Peasant*. My Lord, that was a Dr. Schlögl, and *The Lower Bavarian Peasant*, I think, was a Bavarian People's Party paper, a sort of Catholic Party paper. And Your Lordship will see that the proceedings are held to fall within the amnesty, but it is interesting again to see the declared motive and the connection with the leadership. If Your Lordship would look at the second paragraph for the reason for the decision of the Amtsgerichtsrat; it says:

"There is no doubt, therefore, that the deeds were committed for political reasons. They were committed also to insure the success of the National Socialist State. It may be that the destruction of the furniture was intended to serve the purpose of a house search in which previously imbibed alcohol may have played a harmful part in the manner of carrying out that decision. On the other hand, it may be that by the destruction of the furniture, certainly, however, by the ill-treatment, it was intended to restrain Dr. Schlögl from further political activity. No other motive for the deeds can be found."

I ask Your Lordship to note:

"The Supreme SA Leadership have also examined these questions. In their letter of 14 September 1933 they announce that the SA men in question were bound to see, and did see, in the possibility of Dr. Schlögl forcing his way into the National Socialist movement a danger for the Movement and thus for the nation itself. Nor were the deeds committed for the purpose of personal profit or other low motives. The Supreme SA Leadership state on this point that the deed and intention of the SA men were only aimed at the well-being of the National Socialist movement. The political reason and the purity of the intention is thus beyond doubt."

Now, I ask Your Lordship again to note that it is the Supreme SA Leadership.

My Lord, the only other one—I hope I can take it quite quickly—Your Lordship will find in Document Book 16 A, the smaller document book, Page 9.

Your Lordship may remember that my learned friend, Major Barrington, mentioned the question of the punishment of those

members of the SA—I think, My Lord, they run to some 30 or so—that had been engaged in cruelties in the concentration camp of Hohenstein. My Lord, this is the report dealing with their punishment, and Your Lordship will note—and this is, in my submission, interesting—that it is dated the 5th of June 1935. My Lord, it concerns the penal proceedings against the merchant and SA Obersturmbannführer Jähnichen and 22 companions—I am afraid I said 30; it is 23—for inflicting bodily injury on duty in the protective custody camp of Hohenstein in Saxony.

This is a letter from Dr. Gürtner to the Defendant Hess. That is, it is a top level letter from the Ministry of Justice to the Deputy of the Führer. My Lord, it is Document Number 784-PS. It becomes Exhibit GB-617.

Dr. Gürtner first of all sets out the sentences that were asked for by the prosecutor. Then he sets out the sentences which were inflicted by the Supreme Court in Dresden.

My Lord, I ought to have said that this is Page 9 of the English document; I think Pages 9 to 15 of the German, too.

Turning over to Page 10, which are Pages 10 and 11 of the German document, Your Lordship will see that the Minister of Justice writes:

“After the proposal of the sentence, however, still before the announcement of the verdict, the president of the Criminal Division Number 12”—that is, the judge—“received the following letter from the Reich Governor of Saxony.”

HERR BÖHM: I beg your pardon, Mr. President, but the document which I received neither has a Page 9 nor a Page 10. It only has a Page 7 at the most. I am, therefore, not in a position to follow the prosecutor's speech.

SIR DAVID MAXWELL-FYFE: My Lord, I see the paging is different on Dr. Böhm's copy. This is the letter from the Reich Governor:

“As I was informed, it is proposed to impose a punishment of 3½ years of penal servitude upon the accused Standartenführer Jähnichen. Without wanting to interfere in the proceedings or intending to influence you as judge in any way before the verdict is announced, I should nevertheless once more like to call your attention to the fact that the circumstances brought about by the revolution of 1933 and without doubt still taking effect up to the beginning of 1934, cannot be overlooked when pronouncing sentence.

“A further point appears to me to be worth taking into consideration, namely, the fact that one cannot accuse Jähnichen of having a low character and that, above all, in Hohenstein

the scum of humanity had to be dealt with. In consideration of this fact I should like to leave it to you to consider whether the misdemeanors call for such a severe punishment"—Your Lordships will note the next words—"or whether an acquittal could not be considered.

"As Gauleiter of the NSDAP I consider it my duty to call attention again to the unusual circumstances."

Now, My Lord, Dr. Gürtner, the Minister of Justice, goes on, and this Your Lordship may well think is the most extraordinary and sinister part of it:

"Moreover, the information has come to hand that the two magistrates who functioned as lay judges in the principal trial, namely Regierungsamtman Helbig and the merchant Pesler, had been expelled from the NSDAP after the announcement of the verdict. I do not know by whom this expulsion was ordered.

"Finally it has been put to the Public Prosecutor, Dr. Walther, who is a storm trooper, after the pronouncing of the verdict, by his Obersturmbannführer, that he should resign from the SA."

And then you may think that the Minister of Justice goes on with some extremely pertinent observations as to the impossibility of carrying on justice if this goes on. He says in the middle of that paragraph, the end of Page 12 in the German version:

"That kind of procedure against lay judges after the verdict had been pronounced would naturally and necessarily arouse the feeling that when they are functioning as judges they are responsible to a certain agency as to their work. Hereby the judicial independence, which is the foundation of every orderly administration of criminal law, becomes null and void."

Then he deals with the lay judge, and as Your Lordship will see, at the end of the paragraph he comes to the understandable conclusion:

"I would find myself obliged to consider the question whether in the face of such a state of affairs public prosecutors and judges could still be functionaries of the Party or members of the SA at all."

Now, My Lord, Your Lordship will see at the bottom of Page 11 of the English book, Page 3 of the document, and Page 13 of the German version, that there is a letter to the Chief of Staff of the SA of the NSDAP, with a copy of the following accusation enclosed. My Lord, that would be Lutze at that time, because Röhm had been murdered before that date. The same points are put to the Chief

of Staff of the NSDAP, and, My Lord, the matter then goes up to Hitler. My Lord, Your Lordship will find the report that contains Hitler's decision on Pages 13, 14, and 15 of the English version, and Pages 16—I think it starts there—to 33 of the German version. I hope Dr. Böhm will be able to find it.

That is Document Number 785-PS. I am sorry, My Lord, I thought it was the same document. It is a different document. Your Lordship will see in the first paragraph a description of the crime:

"The maltreatment of inmates, which has led to the sentencing of the accused, was not carried out for any political purpose (to obtain a confession, to punish disciplinary infractions, *et cetera*) or in retribution for previously suffered wrongs inflicted by Communists, but was merely malicious torture or the expression of sadistic brutality."

Then:

"A few cases of maltreatment occurred, however, where enemies of the State were involved."

At the end of that paragraph:

"... the defendants not only attempted to wring confessions from the inmates, but that they had acted in sheer lust for torture."

"They acted in sheer lust for torture." This is a document coming from the Reich Chancellery, so Your Lordship sees the criticism that was made in that quarter. But then, My Lord, it goes on to say at the end of the next paragraph about being motivated neither by political purposes nor by personal revenge. Then that is shown.

But, My Lord, at the top of Page 14 it is stated:

"If, nevertheless, I suggest subsequently a further reduction of sentence based upon new evidence for some of the defendants, I can only justify my action because I believe that according to the circumstances the defendants in one or the other case of maltreatment may have partly acted out of revolutionary motives."

I will repeat that:

"... may have partly acted out of revolutionary motives."

Then it gives some examples, and, My Lord, at the foot of the page there is the appendix, with Hitler's decision:

"Upon application of the Reich Minister of Justice"—which was the preceding—"I hereby grant in the case against Rudolf Jähnichen and others for maltreatment of persons committed to protective custody in Hohenstein Concentration Camp, the following mitigation of sentences as enumerated in Column 6."

And then, roughly, My Lord, the sentence is reduced by either a third or a half in each case.

My Lord, I would just like to correct an exhibit number. The first document is Exhibit USA-732, and the second document, 785-PS, will be Exhibit GB-617. My Lord, I am again sorry; it is my mistake. It is USA-733, the second document. I am so sorry.

THE PRESIDENT: Perhaps we had better break off now.

[A recess was taken.]

SIR DAVID MAXWELL-FYFE: My Lord, I have finished with the submission of documents. There are three more questions in cross-examination which I should like to put to the witness; and then I shall be finished with my cross-examination.

THE PRESIDENT: Just before you turn away from this 16 B, if you turn to Page 27, the Tribunal would like to know from the witness what the SA Sturm for Special Use was.

SIR DAVID MAXWELL-FYFE: Your Lordship, I mention that because I told Your Lordships that the fact that Korn was on the staff of the Supreme SA Leadership was on 27, the last line of 26; and you will see that the last line of 26 is: "Korn is at present in Munich on the staff of the Supreme SA Leadership." My Lord, then I will ask the question.

Witness, will you tell the Tribunal what the SA Sturm for Special Use was, which was stationed in Nuremberg in the old Samariter Wache at Hallplatz Number 4; what task it carried out in assisting the Police?

JÜTTNER: We had SA Stürme and Sturmбанne for Special Use in various places, and in Nürnberg, too, as far as I know. The general task of these units was to be available in case of catastrophes. Also for police purposes, when they were requested by the Police and used by them as auxiliary police. They were also used for fire brigade service, and during the war in air raid service, in Hamburg, for instance, and Westphalia. Those were in general the tasks of the Sturmбанne for Special Use. They were composed of men whose work or professions allowed them time for such service.

SIR DAVID MAXWELL-FYFE: The present example is that these men under Korn, who was on the staff of the Supreme SA Leadership, beat this Communist to death by using the bastinado on his feet. Was that one of the special uses which this Sturm indulged in when they were doing no work? Was that the sort of thing, beating up Communists? Was that one of the special tasks? Was

that a typical special task of this Sturm, to beat up Communists in August 1933?

JÜTTNER: No. That was never their task, and if Korn did that he should receive punishment.

SIR DAVID MAXWELL-FYFE: You must have known Korn, did you not? He was on the staff of the Supreme SA Leadership.

JÜTTNER: I knew Korn from the year 1934, approximately.

SIR DAVID MAXWELL-FYFE: And you went on working with Korn for years, did you not?

JÜTTNER: He was employed in the personnel office for some time. This offense which has just been reported, I knew nothing of until today.

SIR DAVID MAXWELL-FYFE: You knew nothing until today, when you were Deputy Chief of Staff of the SA? Are you really telling the Tribunal you knew nothing about the fact that one man from the staff of the Supreme Leadership had been engaged in this foul and brutal murder in Nürnberg, and you heard nothing about it? Is that your story?

JÜTTNER: The prosecutor seems to have overlooked the fact that I was Deputy Chief of Staff only from 1939 on. Up to then I was Section Chief in the Führungsamt, and later Chief of the Führungsamt.

SIR DAVID MAXWELL-FYFE: I am not forgetting your first words in evidence that you said that you could give an account of the SA from 1933 onwards dealing with all relevant parts—however, if that is your answer I will leave it. I will now take up another of your suggestions. Look at Document Number 1721-PS.

My Lord, that is the document that is in the original document book, dealing with the events of November 1938. Your Lordship will remember that the witness suggested yesterday that the document was not authentic.

[Turning to the witness.] Now, Witness, I am not going to argue with you; but I want to point out certain things in the document and then pass it to the Tribunal. You are not disputing that you wrote the document dated 29 November 1938, of which a copy is the first one in the bundle. That is the document dealing with the handing over of Jews' property, taken by the SA, to the Gestapo. Now, as I understood you yesterday, you are not disputing that you did write that document, of which that is a copy? Is that so?

JÜTTNER: I said yesterday that I recognized this document.

SIR DAVID MAXWELL-FYFE: Would you look at the bottom corner of that document, and you will find on it the stamp of the SA Group Kurpfalz. Do you see that?

JÜTTNER: Yes.

SIR DAVID MAXWELL-FYFE: And do you see in the stamp the letters "H," "W," and "G"?

JÜTTNER: It looks something like that, yes.

SIR DAVID MAXWELL-FYFE: Now, at the bottom, beside the stamp, you will see "z.d.A.," which is—do not let us waste time over it—"zu den Akten"—"Put it in the file." Do you see the contraction, "z.d.A."?

JÜTTNER: Yes, I see it.

SIR DAVID MAXWELL-FYFE: Now, would you look at the document which you are saying is not authentic, and you will find on that the same stamp of the SA Group Kurpfalz, and the same letters, "H," "W," and "G." Do you see that?

JÜTTNER: Yes.

SIR DAVID MAXWELL-FYFE: And do you see—I think it is on the top of the second document—that is the document of the 11th—the contraction "z.d.A." in the same handwriting as on the first document? Do you see that, at the top of the document, "z.d.A."?

JÜTTNER: Yes, I see it.

SIR DAVID MAXWELL-FYFE: Now, just two other points I want you to see on that document, which is the report to the SA Group of the Electoral Palatinate, Kurpfalz, dealing with a number of Standarten. Would you look under "Standarte 145"? Now, do you see that it says "Synagogue at Bensheim, Synagogue at Lorsch, Synagogue at Heppenheim, Synagogue at Birkenau"? Look at the next. Do you see that the next is the "Prayer House at Alsbach"—"Gebetshaus in Alsbach," is it not?

JÜTTNER: Which page, if I may ask?

SIR DAVID MAXWELL-FYFE: It is in the list. It is the document of 11 November and it is a list. It gives a series of Standarten, and the first is 115, and the next is 145; do you see that?

JÜTTNER: Yes.

SIR DAVID MAXWELL-FYFE: Do you see that after four synagogues, the next one—I think it is "Gebetshaus in Alsbach." Do you see that?

JÜTTNER: Yes.

SIR DAVID MAXWELL-FYFE: Now, I want you to turn over the page to the note for the files of the telephone call by the Führer of Brigade 50, Darmstadt, Brigadeführer Lucke. Do you see that?

JÜTTNER: Yes.

SIR DAVID MAXWELL-FYFE: Now, if you will look down to the same group, you will see that it says, "The Synagogue in Bensheim destroyed by fire. The Synagogue in Lorsch near Bensheim destroyed by fire. The Synagogue in Heppenheim blown up. The Synagogues in Rimbach and Birkenau destroyed." Now, does it say the "Prayer Hall"—the word is "Die Bethalle in Alsbach"—destroyed?

JÜTTNER: Yes, "Bethalle in Alsbach."

SIR DAVID MAXWELL-FYFE: The same distinction is drawn between the synagogue and a prayer hall, which is either called a "Gebetshaus" or a "Bethalle." Now the other pages contain reports of different Standarten.

My Lord, I am not going to argue the point, but I wanted to bring out these points from the witness, as he had challenged the document.

Now, Witness, I want you just to help me on another point. You know that after these incidents of 9 and 10 November 1938, 14 SA men were found guilty of killing Jews? Did you know that? Men of various ranks in the SA were found guilty of killing Jews? Do you accept that? The document is before the Tribunal of the Party Court, containing the decision. I do not want to waste time if you will admit one thing I put to you. Do you admit that 14 SA men were found guilty by the Party Court after 9 and 10 November of killing Jews?

JÜTTNER: I learned here while a prisoner about this document in which the 14 SA men are mentioned who are supposed to have shot Jews or slain Jews.

SIR DAVID MAXWELL-FYFE: Now, you have said, not once but many times, that whenever SA men were guilty of excesses, they were punished. Do you know that all the SA men who had killed Jews were let off, that the only SA men who were sent for punishment were those who had committed rape or theft, three of them who had committed rape and theft? Do you know that all these 14 SA officers were let off for this murder?

JÜTTNER: I am convinced that they were punished by the SA. The punishment for such acts of murder as mentioned here was a matter for the regular courts. I do not know whether they were sentenced there.

SIR DAVID MAXWELL-FYFE: Let me tell you, because the document has been put before the Tribunal. The regular court let them off because they fell "within the line of Party comrades who, motivated by the decent National Socialist attitude and initiative, had overshot the mark." That is why the Party Court let them off, according to their own document. Now, are you saying that the

Party or the SA punished people for ill-treating Jews when these 14 murderers of Jewish women and children and men were let off because they were "motivated by the decent National Socialist spirit"? Are you saying that they were punished?

JÜTTNER: Please show me the document. I consider it impossible that the Supreme SA Leadership took that attitude.

SIR DAVID MAXWELL-FYFE: It is the Supreme Court of the Party, the Supreme Court of the Party composed of Gauleiter.

JÜTTNER: The Supreme Party Court is not the SA Court . . .

SIR DAVID MAXWELL-FYFE: No, but it is the Supreme Court of National Socialism, and that is what they did—they recommended that these 14 SA murderers should be let off. How does that square with your suggestion that murder was frowned on?

JÜTTNER: Please understand that the Supreme Party Court was a Reich institution of the Party, while the SA had its own SA Court. The SA Leadership and the Chief of Staff—above all as the Supreme SA Judge—had influence only on the SA Court, not on the Supreme Party Court.

SIR DAVID MAXWELL-FYFE: Did you know, Witness, that the Supreme Party Court had let off these 14 murderers in the SA after 1938?

JÜTTNER: I only learned of that here from this document, while a prisoner.

SIR DAVID MAXWELL-FYFE: So the Deputy Chief of Staff did not know that 14 officers of his own organization had committed cruel and bloody murders? That is what you tell this Tribunal?

JÜTTNER: The Deputy Chief of Staff was convinced and is still convinced today that all excesses of 9 and 10 November, so far as they were committed by SA members and had become known, were punished, not only by the SA but by the regular courts. I know from the words of the Chief of Staff, Lutze, that he insisted on that. I will not deny that one or the other offense did not become known to him.

SIR DAVID MAXWELL-FYFE: Now, there is one other point I want to put to you. You have represented Chief of Staff Röhm as being a peace-loving, churchgoing man. Is that the impression you want this Tribunal to have of the character of Chief of Staff Röhm—that he was a peace-loving, churchgoing man?

JÜTTNER: That is a question the inner meaning of which is hard to understand. I have said that Chief of Staff Röhm belonged to the Church. He was therefore not opposed to the Church. He was also peacefully disposed, for it has been shown, and I myself am a witness, that he repeatedly emphasized—not only to the SA Führer

but also to representatives of foreign powers—that he was constantly endeavoring to bring about good neighborly relations.

SIR DAVID MAXWELL-FYFE: I just want you to look at an extract of Hitler's speech on 13 July 1934, a fortnight after the Putsch.

My Lord, I passed to the witness Schultheiss' *Geschichtskalender* for 1934. I put in an extract at the time.

At Page 182, this is what Hitler stated to the Reichstag:

"But at this point I must establish the fact for the present and for posterity that these men no longer possess any right to invoke National Socialism as an ideology."

That is Röhm and his friends.

"Their lives have become as bad as those of the people we overcame and repressed in 1933. The behavior of these men made it impossible for me to invite them to my house or to enter the Chief of Staff's house in Berlin even once. What would have become of Germany had these people been victorious it is difficult to imagine."

Now, Witness, you know perfectly well, and I ask you to tell the Tribunal, why was it that Hitler would not enter Röhm's house even once?

JÜTTNER: That was a matter for Hitler's judgment, not for mine; I cannot give you any information about it.

SIR DAVID MAXWELL-FYFE: You know perfectly well that he was the most notorious homosexualist in Germany, is that not right?

JÜTTNER: It is not unknown to me that he was morbidly inclined that way, but whether that was Hitler's reason, I do not know.

SIR DAVID MAXWELL-FYFE: My Lord, I am sorry, there is one duty that I had forgotten. Your Lordship asked me to put the affidavit of Dr. Högnér to this witness. He was the Prime Minister of Bavaria. If Your Lordship remembers, Dr. Böhm referred to it and Your Lordship suggested that I should put it in cross-examination. I think the Tribunal have copies, My Lord. That is Document Number D-930, Exhibit GB-617.

THE PRESIDENT: Sir David, I do not remember saying you should put it to him. I think what I said was that if you did put it to him that Dr. Böhm would then have an opportunity to re-examine him upon it, if you did not put it in evidence, it not being already in evidence, it would not be in evidence.

SIR DAVID MAXWELL-FYFE: My Lord, I have no desire to put it. I thought Your Lordship wanted me to do it. This is one of the

group of affidavits which I mentioned to the Tribunal that I would give to the defense counsel at once, as they are general affidavits from ministers and other prominent people in Germany which are in general rebuttal of the affidavits put in by the Defense, and, My Lord, I was quite content—in fact I suggested and the Tribunal approved—that they should be read when we are dealing with the documents after the Defense documents, but that I should give it to the Defense so that they would have an opportunity in advance. My Lord, that is my position, and I am very content to adhere to it.

THE PRESIDENT: If you want to make use of it, I think perhaps it should be offered in evidence so as to make it strictly in evidence.

SIR DAVID MAXWELL-FYFE: Well, My Lord, I am quite content to do that. They were going to be offered in evidence as affidavits. My Lord, it is only a matter of procedure; I do not mind which—of course the Tribunal will decide that. The Defense are putting in about 300,000 affidavits which are being summarized in a number of general affidavits. My Lord, I suggested the other day that we should put in—at the same time we should put in rebuttal these few affidavits that we have.

THE PRESIDENT: Well, do it then. Offer it in evidence now.

SIR DAVID MAXWELL-FYFE: Well, My Lord, I will do that.

THE PRESIDENT: Is there any other rebuttal besides these affidavits?

SIR DAVID MAXWELL-FYFE: My Lord, it is this group—I think there is one addition to it, but that is all the rebuttal as far as I know.

THE PRESIDENT: Yes; you are not going to apply to call any additional witnesses?

SIR DAVID MAXWELL-FYFE: No, My Lord; I will not try to say for my colleagues, but as far as I know, they have not. I will verify that at once, My Lord.

My Lord, none of the Prosecution are going to submit any oral evidence in rebuttal.

THE PRESIDENT: Very well.

SIR DAVID MAXWELL-FYFE: My Lord, this is the affidavit of Dr. Wilhelm Högner, the Bavarian Prime Minister, and it gives his address. In the second paragraph he says:

“The two pamphlets, Part I and II, submitted to me—‘Hitler and Kahr, the Bavarian would-be Napoleons of 1923, a scandal of justice exposed in the Committee of Inquiry of the Bavarian Provincial Diet,’ were written by me. At that time I was assistant reporter of the Committee of Inquiry of the Bavarian Provincial Diet on the Hitler Putsch of 1923. All the facts

mentioned in these pamphlets originate from court documents which I worked over personally and from which I made extracts. That also applies especially to the military orders and instructions, partly quoted literally in the pamphlets."

And then, My Lord, he gives an account of the illegal and violent activities of the SA from 1921 to 1933, and, My Lord, that is the long paragraph. Then he goes on to say, dealing with 1933 and 1934:

"The SA did not change their behavior later on either. Especially after 1930 it distinguished itself in the conflicts with its political opponents by its violence and ruthlessness. After the coming into power of the National Socialists, the SA broke into the houses of political opponents as a heavily armed horde, ill-treated and arrested them. It is known to me that the SA also played an evil part in the persecutions of the Jews in April 1933. The same was the case in the occupation of the Trade Union buildings on 2 May 1933. Already before that, the chairman of the Munich Trade Unions, Gustav Schiefer, had actually been attacked by members of the SA in the Trade Union building, and so seriously ill-treated that he had to spend a long time in a hospital."

Then, My Lord, that is continued with some additional information about the SS in the next paragraph. And then in the penultimate paragraph, it says:

"Before my departure from Germany the former Communist Diet Deputies Dressel and Schleffer were murdered in the concentration camp of Dachau, probably in May 1933. Whether by the SS or the SA, I do not remember for certain. I knew the incident very well because I complained about it to the Reich Minister of Justice, Dr. Gürtner, in Berlin."

And then he recounts an incident of the SS murdering somebody else. Then he says:

"The gross excesses of the SA and SS in the service of the NSDAP were perpetrated so publicly that the whole population knew about them. Everyone who entered these organizations as a member knew of such excesses."

THE PRESIDENT: Does he say when he left Germany?

SIR DAVID MAXWELL-FYFE: My Lord, I do not think he does.

THE PRESIDENT: It is rather material, is it not?

SIR DAVID MAXWELL-FYFE: My Lord, I will get that point discovered. Your Lordship is of course right, we ought to have had that stated as to when he did leave Germany.

THE PRESIDENT: Perhaps one ought to conclude from the document that it only relates to 1933.

SIR DAVID MAXWELL-FYFE: Well, My Lord, he does say, "After the coming into power of the National Socialists, the SA..." did so and so. That is after the beginning and he goes up to May 1933, to the Trade Unions. But Your Lordship is quite right. There is no specific date given after 1933. I will verify that point, My Lord. Much obliged, My Lord.

THE PRESIDENT: Dr. Böhm, had you not better wait for your re-examination until after Dr. Seidl has asked questions, if he wants to ask them?

HERR BÖHM: Certainly, but I should like to make one suggestion. The declaration of Dr. Högner was submitted at my instigation, as I learned a short time ago. Now I should like to ask that the statement of the Public Prosecutor at the Court of Appeal in Braunschweig and the declaration of Dr. Schumacher and the declaration of the Mayor of the provincial capital of Braunschweig should also be submitted. These are affidavits which were placed in my pigeonhole with the affidavit of Dr. Högner.

THE PRESIDENT: You ask that we should consider the other seven affidavits which were given to you at the same time, is that right?

HERR BÖHM: Yes, certainly. I have learned now that the affidavit of Dr. Högner was introduced because I referred to it yesterday. Now these other affidavits, which contain much evidence for the Defense, were placed at my disposal or given to me at the same time and I would ask the prosecutor to submit the affidavits which have just been mentioned or to read them into the record now, so that I may have an opportunity, when hearing evidence, to form an opinion, through a witness, on the contents of these affidavits.

SIR DAVID MAXWELL-FYFE: My Lord, I have no objection, of course, to Dr. Böhm's putting away of the documents. We have given, I think, all, whether we have decided to use them or not. Some are not in the form of a sworn statement, and we were not going to use them. If Dr. Böhm thinks that he can get any help from any document to be had from the Prosecution, the Prosecution, of course, make no objection to him using it.

HERR BÖHM: Mr. President...

THE PRESIDENT: Dr. Böhm, you can offer these affidavits or other documents in evidence, if you want to.

HERR BÖHM: Very well. Then I am in a position to refer to the affidavits in the course of taking evidence.

THE PRESIDENT: Yes. But for the purposes of the record, you must offer them in evidence, and then they will be given, or you will give them, proper exhibit numbers.

HERR BÖHM: Yes, certainly.

DR. ALFRED SEIDL (Counsel for the Defendants Hans Frank and Rudolf Hess): Mr. President, yesterday the Prosecution submitted a new document, GB-602, a letter from the Commander of the Security Police in the Government General to the Defendant Dr. Frank.

THE PRESIDENT: What is the other reference to it? You said GB-602. It must have some other reference.

DR. SEIDL: D-970. It is a letter from the Commander of the Security Police in the Government General to the Defendant Dr. Frank, dated 25 September 1944. It appears from the document itself that it is an appendix, and I make application that I may be permitted to read into the record a short excerpt from the diary of Dr. Frank, which belongs to this document.

THE PRESIDENT: If it refers to this document, yes.

DR. SEIDL: This is an entry of Tuesday, 26 September 1944. "Conference with State Secretary Dr. Bühler..." and others. At this conference first of all the shooting of the Prior of the Carmelite Monastery at Czerna was discussed.

"As the report given by the Commander of the Security Police and the SD in the Government General"—that is the report put in by the Prosecution—"lacks clarity according to the opinion of the Governor General, and as the Police Office at Kattowitz wanted to take upon itself the responsibility that in the future not SA men but Police officials would carry out such undertakings, the Governor General told the Senior Public Prosecutor, Rother, to carry out a detailed investigation of that case."

The diary does not show what happened to these SA men. Therefore, I have taken an affidavit of the Defendant Frank which I ask to be permitted to submit in evidence here. It is very brief. It indicates that the men were tried and received severe punishment.

THE PRESIDENT: Are you offering the affidavit in evidence?

DR. SEIDL: I should like to offer this as Frank Exhibit 25.

THE PRESIDENT: Have you any other documents that you want to offer in evidence, or is this the only one?

DR. SEIDL: This is the only new document that I want to offer in evidence.

THE PRESIDENT: Very well, then. I think we may as well put it in now, and you will put it in as Frank-25. And you did not give us...

DR. SEIDL: Frank Number 25.

THE PRESIDENT: Did you give us the reference to the diary of Frank, the passage that you read?

DR. SEIDL: It is an entry of 26 September 1944.

THE PRESIDENT: Is that already in evidence? I know some parts of the diary are. But is that in evidence?

DR. SEIDL: It is a part of the Document GB-602.

THE PRESIDENT: Will you state that again? What was the number of the document?

DR. SEIDL: GB-602.

THE PRESIDENT: That is not Frank's diary, is it? GB-602?

DR. SEIDL: No; it is the letter written by the Commander of the Security Police and submitted by the Prosecution.

THE PRESIDENT: I know that. I was asking the number, if it has got an exhibit number, of the diary of Frank of 26 September 1944.

DR. SEIDL: It has the Number 10. The whole diary was submitted in evidence under this number.

THE PRESIDENT: Very well.

MR. THOMAS J. DODD (Executive Trial Counsel for the United States): Mr. President, I do not wish to object to the submission of this affidavit, but I should like to observe that if other affidavits are offered by the defendants, it may be necessary for the Prosecution to have the right to cross-examine in this case. But it might very well call for cross-examination if they are now going to make an effort to put in further testimony on their own behalf under the disguise of an affidavit.

DR. SEIDL: Mr. President, my original intention was to ask permission to recall the Defendant Frank to the witness stand and examine him on this question. If I submit an affidavit, this is done only to save time, and for no other reason. I would have preferred it the other way.

MR. DODD: I am not altogether sure, Mr. President, that this is done in the interests of saving time. I have some feeling it may be done in the interests of prolonging the time.

THE PRESIDENT: We do not need to hear any more, Dr. Seidl. We have admitted the document.

DR. SEIDL: I may assume that this very short affidavit may be read into the record. Exhibit 602 was also read into the record.

THE PRESIDENT: Have you not read it? Read it into the record then, if you say it is short.

DR. SEIDL: "In the second half of September 1944, Governor Dr. Von Burgsdorff reported to me that the Prior of the Carmelite Monastery Czerna had lost his life and that there was a suspicion of punishable action. I immediately ordered that preliminary proceedings be instituted and, if need be, punishment administered. In the course of these preliminary proceedings the Commander of the Security Police in the Government General made a report, on 25 September 1944, which has now been submitted by the Prosecution under the Number D-970, Exhibit GB-602. This report was also the subject of a discussion which I had with State Secretaries Dr. Bühler and Köppe and other high-ranking officials on 26 September 1944, during the course of which I ordered the Public Prosecutor, Rother, to make a detailed investigation of the case.

"Further investigations have shown that the SA men mentioned in the report of 25 September 1944 (GB-602) did not belong to an SA unit of the Government General. Although, as shown in the report of 25 September 1944, the Monastery Czerna was situated within the boundaries of the Government General, nevertheless, on the basis of a Führer decree in the summer of 1944, the whole district, as far as customs, police, and military administration were concerned, came under the neighboring province of Upper Silesia, and therefore under the Reich. The order of the Führer had been issued in connection with the fortification work to be carried through in the East at that time. That explains, as is seen from Document GB-602, why the investigation was carried out by the State Police Office of Kattowitz, that is, by a State Police Office situated in the Reich territory.

"Ilkenau was not situated in the Government General, but in the Reich (Upper Silesia). For these tasks not only SA men were used, but also members of other organizations, for instance Volkssturm men. The investigations proved further that the participating SA men were not employed by any higher SA office, but by the building staff Kattowitz (Upper Silesia).

"On the basis of the investigations of Public Prosecutor Rother penal proceedings were instituted against several SA men in Kattowitz. It was later reported to me that these proceedings resulted in the sentencing of several of the accused to severe penalties. (Signed) Dr. Frank."

THE PRESIDENT: Now, Dr. Böhm, do you want to re-examine?

DR. SEIDL: I do not want to ask any further questions, but I would like to call the attention of the Tribunal to a document, also

in the name of the Defendant Frank, which was submitted today as GB-615, Document Number D-923. The report of the Defendant Frank of 6 September 1933 shows, under Number 3, that the defendant demanded with the utmost rigor that penal proceedings be instituted against the accused SA Führer, and even ordered it.

THE PRESIDENT: Dr. Seidl, the Tribunal has noticed that document and it does not require having its attention called to it by counsel for the Defendant Frank. The Tribunal will consider the document.

DR. SEIDL: For the Defendant Rudolf Hess I should like to make application that the Prosecution be requested also to submit the answer of the Führer's Deputy to Document Number 784-PS. This is a letter, dated 5 June 1935, from the Reich Minister of Justice to the Führer's Deputy. The document given to me does not show what occurred between this letter and the later decision of Hitler in this case. In particular the attitude which Hess took is not shown.

THE PRESIDENT: Have you not got the document you mean? You are referring to 784-PS and you are asking us to take notice of some other document. Have you got the document?

DR. SEIDL: No, I have not got it, but I should like to ask the Court that the Prosecution be requested to let me have the answer of the Defendant Hess to this document.

THE PRESIDENT: The Tribunal will request the Prosecution to produce the document if they have got it.

LIEUTENANT COLONEL J. M. G. GRIFFITH-JONES (Junior Counsel for the United Kingdom): My Lord, it will be done. I cannot say at the moment whether the document is in our possession. If it is, it will be done.

THE PRESIDENT: Very well. Now, Dr. Böhm, do you want to ask any questions? Do you think that you will be able to finish by one o'clock?

HERR BÖHM: That is impossible, Mr. President.

THE PRESIDENT: Well, will you be able to finish shortly afterward?

HERR BÖHM: No. I believe that this re-examination after this cross-examination may last three hours. A number of new documents have been submitted...

THE PRESIDENT: Very well. We hope they will be relevant.

HERR BÖHM: Witness, the first question which the prosecutor asked yesterday was...

THE PRESIDENT: Dr. Böhm, the Tribunal thinks that three hours is not a reasonable time for the re-examination. You will

remember that re-examination should not be put in the form of leading questions; that is one rule, and another rule is that it must arise out of the cross-examination and not be for the purpose of introducing fresh evidence which has not been dealt with by cross-examination. You will be kept strictly to these rules.

HERR BÖHM: I believe that the cross-examination by the Prosecution dealt with a number of new matters, especially with the matters which were freshly introduced today and yesterday afternoon.

THE PRESIDENT: We do not want any arguments from you, Dr. Böhm. I am telling you what the Tribunal rules. If your questions arise out of the cross-examination they are admissible. If they do not arise out of the cross-examination they are inadmissible. Now will you go on with your re-examination, please?

HERR BÖHM: Witness, the first question which was asked of you yesterday by the prosecutor was whether you, and I assume by that was meant you personally as SA Führer, hence the whole SA Leadership, whether you had anything to do with the treatment of people outside of the borders of the Reich.

JÜTTNER: No. The SA Leadership was not concerned with the treatment of such people, unless they were Germans belonging to the SA and employed outside the Reich borders.

HERR BÖHM: A confidential report of the Supreme SA Leadership in the form of a third report on the activities of the SA in the war was submitted yesterday. In connection with this report the Prosecution asserted that its contents referred to the last weeks before 23 June 1941; that is the day when this report was issued. Now I should like to ask you whether it is true that the beginning of this report, under Number 1, on the first page: "The whole work of the SA from the beginning of the war," and on Page 2 the last four lines, I quote: "Decorations..."

THE PRESIDENT: Did you give us the reference to this document?

HERR BÖHM: The first document which was submitted yesterday, Number 4011-PS, on Page 1, the first line, and on Page 2, the last four lines. May I continue?

THE PRESIDENT: I only wanted the reference to the document. Go on.

HERR BÖHM: "Decorations given to the SA: 21 Knight's Crosses of the Iron Cross, and 31,125 Iron Crosses, first and second class."

Is it true if I say that this shows that the assertion of the Prosecution that the report was only a report on the weeks before 23 June

1941 is incorrect: Is that true? Is it correct if I conclude from this that the third report on the activity of the SA during the war is a report beginning with the activity of the SA on the 1st September 1939?

JÜTTNER: These reports were always comprehensive reports. The third report—I believe I signed it myself—sums up the activity of the SA from the beginning of the war until the day of the report.

HERR BÖHM: The Prosecution said yesterday that the activity of the SA in the "Hinterland" was the activity of the SA in occupied territories. Herr Jüttner, if you will look at Page 4 of this report, where it says that when the disaster of the Elbe floods occurred in the spring of 1941, for example, it was the SA engineer units who were the first to arrive to give assistance, and who by means of their floating equipment saved human beings and animals from drowning, can one assume from this statement that what you called "Hinterland" was within the borders of the Reich?

JÜTTNER: By "Hinterland" was meant the home area.

HERR BÖHM: And then please look at Page 5 of the same report.

JÜTTNER: It was submitted yesterday.

HERR BÖHM: Well then, I will read it to you. On Page 5 of the same report, I quote:

"Many SA Führer and Unterführer were assigned to the German Labor Front for duty in the Todt Organization. The SA also carried out numerous tasks for the authorities, for example in the frontier control service."

Does this not show clearly that the SA seceded from the authority of the SA Supreme Leadership and was assigned to other authorities for certain tasks like other drafted German citizens?

JÜTTNER: We released the men from the SA for duty in all these services. We did not offer them, we released them. These agencies of the Organization Todt, or other authorities, selected such men. They wanted to engage them and they inquired of the SA whether they could be dispensed with.

THE PRESIDENT: That is what he said already, is it not? He said already in cross-examination that these men, insofar as they were employed outside the Reich, were not operating as SA men in SA units.

JÜTTNER: It was also true within the Reich.

HERR BÖHM: What I asked was supposed to lead up to the question which now follows. I should like to ask you, Herr Jüttner,

did not the same conditions apply when you made your report on the 21 groups of SA men who were assigned to guard prisoners?

THE PRESIDENT: That again, Dr. Böhm, he has already said. He said that all activities referred to in this report, insofar as they were by SA men, were not under SA men or SA units.

HERR BÖHM: Very well.

THE PRESIDENT: We will adjourn now.

[The Tribunal adjourned until 1000 hours 16 August 1946.]

TWO HUNDRED AND FIFTH DAY

Friday, 16 August 1946

Morning Session

[The witness Jüttner resumed the stand.]

THE PRESIDENT: Dr. Böhm.

HERR BÖHM: Mr. President, yesterday, in answer to the question of how long the redirect examination would take, I indicated too long a time. After looking through the material, I believe I can say that much of it has nothing to do with the SA; and that I can abbreviate the examination considerably.

[Turning to the witness.] In connection with Document 4011-PS, Witness, I wanted to ask you again, in connection with the report that 21 groups were engaged in the transport of prisoners, how did the report originate and at whose orders did these people transport the prisoners; that is, were these people ordered by the SA to transport prisoners, or was this activity carried out by these men in their capacity as soldiers?

JÜTTNER: The report originated from the activity reports which the groups made every month and later every three months. The men were under the Wehrmacht for the purpose of guarding the prisoners; the Wehrmacht drafted and assigned them.

HERR BÖHM: Do you know the number of SA men who were active as Wehrmacht members in connection with the transport of prisoners?

JÜTTNER: I do not know the number. They were quite small units.

HERR BÖHM: The prosecutor said yesterday that the so-called military training was the same before and after the beginning of the second World War. I should like to ask you, Herr Jüttner: was shooting on combat scale taught before 1 September 1939, or only small-bore shooting?

JÜTTNER: Only small-bore shooting, such as was practised previously. I already said yesterday that soon after the beginning of the war we laid more stress on defense sport exercise, while ordinary physical exercise took second place.

HERR BÖHM: Do you agree with the numerous affidavits which say in this connection that it was forbidden in the SA to conduct maneuvers on assumed military situations?

JÜTTNER: That was forbidden, and besides we were not able to do so because most of the SA leaders had no previous military training and could not base exercises on military situations.

HERR BÖHM: Now a little historical question. In view of the assertions of the Prosecution in connection with the statements on Page 14 of Document 4011-PS, do you know, Herr Jüttner, when Memelland became part of the Third Reich? Do you know, perhaps, that it was in March 1939?

JÜTTNER: I cannot say that exactly, but it is probably correct.

HERR BÖHM: Did the region of Memelland belong to Estonia, Latvia, or Lithuania, or was it part of the province of East Prussia? I believe I can say that the Prosecution is confusing the SA Group Ostland with the so-called Reichskommissariat.

JÜTTNER: I should like to say: In East Prussia, that is SA Group Ostland, we had an SA unit, and we organized and directed it. In the rest of Ostland, in Lithuania, Latvia, *et cetera*, no German SA was ever organized or directed by us. This question is probably connected with the documents from which excerpts were read by the Prosecution yesterday.

Perhaps I may explain to Your Lordship that since the beginning of the cross-examination I have been in solitary confinement and am not in contact with counsel for the SA. For that reason, I believe I may make the following three brief statements in regard to the documents presented yesterday, which contain monstrous and false accusations against the SA leaders and the SA as an organization.

(1) To such serious documents one cannot reply exhaustively unless one has been able to look them over and check them at leisure. I have not been able to do that.

(2) There were numerous documents, excerpts of which were read, about which no questions were asked—for example, the Blomberg letter.

(3) When the various documents were submitted to me, only questions were asked which had scarcely any connection with the facts contained in them—for example, the report of Brigade 50 regarding the destruction of the synagogues.

I still do not consider this report authentic, because what is actually contained in the report is impossible, and also because what was done according to the report could not be carried out in that short time. But I believe that the questions of the defense will clear up any doubt.

HERR BÖHM: From Document 4011-PS the Prosecution concludes that the SA Leadership concerned themselves with foreign peoples. In this connection I should like to ask you whether you did do that, and whether that was ever your intention?

JÜTTNER: In the SA we did not concern ourselves with foreign peoples, nor was it ever our intention.

HERR BÖHM: Witness, you surely know the order of the Reich Government that in the Reichskommissariat Ostland the establishment of Party branches was prohibited. Could an SA Group or SA Brigade "Vilna" therefore have existed in Estonia, Latvia, or Lithuania?

JÜTTNER: No, it could not exist, and we did not organize or establish any. The men of the SA who were employed there were not under the SA Leadership. For example, the SA leaders Kunze and Kramer, who were mentioned yesterday, were Führer for special purposes. They were not under the SA Leadership when they were employed there. These men also wore a different uniform from that of the SA. Perhaps the confusion is due to this.

HERR BÖHM: Would you have violated such an order of the Reich Government?

JÜTTNER: No, under no circumstances.

HERR BÖHM: Would it have been possible therefore for the SA to have been entrusted with the administration of the ghetto in Vilna?

JÜTTNER: The SA did not set up or administer ghettos and the SA as an organization, or the leadership, was at no time entrusted with such tasks.

THE PRESIDENT: Dr. Böhm, when you speak of an order of the Reich Government, are you referring to a document?

HERR BÖHM: No, but to an order of the Reich Government which is generally known.

[Turning to the witness.] An affidavit of Herr Szloma Gold was submitted yesterday. In that connection I should like to ask you briefly whether the town commissioner of Vilna came under your jurisdiction in any way. Could you give him orders, and did he carry out any tasks on your instructions?

JÜTTNER: None of the Kommissare in the Ostland were under the SA Leadership, and they did not receive orders from the SA Leadership. If I remember rightly women SA members were also mentioned yesterday in connection with the Kommissare. There were never any women members.

HERR BÖHM: Was the provincial commissioner of Vilna ever under you?

JÜTTNER: I have already said that the Kommissare were not subordinate to the SA Leadership.

HERR BÖHM: This affidavit does not indicate whether the man concerned is a Kommissar. It merely says that the expert on Jewish questions was an SA leader called Murer. Was he under you in any way with respect to this activity in Vilna?

JÜTTNER: The personnel working with the Kommissare was not under the SA Leadership, either, nor this man who is mentioned here. If he was employed there, he was released from the SA for the duration of his assignment there and he carried out his tasks and duties there without the SA Leadership being able to influence him in any way.

HERR BÖHM: In connection with the indictment against another organization the Prosecution submitted a document, Exhibit US-276. I shall quote from Page 2 of this document, the last paragraph:

"In the first hours after the entry, in spite of considerable difficulties, native anti-Semitic forces were incited to pogroms against the Jews. Acting on orders, the Security Police was determined to use every means to solve the Jewish question."

In the case against the SD the Prosecution says that it was the Security Police who carried out the pogroms in Vilna, Schaulen, and Kovno. In the case against the SA, on the other hand, the Prosecution says that it was the SA. As defense counsel I should like to know which organization is actually responsible for the Jewish pogroms in these cities, and I ask you, did the Supreme SA Leadership, through orders or instructions, take any part in excesses against or murders of Jews in this district?

JÜTTNER: At no time and under no circumstances.

HERR BÖHM: And then an affidavit of a Mr. Chaim Kagan was submitted yesterday. The witness asserts that he saw girls in SA uniforms. Were there ever female SA members?

JÜTTNER: I have already answered that we never had any female SA members.

HERR BÖHM: Is not the absurdity of this accusation in the affidavit made obvious by the fact that it asserts that they were or must have been SA men because they wore a brown uniform? This assertion is made repeatedly in this affidavit.

JÜTTNER: In my testimony yesterday and the day before yesterday, I pointed out several times that in the course of the years anyone who wore a brown shirt was always taken for an SA man. That seems to be the case here too, although those concerned had nothing to do with the SA.

HERR BÖHM: The same is true of the affidavit of Mr. Leib Kibart who also terms some of the people whom he mentions SA

men and identifies them as such because they wore brown uniforms with a swastika armband. Were not the swastika armband and the brown uniform worn by all the other people, and primarily by those who worked in the Eastern Ministry and were engaged on duties connected with it? There was an East uniform, was there not? Was this uniform worn by the SA, and could it be confused with the uniform of the SA?

JÜTTNER: The East uniform was worn by those who were employed in this task, and they were employed not by the SA but by the Eastern Ministry. It was brown, and I believe that it had the swastika armband and, without doubt, like any other brown uniform, it could be confused with the SA uniform.

HERR BÖHM: Document R-135 was submitted yesterday. It is a letter from the Reichskommissar for the Ostland, written on 18 June 1943. What I wanted to ask you was: was the Reichskommissar for the Ostland ever subordinate to you or to the SA Führung at any time?

JÜTTNER: No. No Reichskommissare in Ostland were under the SA Leadership. They were under the Eastern Administration. The SA Leadership had no influence on them, nor was that its function.

HERR BÖHM: Now I should like to show you the paragraph which yesterday formed the subject of statements by the prosecutor, which, however, in my opinion was torn from the context. It reads:

"On orders of the chief..."

THE PRESIDENT: What is the reference?

HERR BÖHM: That is Number R-135, Mr. President. It is the second paragraph from the end in this document.

"On orders of the chief of anti-partisan activity, SS Obergruppenführer Von dem Bach, units of the Wehrmannschaften took part in the undertaking. SA Standartenführer Kunze led the Wehrmannschaften, which included 90 members of my group and of the District Kommissariat of Minsk. Our men returned yesterday from the undertaking without losses.

"I refuse to assign to such missions officials and Reich employees of the Generalkommissariat in the rear area. The men employed by me have not been deferred in order to combat partisans in the place of the Wehrmacht and the Police. One railroad Wehrmannschafter was wounded (shot through the lung)."

Does this not show clearly that these were railroad men and officials formed into fighting commandos to combat partisans, created

as a result of the Soviet Russian order? Could this have been an SA commando?

JÜTTNER: No, under no circumstances. They were called Wehrmannschaften under an SA Führer named Kunze, who had for some time been out of the active Leadership Corps of the SA. He was a leader for a special purpose. He was in the East. I know him, but I have only now learned that he was employed in the East. He was employed within the Eastern Administration, but not as an SA Führer. If he trained Wehrmannschaften, they were not SA Wehrmannschaften. There were none there, and they were not organized, trained, or influenced by us in any way.

HERR BÖHM: Then it is probably correct if I assume that Kunze was an official of the District Kommissariat of the city of Minsk and that he had nothing to do with the Supreme SA Leadership?

JÜTTNER: That is correct.

HERR BÖHM: Through an affidavit of...

THE PRESIDENT: Will you ask the witness, Dr. Böhm, what "Wehrmannschaften" means literally?

HERR BÖHM: The witness already commented on that yesterday by distinguishing between "SA Wehrmannschaften" and "Wehrmannschaften" of the type mentioned here. Herr Jüttner, would you please...

THE PRESIDENT: I asked what the word meant literally.

HERR BÖHM: Witness, please explain to the President what you understand by the term "Wehrmannschaften."

JÜTTNER: Your Lordship, I should like to distinguish between "SA Wehrmannschaften" and "Wehrmannschaften" of the type mentioned here. The "SA Wehrmannschaften," according to the decree of Adolf Hitler of January, 1939, were to be set up by the SA in the Reich consisting of released soldiers so that they could be kept ready for defense physically and mentally. The "Wehrmannschaften" mentioned here were given this designation without our having anything to do with it and I imagine that these "Wehrmannschaften" were men who formed themselves into groups to combat partisans in occupied territory.

THE PRESIDENT: The witness still has not told me what the word means. It is a German word. All we want is the translation. Is it possible to translate it?

HERR BÖHM: If I may explain it, I would say that it is a group of persons determined to ward off an attack from any side.

THE PRESIDENT: Do you agree with what your counsel has said, or what the Organization counsel has said, as to the meaning of the word?

JÜTTNER: I could give it another definition. It is a unit under a leader, set up in this case for dealing with enemy action in occupied territory that is behind the front, a defense organization.

HERR BÖHM: I believe that it is necessary, Mr. President, for me to demonstrate to you with the aid of Document 4011-PS the difference between "Wehrmannschaften" and "SA Wehrmannschaften." In Document 4011-PS, on Page 9, the Deputy Generalkommando IV. A.K. says—in the 3d paragraph, last line but one...

THE PRESIDENT: Page 9 of what?

HERR BÖHM: I thought I said 4011-PS, Mr. President. It is the third paragraph. The Deputy Generalkommando IV. A.K. speaks of "SA Wehrmannschaften" and the same term is used on the same page in the same document in Paragraph 5. It is the view taken by the Deputy Generalkommando IV. A.K. There it also states: "While I was on duty with the 'SA Wehrmannschaften' on 2 June 1940." Whenever he refers to the Wehrmannschaften of the SA, then they are SA Wehrmannschaften and were explicitly designated as SA Wehrmannschaften.

THE PRESIDENT: Dr. Böhm, the translation we have got said: "On the occasion of my presence at the training of the SA Wehrmannschaften on the 2d of June, 1940, I established that the primary military physical training of the SA Mannschaften, especially under difficult conditions brought about by the present time, was practised by all concerned with great zeal."

HERR BÖHM: Yes, of course, Mr. President; I want to make a distinction between the term "SA Wehrmannschaften" if any such were concerned, and the term "Wehrmannschaften" if no SA was involved.

THE PRESIDENT: I do not think it is any good arguing the point. I was only asking what the meaning of the word was. The witness has now explained to me that according to the Hitler decree of January 1939, certain men called "Wehrmannschaften" were to be set up in the Reich, as he says, ready for defense. If you can confirm that, it would be useful perhaps.

HERR BÖHM: If the explanation of this term is sufficient, I can continue.

THE PRESIDENT: Certainly.

HERR BÖHM: An affidavit of Rudolf Schönberger is supposed to show that according to orders the Supreme SA Leadership was in charge of the guarding of forced labor camps. This is the first affidavit given in this connection. I should like to ask you under whom the forced labor camps operated. Can you clarify this point, Herr Jüttner? Did you ever detail men as SA Mannschaften or as

SA units to the Auxiliary Police or to any other authority to be employed or used in these labor camps?

JÜTTNER: At no time did the duties of the SA include police tasks. The guarding and supervision of forced laborers is always a police task. If SA men were used for this, they were enrolled for this on a legal basis and were no longer under the authority of the SA as regards orders. They fulfilled their police tasks there, the same as anyone else fulfilled his task in some other profession. He remained an SA man, but during the time he was occupied in police tasks, he was on leave from the SA and was no longer under the authority of the SA Leadership.

HERR BÖHM: Not for orders either?

JÜTTNER: Not for orders either.

HERR BÖHM: Another document which I should like to show you is Number 3661-PS. The Prosecution wishes to use this document, which is signed by a certain Gewecke, to show the part of the Supreme SA Leadership or the organization in attacks on Jews in Ostland. Therefore I should like to ask you, does not the letter heading of the District Kommissar in Schaulen show that this was the affair of the Reichskommissariat Ostland? This letter was written on 8 September 1941, and the letter heading reads "The District Kommissar in Schaulen." Was the District Kommissar in Schaulen ever in any way subordinate to you?

JÜTTNER: I have repeatedly said that the Kommissare in the Occupied Eastern Territories as well as the forces allocated and employed in the occupied territories were in no way under the SA Leadership, and as a result did not receive and could not receive any instructions from the SA Leadership. This District Kommissar was not under the authority of the SA either.

HERR BÖHM: That makes the matter clear. The letter was signed by a certain Gewecke. He was actually an SA man, but it is interesting to point out in this connection that the contents of this document show that this Gewecke complains about attacks on Jews committed by the SS Leadership.

The next document was submitted under Number D-970 and refers to the commander of the Security Police and the SD in the Government General. In connection with this Prosecution document I should first like to state that Kattowitz, or the outpost Ilkenau, is not in the Government General, but in Upper Silesia.

Now I should like to ask you, if you will pay attention to the following sentence which I will quote:

"Therefore, the construction staff at Kattowitz, detailed a special detachment of 12 SA men to round up workers in the villages."

Does this not show that the office giving the order was not an SA office but an official agency, namely, the construction staff Kattowitz, which by coincidence chose SA members amongst others? Did you understand, me, Witness?

JÜTTNER: Yes. Which question should I answer first?

HERR BÖHM: Was a construction staff at Kattowitz ever under your jurisdiction?

JÜTTNER: No, construction staffs—presumably by these is meant construction staffs of the Organization Todt—were never under the SA Leadership. If a construction staff employed SA men for such tasks, it no doubt took from its own personnel those that were SA members. If they employed SA men who were not directly under their orders, that was outside the powers of the SA Leadership. If such men have been guilty of illegal actions in this connection they deserve proper punishment. In any case, the SA Leadership, as the document shows, had no power over such employment. They were employed by the construction staff which was not subordinate to the SA Leadership.

HERR BÖHM: Might it have escaped you that in Kattowitz there were SA Einsatzkommandos of which you knew nothing? Would that have been possible?

JÜTTNER: I said emphatically yesterday, and I repeat today, that the term "Einsatzkommando" was completely foreign to the SA, as we never formed Einsatzkommandos for such purposes. If Einsatzkommandos existed and there were SA members in their ranks, then that was not due to any instructions of the SA and did not mean that it was approved by the SA.

HERR BÖHM: The Prosecution submitted a letter yesterday from the Reichsführer SS, Inspector of Concentration Camps, to the Reichsführer SS and Chief of the German Police in Berlin, dated 21 February 1940. Unfortunately I do not remember the exhibit number given yesterday, but there can be no doubt about this letter because I have a photostatic copy of it here.

I should like to ask you, Herr Jüttner, whether the Supreme SA Leadership had a labor camp for drunkards and shirkers, as was asserted yesterday by the Prosecution and as this document might be interpreted to indicate.

Regarding the camp Frauenberg near Admont, it says:

"About 20 men of the SA guarded the camp."

What do you have to say about the document submitted by the Prosecution about the labor camp Frauenberg in Styria, concerning the labor camp in which 20 SA men are said to have been used as guards? Would you like to see the document? Have you seen the document?

JÜTTNER: No.

[The witness was handed a document.]

HERR BÖHM: You will find this statement on the second page of the document, in the last third.

JÜTTNER: I must say, Your Lordship, that after the Reichsführer SS took over the concentration camps, which as far as I know was at the end of 1933, the SA as an organization had nothing to do with concentration camps and the guarding of concentration camps. If SA men were in fact used as guards, then they were drafted by the authorities as Auxiliary Police or something similar in order to carry out this task. But in that case they were completely removed from the responsibility and the authority of the SA.

HERR BÖHM: Another document which was submitted is Number 4013-PS, which says:

"This morning I had an inquiry from very reliable English quarters whether it would be possible for Austrians in Germany behind the backs of Hitler and Habicht to break into Austria. My informant added that so far the Austrian attacks had been ignored, but this information had come from such a reliable source that they simply had to contact us. I am afraid of a possible provocation by hired elements which, if announced to the world just at that time, could produce conflicts."

I should only like to ask you, is this one of the usual cock-and-bull stories which in the past have been very frequent? Do you know the document?

JÜTTNER: No. I do not know the document.

[The witness was handed a document.]

I may say that until yesterday I knew nothing about this affair. I could not have helped hearing about it. The collecting-point for refugee or expelled Austrians, the so-called Austrian Legion, which was later Aid Campaign Camp North West, was purposely located a long way from the Austrian border, several hundred kilometers, on the Rhine. This alone should indicate that any border incidents or whatever the author of this report anticipated was quite out of the question. In any case, I knew nothing about the affair until now.

HERR BÖHM: Then the Prosecution submitted another document yesterday, Number D-951. On the second page of the document it says:

"According to the report of the Military District Headquarters VI, the SA Brigadeführer are also said to be considering forming such a staff guard and to be engaging SA men for one or one and a half year's service for this purpose..."

Numerically this would amount to 6 or 8,000 SA men permanently armed with rifles and machine guns in the area of the Military District VI alone."

The letter is dated 6 March 1934, or 2 March 1934.

The second letter says:

"The training is to be carried out with rifle Model 98."

Have you seen this document?

JÜTTNER: No, but I heard of it yesterday.

[The witness was handed a document.]

HERR BÖHM: Do not these documents refer to the people's militia which Röhm intended to set up and in which he failed? Please describe Röhm's plans for the people's militia in its political connection, and please be brief.

JÜTTNER: First, as to the staff guard: there were staff guards, in part armed, to protect the offices and to post, quite publicly, guards of honor and other guards. That 6,000 men should have formed the staff guard in Höchst on the Main is quite out of the question. Herr Von Blomberg repeatedly made mistakes and apparently he did so in this case too. These mistakes are especially clear from an exchange of correspondence after the death of Röhm, in which he attacked me personally because of an order of 8 May 1934, and where he presented the facts quite wrongly. When the Chief of Staff, Lutze, and I objected, he excused himself with the explanation that in such turbulent times such mistakes could occur.

If the Tribunal wishes I can go into more detail.

Chief of Staff Röhm, as he repeatedly said at Führer discussions, wanted to create, in addition to the Reichswehr, a militia from the ranks of the SA amounting to 300,000 men. He repeatedly emphasized that the State leadership had to keep the pledge they had given to the old gentleman, meaning Hindenburg, that is, that the Reichswehr should not be touched.

He spoke quite openly with the Military Attachés of the Western Powers about his militia plans. I myself was twice a witness, and gained the unequivocal impression that particularly the French Military Attaché in no way objected to these plans.

THE PRESIDENT: I don't believe that we need to prolong this discussion. The witness says, as I understand it, that this document refers to a militia which Röhm wanted to set up. Is that right?

HERR BÖHM: Yes, those were the plans of Röhm.

THE PRESIDENT: Well, that's all we need there.

HERR BÖHM: Then I should like to add a short question: with the death of Röhm were not these plans completely shelved, that is, did they not fall through?

JÜTTNER: To my knowledge these plans were not followed up in any way. On the contrary, the comparatively few arms which the staff guards possessed were collected and delivered after the 30th of June, 1934.

HERR BÖHM: Now I come to the next document, Number 3050-PS, the first page, A. This document was submitted in cross-examination yesterday and contains a collection of articles from the *SA Mann*. This was commented on widely in the Commission and it was made sufficiently clear just what the *SA Mann* meant to the individual members of the SA and what the influence of the Supreme SA Leadership was upon this paper. However, since these things have been brought up again, it is necessary to comment on them again, even if only briefly. It is fundamentally wrong, if one quotes articles, to quote only excerpts.

THE PRESIDENT: You don't seem to have understood that you are not here to comment; you are here to ask questions of the witness. If you want to ask questions of the witness, ask them.

HERR BÖHM: Yes, Mr. President. I should like to quote an article which has not yet been read, Document Number 3050-A. This article must be quoted by me, Mr. President, because I should like to ask a question about it, since—and I ask that this be officially recognized—the article from the *SA Mann* as submitted by the Prosecution does not read as it appears here. The article reads:

“Since marching is in the last analysis a form of sport, the same principles are true of it as of any other sport. Health and hardening of the body are conditions for successful march training. This includes foot care which is especially important for those marching.”

The article then goes on to describe foot care. I will not take up your time with that. Then it points out that marching is not only important for the soldier in the Army, but also for the political soldiers, the SA men. A completely unmilitary matter in my opinion. In Document 3050-C, I see there is an article, also from the *SA Mann* of 24 March 1934, with the heading “cross-country.” This is the third article submitted to the Court in Document 3050-PS, and it is supposed to prove that the SA had a military attitude. Therefore the article should be submitted.

THE PRESIDENT: I've already told you that what you are doing is making an argument on the Document 3050-PS; and what you ought to do is to ask the witness a question as to the document.

HERR BÖHM: Herr Jüttner, the document which I read to you, now that I have pointed out the mistakes, should, according to the Prosecution, prove the military character of the SA, because it

speaks of foot care and because this article appeared in the *SA Mann*. Did you order this article?

JÜTTNER: The Supreme SA Leadership did not order the articles in the *SA Mann*. The editors were responsible for them. The SA was not military in character and never attempted to be. If, as was said yesterday, the paper *SA Mann* was to be used to help in the education and training of the SA, that was because...

THE PRESIDENT: Dr. Böhm, we don't want that argument over and over again. We know perfectly well that you say these documents about training were simply for sports; and the witness has said it at least twenty times in the course of the examination.

HERR BÖHM: Very well, Mr. President. Since these documents were submitted yesterday, the witness must in some way comment on this matter; and I must ask him about it and inform him of the contents of these documents if he is to comment on them in giving evidence. There is no other opportunity.

THE PRESIDENT: He had ample opportunity to get familiar with the documents. The documents were put to him yesterday.

HERR BÖHM: They were not put to him, Mr. President. No questions were asked.

THE PRESIDENT: He stated yesterday that that was a lecture by Lutze.

HERR BÖHM: No, not this document, Mr. President, the whole series of documents...

THE PRESIDENT: If you'll ask the witness questions instead of arguing, we shall get on better; and if you won't ask questions, you'll have to stop the examination.

HERR BÖHM: Very well, Mr. President.

[Turning to the witness.] In another article in Document 3050 of 24 March 1934, with the heading "cross-country," it says:

"The most effective means in the hands of the clever leader is to implant in the hearts of the youth now growing up a love of nature, and to steel them physically and mentally."

Do you conclude from this article, which was not written by you or on your instructions any more than the others, that it denotes a military attitude or military training?

JÜTTNER: No.

HERR BÖHM: In Document 3050-E it states in the third line: "For the SA man there is no tiring, no slothful resting, whether in the political struggle or in the maintaining and saving of valuable goods for German political economy. The SA is always ready."

Do you take that to imply a military attitude? I do not know who wrote this article; it was not ordered by you in any case; but can one take the attitude expressed here to mean a military training or a militaristic attitude?

JÜTTNER: No one would take it to mean a militaristic attitude or an attempt to adopt one.

HERR BÖHM: Document 3050-F is called militaristic because it contains a service plan according to which 6 hours of drill, 3 hours of shooting practice and 3 hours of field exercises per month are demanded of the SA members. I should like to ask you in the first place, what did the drill consist of?

JÜTTNER: As the name implies, it consisted of exercises for the public appearance of the SA at demonstrations, parades, and so forth. That was a matter of course and a necessity. For example, if, as was my responsibility, one had to move 120,000 men in big parades at the Party Rally, they had to be prepared for this by drill if the spectacle was to be at all presentable. It is for these things that the men were drilled, to teach the men proper bearing, as is the case in other countries too.

HERR BÖHM: And what was the shooting practice?

JÜTTNER: We had only small-bore rifles, the sports model. We could, therefore, practise only with small-bore. That was sport shooting.

HERR BÖHM: What did the field exercise consist of?

JÜTTNER: An attempt was made to train the men mentally and to awaken in them a love of nature. By the various exercises the men were to be forced to think; it was to train their courage and to give them initiative, the same as in the motor exercises in the NSKK, where motorcyclists were trained in cross-country riding and had to overcome difficult terrain.

HERR BÖHM: Then another article is contained in this document, which reads:

"The difference between shooting and aiming is the difference between the training of the SA and that of the soldiers of the nation, the Wehrmacht"; and then it goes on to say: "military field observation was only a fraction of what is understood by SA field observation."

Now I should like to ask you to what extent the SA field observation has anything to do with the military field observation, particularly whether it is important that SA field observation did not go far beyond the military points? Is it correct that perhaps the SA man by no means considered field observation merely from the point of view of shooting in the technical sense? Is it true that above all

through this field observation he got to know his own country, and that with this end in view he was trained in marching and in field observation?

JÜTTNER: None of these questions you have put were leading questions. It was clear to every SA man that our field observation in the SA could in no way be compared with the military field observation, which was along purely military lines. We in the SA combined field observation and field exercises with the ideological training of the man, namely, we wanted to awaken and deepen in him the love of his own country. Above all, this field service was intended to teach him to know the natural beauties of his country, the historical significance of the sector in which these exercises were carried out.

THE PRESIDENT: I'm afraid you don't understand what I say. I thought I had said to you that we quite understood your argument that the training which was given to the SA was not for military purposes but was for other peaceful purposes. Your argument isn't proved by repetition; and the Tribunal does not desire to hear any more of this.

HERR BÖHM: Yes, Mr. President. Then I can skip the next articles. They are all more or less the same in content. I will not put any further questions.

Then Document 4009 was submitted yesterday. It was to prove that the article in the *SA Mann* was a semi-official article of the Supreme SA Leadership. This is also a subject which has been repeatedly discussed. But if these things are submitted ten times, Mr. President, then I ask permission to comment on them ten times. These things were dealt with before the Commission down to the smallest detail, and every point, even the smallest, was elucidated before the Commission. Yesterday this document was submitted again; and therefore I am forced to comment on it once more, much as I dislike doing so.

THE PRESIDENT: Ask the witness questions about the document. I suppose there is a difference in your language between making a comment and asking a question. Will you ask the witness a question?

HERR BÖHM: Yes, Mr. President.

Witness, a document was submitted here written by the press consultant of the paper *Der SA Mann* to a Herr Körbel, who was at that time Reichsleiter. He was induced to write an article. Did that have anything to do with the Supreme SA Leadership?

JÜTTNER: I did not quite understand. Körbel was not a Reichsleiter. The letter was sent to whom?

HERR BÖHM: The letter was sent to Reichsleiter Rosenberg.

JÜTTNER: A letter from Körbel to Rosenberg?

HERR BÖHM: Yes.

JÜTTNER: He wrote it in his capacity as editor of the *SA Mann*. If he wanted to have an article for the *SA Mann*, that was entirely his affair. If he also gives himself the title of press consultant of the Supreme SA Leadership, then in this capacity his task consisted merely in transmitting to the rest of the Germans press news which we wanted to have published, and in taking care of its publication.

HERR BÖHM: 750,000 subscribers are mentioned in this letter. It might be deduced, although it was not expressed here, that these 750,000 readers were members of the SA. Can you comment on that?

JÜTTNER: I do not know exactly how these 750,000 subscribers were made up. I only know that the paper, about which we had very mixed feelings, did not meet with a very good reception, and consequently was little read in SA circles, comparatively speaking.

HERR BÖHM: But you know that this paper was then banned?

JÜTTNER: It was banned in 1939.

HERR BÖHM: Another document was submitted yesterday, Number 366-1. That is a report of Mr. Köchling as a special delegate of the OKW with the Reich Youth Leader in connection with the Sudeten German Free Corps.

I should like to ask you to explain the connection between the SA and the Sudeten German Free Corps.

JÜTTNER: Your Lordship, as far as I remember, I have already commented on this before the Commission. I was assigned by the SA as Liaison Führer to Konrad Henlein.

HERR BÖHM: Herr Jüttner, perhaps I may shorten this by asking: Is it true that the SA associated or co-operated with this Sudeten German Free Corps only to the extent that these people, during the time they were in Germany as refugees, when they were not organized into a Free Corps, were given economic support by the SA; for instance, perhaps one or the other was given a blanket or something to eat out of, so that they should have what was necessary merely to exist.

JÜTTNER: Individual groups of the Free Corps were helped by individual SA men without orders from us to do so, in the way which counsel has just stated. They helped to establish the refugees and supplied the Free Corps members with the necessary blankets, cooking utensils, and so forth. And then these SA men helped the men of the Free Corps in forming their groups. The Free Corps itself had no military value. If I may speak quite plainly, it was a loosely organized band, a group of people who had taken upon themselves the task of receiving the refugees who were coming in,

some of them in great distress, bringing them to refugee camps, and preventing incidents and attacks at the border, which actually did occur. In other words, protecting their fellow citizens. This Free Corps did not have any military value.

HERR BÖHM: Then Document 3993-PS was submitted yesterday. It is a letter from the Chief of Staff, Lutze, to Reichsleiter Alfred Rosenberg, in which he thanks him for congratulations which he received because the premilitary and postmilitary training of the SA was entrusted to him. This has already been replied to several times. Is it true that this premilitary and postmilitary training had reached the stage it was intended to reach?

JÜTTNER: I said yesterday that through the decree of Hitler of January 1939...

HERR BÖHM: May I ask you to be very brief, Herr Jüttner?

JÜTTNER: ... this task was given to the SA ...

THE PRESIDENT [*Interposing*]: The Tribunal has asked about it in cross-examination. What is the point of putting it to him again? He has given his account of it in cross-examination.

HERR BÖHM: Mr. President, I asked him to be brief. I only did it to complete the evidence.

THE PRESIDENT: What is the good of doing it if he has done it already? It doesn't matter whether you do it briefly or not; he is going to say the same thing.

HERR BÖHM: Document D-923 was also submitted yesterday. Are the cases ...

THE PRESIDENT: The Tribunal wants you to understand that the function of re-examination is not to repeat what has been said in cross-examination, but simply to explain and to alter, or to explain and clarify—if you like the word—what has been said in cross-examination.

HERR BÖHM: Yes, Mr. President.

[*Turning to the witness.*] Document D-923 was submitted to you yesterday. It concerned the legal handling of the Pflaumer and Schlögl cases. Did you have any part in the measures which were taken as a result of this case? Did you use any influence on any of the judges who acted in this case, or did you take the view that, basically, in all cases of amnesty, that amnesty or the amnesty decree was an affair of the State, and you naturally wanted to apply it to your SA members in cases in which this was possible?

JÜTTNER: As I said yesterday, I had no part in these two cases. I did not know about them. The SA Leadership tried and punished offenders; that was its principle and it acted accordingly. In cases of amnesty, they applied to the SA as well.

It might be important to mention here that the punishment of the concentration camp guards at Hohenstein, the juridical punishment, was set on foot and carried out not at the suggestion of Reichsstatthalter Mutschmann, but at the suggestion of SA Obergruppenführer Von Killinger. The SA Leadership asked for the punishment of the Hohenstein men and had the court carry it out.

HERR BÖHM: Then Document 784-PS was submitted yesterday, which was said to be a typical case of forcefully suppressing political opponents, and I have discovered in my study of the files that particularly old fighters of the NSDAP were ill-treated. For example, there was a certain Stahl who joined the SS in 1933, and a certain Seifert, an old fighter from the year 1924. There was the case of Kreisobmann Krüger of the German Labor Front, and a member of the NSDAP since 1931 by the name of Ginsk.

In this connection, Mr. President, I should like to ask the members of the Prosecution to give me the letters which are missing here, especially the letter of the Chief of Staff, Lutze, and the letter of Hess, which my colleague Seidl asked for yesterday.

Now, I should like to ask you, Witness, . . .

SIR DAVID MAXWELL-FYFE: My Lord, I had a search made, and we haven't got the documents, the answers from Defendant Hess or from Chief of Staff Lutze.

HERR BÖHM: That letter would have been very essential, Mr. President, to show the attitude of Chief of Staff Lutze in this case.

Now I must go back to Document 1721-PS, Mr. President. It is a report to the Group Kurpfalz-Mannheim on action taken by Brigade 50, and concerns the order of the Supreme SA Leadership in connection with the objects which were possibly stolen or otherwise lost in the year 1938.

Witness, the situation was dealt with here yesterday in cross-examination as if there were a number of indications which fitted together and vouched for the authenticity of the report of Brigade 50.

Please note the report and at the top, at the right, look at the three letters which are contained in this document, "Z. d. A." The same letters appear on your order signed "Jüttner" at the left near the bottom, next to the reception stamp. You are not a handwriting expert, but even a layman can see whether these letters were written by the same hand.

Please comment on this.

JÜTTNER: As far as I can recall, I was asked yesterday whether I saw these letters. I said yes. As I compare them, I must say

that on the one document they are written in a different handwriting from that on the other document. That is shown by the flourish and the peculiar "A" and "d." The "Z" also is different.

HERR BÖHM: It is not difficult for a layman to see that. Now, please look at the reception stamp on the left at the bottom on your order, in the first square...

JÜTTNER: Yes, I see.

HERR BÖHM: These are two letters. Is it probable that these two letters which may mean the same thing were written by the same hand?

JÜTTNER: On closer observation of the writing on the stamp, one must come to the conclusion that the stamp which follows the report of Brigade 50 is forged. The differences are so obvious. The "F," for instance, the "H," and the crooked "G," or whatever it is supposed to be, indicate that it is copied.

HERR BÖHM: Did you see anything else on the document...

THE PRESIDENT: The Tribunal will adjourn now.

[A recess was taken.]

HERR BÖHM: Mr. President, I have but four more questions which deal with the affidavit, which was submitted yesterday, deposed by Minister President Dr. Högner, and these are the final questions.

Witness, in the affidavit deposed by Minister President Dr. Högner which was read yesterday, it says: "Already in the year 1922"—I believe it was at the so-called German Day at Coburg—"the SA with its armed bands dominated the streets, made attacks on the peaceful population and particularly on people who held different political opinions, and travelled in lorries to all demonstrations of the National Socialist movement."

Now I should like to ask you, what were the conditions in Coburg like and what were the occurrences which took place there? Who attacked whom? Please be brief.

JÜTTNER: I did not participate in the first appearance of the SA outside of Munich, on the German Day in Coburg, but I was informed exactly by a number of colleagues who were participants. For quite some time beforehand the opposition press tried to prevent this SA rally and incited the people against it. Already when the transports left Munich conflicts occurred and the Police searched the departing SA members for weapons; the same thing happened when the transports arrived at Coburg. In Coburg there was a majority of the political opponents, the SPD and similar organizations. The SA was by far in the minority and the fact that the

conflicts were not more serious is due entirely to the disciplined behavior of the SA. Coburg may be taken as a classic example of that. These attacks were started and carried out not only by the Coburg political opponents, but by people who had come in from the outside and who were overwhelmingly stronger than the SA.

HERB BÖHM: Dr. Högner declares further in his affidavit:

"The appearance of the SA was all the more dangerous because it had been trained by the Reichswehr as a sort of auxiliary unit and some had their own secret depots of arms while others had access to the secret depots of arms of the Reichswehr."

Is that true?

JÜTTNER: This statement is quite incomprehensible to me. The Reichswehr at that time, with the approval of the Government, carried on a training program for the purpose of protecting the border, especially after the incidents along the Polish border, which made it necessary to protect our home borders. The men who were brought in for this training were taken from such units as "Stahlhelm," "Jung-Deutscher Orden," and "Reichsbanner." Only one organization was not admitted to this training and that was the SA, which was mainly due to the instigation of the civil authorities, who, I remember, were very close to Dr. Högner's party at that time. Secondly, the Reichswehr had arms depots for the purpose of protecting the frontiers, and these arms depots were kept very secret, and quite rightly so, for there were uprisings and riots all over Germany—I am thinking of Brunswick, Hamburg, *et cetera*. It was important that these weapons should not fall into the hands of unauthorized persons. On the occasion of the Polish uprising, in which I myself took part as a member of a Free Corps, one of these depots was used with the agreement of the Inter-Allied Military Commission. A British officer who belonged to the Commission, and whom I knew very well from the previous war, supported us in the most chivalrous manner. It is remarkable that Dr. Högner should try to lay these arms depots at the door of the SA, for he really must have known that Minister Noske, who was a close friend of his, had given the Reichswehr permission to set up these depots. Thirdly, I should like to say that between the SA and the Reichswehr an extraordinary state of tension existed. I know that from Generaloberst Heye. He was Generaloberst Von Seeckt's successor, and I knew him well from the previous world war. He also told me that General Von Lossow, in November 1923, was responsible for the failure of the action in Munich in which the SA also participated. It shows also that Generaloberst Von Seeckt was strongly opposed to the NSDAP.

Dr. Högner must have known that too, for in connection with this question he afterwards...

THE PRESIDENT: That is just argument.

HERR BÖHM: That will do. My question was only whether you had access to these depots, if they really existed as secret Reichswehr depots.

JÜTTNER: No. That was completely out of the question. May I continue?

HERR BÖHM: That is quite sufficient. Dr. Högner further asserts in his affidavit that on 9 November 1923 Ludendorff was chosen to be the man to unleash the national war. What do you know about that?

JÜTTNER: I beg your pardon, but only a half-wit could assert such a thing. General Ludendorff after the first World War wanted a peaceful solution...

THE PRESIDENT: It is quite sufficient if he says no to your question.

HERR BÖHM: Yes, Mr. President.

[Turning to the witness.] Do you remember that weapons were found in 1933 in the Trade Union House in Munich?

JÜTTNER: Yes.

HERR BÖHM: And now one last question. What were relations like between the SA and Himmler?

JÜTTNER: The relations between Chief of Staff Lutze and Himmler were the worst conceivable. The relations between the SA and the former Reichsführer SS personally were definitely bad. In conclusion, may I give a very brief explanation to the questions which were put, Your Lordship?

HERR BÖHM: To which questions did you want to make a few remarks?

THE PRESIDENT: Dr. Böhm, you can make, of course, in your speech what arguments you like, but unless it is in answer to some question from you, I don't think this witness ought to say anything on his own, unless there is something he wants to clear up in his evidence.

HERR BÖHM: The witness wanted to clarify some questions which I had put to him, Your Honor, as far as I understood him.

THE PRESIDENT: What question do you want to clarify?

JÜTTNER: The question of whether the SA committed war crimes or crimes against humanity.

HERR BÖHM: Mr. President, I would like to ask that the explanation be permitted.

THE PRESIDENT: Very well, if he does it briefly.

JÜTTNER: I shall be very brief, Your Lordship. To conclude the questions put to me I should like to assure you upon my oath that we of the SA did not do anything bad. We did not want a war and we did not prepare for a war. We of the SA, the leadership and the organization itself, did only those things which in other countries are expected of the men of the nation as their moral duty, which Mr. Truman or Marshal Stalin or the statesmen of England and France expect of their men, namely, to do everything to protect the home country and to maintain peace. We of the SA did not commit any crimes against humanity, either. The leadership did not decree them, nor did they tolerate them, nor allow the organization to become guilty of any of them. When individuals committed misdeeds they should be punished and it is our will, too, that they should be brought to just punishment.

We therefore do not ask for mercy or sympathy by portraying our domestic distress. We ask only for justice; for nothing else, for our conscience is clear. We acted as patriots. If patriots are to be labelled as criminals, then we were criminals.

HERR BÖHM: Mr. President, I have no further questions.

THE PRESIDENT: The witness can retire.

DR. OTTO PANNENBECKER (Counsel for Defendant Frick): Mr. President, one document for Frick is still outstanding, a document which was granted to me before the end of the evidence, but which has not been handed in. I ask to be allowed to present it now. It is an answer to a questionnaire by Dr. Konrad in Berlin, which deals with the attitude of the Ministry of the Interior in the Church question. It is Frick Exhibit Number 15. I believe I may refer to this document without reading it in full.

THE PRESIDENT: Yes. Now, then, counsel for the Defendant Funk wanted to recall the defendant, did he not? Yes, well, will you do that now?

DR. OTTO STAHLER (Counsel for Defendant Göring): Mr. President, on 14 August I submitted a written application to present evidence which has not been decided upon, and which probably cannot be decided upon yet. It is not possible for me to tell whether this application for evidence will be considered unless I refer to it at the present stage of the proceedings. It deals with incidents which were discussed in the session of 9 August during the cross-examination of the witness Sievers by the British Prosecution. On that occasion it was said that the Defendant Göring was connected with medical experiments which were made with concentration camp inmates. It was in connection with the experiments to make sea water potable, to find a cure for typhus, and finally, with

freezing experiments. These experiments allegedly were carried out on concentration camp inmates, and it was asserted that all of this took place at the direction of, or rather with the approval of, Göring. Now I should like to prove that Göring did not decree these experiments, and therefore they were not carried out on his instructions, and that he did not even have knowledge of such practices.

In this connection I named as witnesses, first of all, Dr. Schroeder, the senior medical officer of the Luftwaffe, who apparently is a prisoner in British or American hands. I also named the Defendant Göring himself as a witness, for it is uncertain whether it will be possible to bring the witness Schroeder here in time. Therefore I should like to ask the High Tribunal's permission to have Göring recalled to the witness stand so that I can question him in regard to these questions which I have just mentioned and outlined.

THE PRESIDENT: Would you give, please, the Tribunal a reference to the transcript where the Defendant Göring testified upon the question of experiments.

DR. STAHLER: Mr. President, I tried to do that, and I am anxious to prove that. I have not received the transcript as yet. These documents were submitted in the afternoon session of 9 August. I could not get the individual numbers; I will submit them later today.

THE PRESIDENT: You are misunderstanding me. What I asked you for was a reference to the transcript where the Defendant Göring himself was questioned, as I imagine he was questioned, about experiments generally.

DR. STAHLER: Yes, he has been examined generally on this matter, and the witness Milch also testified in general. General Milch was heard on this matter on 8 March 1946. (Volume IX, Pages 51, 52).

But I should like to point out that Field Marshal Milch testified generally to only a part of these questions. However, specific accusations have now been raised, which were unknown to me at the time and in regard to which I could examine neither the Defendant Göring nor the witness Milch.

THE PRESIDENT: What I wanted to know in addition to General Milch was at what page in the transcript the Defendant Göring himself dealt with the matter, either in the examination-chief or in cross-examination or re-examination.

DR. STAHLER: I cannot tell you yet, but I will submit it immediately.

THE PRESIDENT: We will consider the matter. Have the Prosecution any observations they wish to make with reference to the application on behalf of the Defendant Göring?

SIR DAVID MAXWELL-FYFE: My Lord, this is the first time that I had heard of the application, so I am speaking from memory.

My Lord, my recollection is that the Prosecution put in certain correspondence about the experiments. That was put in cross-examination by Mr. Justice Jackson to Marshal Milch so that when the Defendant Göring went into the witness box the question of his connection with the experiments was a matter that was known to him and with which he could deal.

My Lord, I would like to do the same as I understand the Tribunal wants—to check as to how far he did deal with it, and if there is any further point arising on that, perhaps I could mention it to the Tribunal later on.

THE PRESIDENT: Could you do that when we rise, or just before we rise today?

SIR DAVID MAXWELL-FYFE: Certainly, My Lord. I will have it looked into at once.

THE PRESIDENT: And perhaps Dr. Stahmer could let us have a reference to the passages in the transcript at 1 o'clock, or even 2 o'clock. One o'clock would be preferable.

SIR DAVID MAXWELL-FYFE: That would help a lot.

DR. SAUTER: With the permission of the Tribunal, I will call the Defendant Funk to the witness box.

[The Defendant Funk took the stand.]

THE PRESIDENT: Defendant, you understand you are still under oath?

FUNK: Yes.

THE PRESIDENT: You may sit down.

DR. SAUTER: Dr. Funk, can you understand me?

FUNK: Yes.

DR. SAUTER: Dr. Funk, today I must examine you about this affidavit submitted by the Prosecution last week, deposed by the former SS Obergruppenführer Pohl, and dealing with concentration camps. You yourself have been heard on this group of questions on 7 May here in this courtroom. In this examination of 7 May, in response to a question, you stated that at that time you had seen this Obergruppenführer Pohl once, and I quote from the transcript of 7 May, "I saw him once at the bank, when he was having lunch with Mr. Puhl, the vice president of the bank, or some of the other gentlemen of the directorate. I passed through

the room and I saw him sitting there. I myself," you said, "never discussed these matters with Herr Pohl (Gruppenführer of the SS). It is completely new to me that these things took place." That is a literal quotation from your testimony of 7 May. Now Obergruppenführer Pohl, in his affidavit Number 4045-PS, which was submitted to the Court on 5 May, stated that he had talked to you twice. Do you remember the other conversation you had with him, a conversation which you did not mention at that time? Yes or no?

FUNK: No.

DR. SAUTER: What can you say about this other conversation, regarding the statement of Obergruppenführer Pohl? I mean the conversation in regard to which Obergruppenführer Pohl stated that he had talked with you on Himmler's instructions to the effect that you, as Reich Minister of Economics, would give preferential treatment to the SS when textiles were being allotted, apparently for uniforms? What can you say on this subject?

FUNK: It is my conviction that this conversation did not take place. At any rate, try as I may, I cannot remember such a conversation with Pohl, and many things show that it could not have taken place. First of all, I did not concern myself with such specific things as the allocation of textiles to a branch of the services. Secondly, I always held conversations like that in the presence of my state secretary or in the presence of the competent chief of the department or specialist, particularly if the conversation was with a person whom I did not know. I never concerned myself with the supplying of textiles from concentration camps. These things came within the province of the Reichskommissar for the utilization of old materials. That was an office outside the Ministry. This office co-operated of course with the textile department of the Ministry. It is my conviction that it was done in this way: the old material, that is, the old used textiles, from the collecting depots went directly to the factories which processed material of this sort. Therefore, I firmly believe that the officials of the Ministry of Economics knew nothing about the deliveries of this material from concentration camps, because these materials had previously been collected by the economic department of the SS under the leadership of Pohl. Before this Trial I did not even know that the concentration camps were under Pohl's jurisdiction. I had no idea of the connection between the economic department of the SS and the concentration camps. Also the scope of these deliveries of old materials was not so large, in proportion to the entire production, that I would have had to be bothered with them. But let us suppose that Mr. Pohl did visit me. My memory is not quite what it used to be, especially after the many years of illness that I have gone through, so that a visit of that kind, which Pohl stated lasted only

a few minutes, might have slipped my memory. If Pohl had expressed to me such a wish on the part of Himmler, then I most certainly would have turned this matter over to my state secretary for him to handle. But Pohl's assertion that he said something to me about dead Jews from whom these deliveries were supposed to have come, these goods turned in by the SS as old material, is monstrous. That was supposed to have been in 1941, perhaps 1942. That Pohl should tell me, whom he was seeing for the first time, a secret which was closely guarded up to the end, is in itself incredible. But he had no reason to mention dead Jews to me when he told me that big deliveries would be arriving from the SS. It seemed perfectly plausible to me that in the large domain of the SS, where hundreds of thousands of men were housed in barracks, and were clothed by the State, there must constantly have been much old material such as textiles, blankets, uniforms, underlinen, *et cetera*...

THE PRESIDENT: That is going into arguments rather than giving testimony of facts.

FUNK: In any case, I deny most emphatically that Pohl made such a statement to me. I call it a lie, a libel. Up to the day of this Trial no one told me anything, not a soul told me that Jews were being murdered in concentration camps.

DR. SAUTER: Witness, that is the one point on which I wanted to question you.

FUNK: I would not have allowed a report like that to rest. I would have applied immediately to my superior, the Delegate for the Four Year Plan, and would have told him about it.

DR. SAUTER: That is the one point, Witness. I believe it has been cleared up sufficiently with your testimony. Now I would like to turn to the second point. And I ask you again to be brief so that we will be finished by 1 o'clock if possible.

Already in your testimony in May, I believe on 6 May, you testified that you met SS Obergruppenführer Pohl once at lunch at the Reichsbank, in the mess of the bank, and the witness Pohl in his affidavit Number 4045-PS refers to this conversation and says—I will omit everything else—that he spoke with Puhl, your vice president. You know nothing about that and it would only be a waste of time to ask you that. I will read to you what he says about you. In the transcript of 5 August he says:

"After we"—that is Gruppenführer Pohl and Vice President Puhl and several others—"had inspected the various valuables in the Reichsbank vaults, we went to a room to have lunch with the Reichsbank President, Funk. It had been arranged to serve lunch after the inspection. In addition to Funk and

Pohl,"—that is your vice president—"several other gentlemen of my staff"—the staff of Pohl—"were there. About 10 or 12 people were present.

"I sat next to Funk"—please note this particularly, Witness—"and we discussed, among other things, the valuables which I had seen in his vaults"—he means the vaults of the Reichsbank.

THE PRESIDENT: Dr. Sauter, we have all heard this evidence the other day. Can't you put the circumstances of it to him and ask him whether it is true? I mean, it is not necessary to read it all.

DR. SAUTER: Mr. President, I am only reading the two sentences which apply to the defendant. There are only two sentences and I am omitting everything else, but naturally I have to read these two sentences to him so that he might know exactly what Pohl said. What I have read up to now is the first sentence, Mr. President. And now, the second sentence follows, which is very brief. It reads as follows:

"On this occasion it was clearly stated that a part of the valuables which we had inspected had come from concentration camps."

That is the end of the quotation, and the end of the second sentence.

Witness, you have heard what Pohl, the Gruppenführer, asserts in his affidavit. Is it correct or is it not correct? You can answer the question with "yes" or "no," and if it is "no," then you may give a brief explanation.

FUNK: That he talked with me at this lunch, that I do recall. That he discussed with me the valuables deposited by the SS, that I do not recall. But I know with certainty that he did not talk to me about these valuables about which I knew nothing, that is, about that part of the things which had been brought in by the SS which were to be converted not by the Reichsbank but by the Reich Finance Ministry, that is, gold, jewelry, and what other things there may have been. I never knew about these things, I never saw these things, and Pohl did not talk to me about these things, because if he had, I would have known about them and would have inquired about them. It is, therefore, quite out of the question that Pohl would have stated in the presence of 12 other persons, among whom there were perhaps three or four or five directors of the Reichsbank, and in the presence of the servants that things like that had come from concentration camps and from Jews who had been murdered. The fact that the SS deposited gold, foreign exchange, notes, and bonds, and that such things also came from the concentration camps, that I did know, and I discussed these matters

with Pohl. That was how this terrible thing started—by Himmler asking me to put vault space at his disposal in the Reichsbank for these confiscated objects, and I asked Himmler myself to be allowed to prepare this for the legal Reichsbank business, but I did not know anything about the other things; I did not know anything about the nature and size of them and nothing at all about their origin.

DR. SAUTER: Witness, I should like to put one final question to you so that everything will be entirely clear. When did you learn, for instance, that rims of glasses, gold teeth, and such like—in addition to gold coins and foreign exchange which had to be given up—that such gruesome things had come to your Reichsbank? When did you learn that for the first time? Tell me under oath.

FUNK: Here, during this Trial.

DR. SAUTER: Yes. Can you swear that with a clear conscience?

FUNK: I can swear to that. Dr. Sauter, I must add...

THE PRESIDENT: He has already given this evidence.

DR. SAUTER: It was just a very brief question.

FUNK: Of course, what was in the SS deposits, that I did not know. I never saw that. That other things, like foreign exchange, gold, and securities, could have been in them, that was clear to me...

DR. SAUTER: You have already explained that. Thank you very much, Mr. President. I have no further questions.

MR. DODD: You now tell us that you did know about the gold deposits and the jewelry coming in from the concentration camps, is that so?

FUNK: I did not know anything about it.

MR. DODD: You did not know anything about it? I must have misunderstood you. I thought you just told the Tribunal that you did know that this gold and these semi-precious stones and jewels and other things were turned over to you through Himmler?

FUNK: No, I did not know anything about that. I only spoke of what was contained in the deposits made by the SS; that the SS did have such deposits in the Reichsbank I did know, but what was contained in them I did not know, for I never saw them and no one ever told me about the nature and the origin and the quantity of these things.

MR. DODD: Well, you recall, when you testified here before the Tribunal on 7 May, that I asked you if you knew anything about the gold deposits from the concentration camps, and this testimony is present in the record (Volume VIII, Page 166). You said at that time that Mr. Puhl told you that the SS had delivered a gold deposit

and "he also told me, and he said this somewhat ironically, 'it would be best if we didn't try to ascertain what this deposit is.'" This was your own testimony, in this very courtroom, in the same chair that you are sitting in now, before the same Tribunal, just a month or two ago. Now, you had some knowledge certainly that there was something sinister about these deposits—didn't you?—when Director Puhl told you it would be best if you didn't ascertain or learn too much about the nature of the deposit. What do you say to that this morning? What is the fact of the matter?

FUNK: This testimony was already corrected by me insofar as when the first discussion between Himmler and myself took place, Himmler told me that the SS had confiscated considerable valuables in the East and that among them there were assets of interest to the Reichsbank such as gold, foreign coins, foreign bank notes, bonds, and other foreign exchange.

Thereupon I asked him—and I testified to this as well—to appoint someone to discuss this matter with Vice President Puhl. Himmler then sent Pohl to see Puhl, after I had told Puhl about my conversation with Himmler. When these things arrived, when the first deposits arrived and were put in the vaults, Puhl said to me: "The SS deliveries are now being deposited," and on that occasion he perhaps made a sarcastic remark, "who knows what is contained in them?" and that is approximately what I have testified to here.

MR. DODD: You also told us, on that same day, and in the next answer to the very next question you made this statement before the Tribunal, "And I personally assumed, since they were always speaking about a gold deposit, that this gold consisted of coins or other foreign currency or possibly small bars of gold or something similar which had been brought in from the inmates of the concentration camps." Well then, you had some knowledge of the source and the origin of these deposits, didn't you? You knew where they were coming from, and that is all we want to establish here, and you had a pretty good idea, to put it mildly.

FUNK: That didn't necessarily come from the concentration camps only. But that the inmates of the concentration camps...

MR. DODD: Now, just a moment. There is no sense in arguing about it at all. All I am trying to clear up here is the fact that you told the Tribunal yourself that you assumed it came from the inmates of the concentration camps. Now, this is your own testimony of 7 May.

FUNK: Not only the gold, but also the foreign exchange, the bank notes, and everything which would come under the heading of legal transactions of the Reichsbank. That these things could come from the concentration camps as well was quite clear to me,

for these things had to be collected from the inmates of the concentration camps just as from every other person. That was clear to me. It was about the other things that I did not know anything; I did not know about the agreements between the Finance Ministry and the SS.

MR. DODD: Let's see whether you did know or not. You were in the courtroom when Mr. Elwyn Jones of the British Prosecution Staff offered the Document 4024-PS, which told about the action "Reinhard." You heard that document discussed here, didn't you?

FUNK: Yes.

MR. DODD: That document is before the Tribunal, and in that one action—and we don't even know if that is all of it—Reichsmark to the total value of 100,047,000 were deposited either in the Reichsbank or in the Ministry of Economics just from this action alone. Are you telling the Tribunal that you as head of the Reichsbank would not know that in one year, or at least in one year, 100 million Reichsmark were deposited in your bank, or credits to that amount were placed in the deposit of your bank? You would have to know that, wouldn't you?

FUNK: Will you please repeat the sum. It doesn't appear to have been translated correctly.

MR. DODD: We don't need to get it down to the pfennig, it was over a hundred million Reichsmark.

FUNK: One million?

MR. DODD: No, no, a hundred million.

FUNK: A hundred million marks in foreign exchange? That is quite impossible. It is absurd.

MR. DODD: But the document here shows it.

FUNK: Where would these 100 million marks come from? That's absurd.

MR. DODD: I am glad you are enjoying this, but let's get on with a little more. This document of the SS men further says that it was a sum of 500,000 American dollars. Wouldn't you have to know about that money being deposited in your bank or at your disposal? That's quite a lot of money too, in dollars, in Germany in 1943, I assume.

FUNK: Certainly, but I do not recall that I was ever informed of these 500,000 dollars. That is a sum which could have been discussed with me, I admit, but it was not discussed with me.

MR. DODD: You know this document goes on, "and there is currency from practically every country in the world in very great amounts." You know that, don't you? You know this money

was being turned over to your bank by the SS in very large sums—500,000 American dollars, thousands of British pounds, francs, all kinds of money. Now, you certainly had to know that it was coming into your bank in 1943, and in such an amount that you must have known whence it came. What do you say about that?

FUNK: That the SS, on the strength of the action mentioned here, deposited securities, foreign exchange, bank notes, and gold coins, and whatever else there might have been in the Reichsbank, that I knew. The scope of these deliveries was not reported to me. At any rate, I do not remember it and I do not know the total sum. And I am quite surprised that the amount is so high.

MR. DODD: Yes, so are we. The important thing is that as the head of that bank, Mr. Witness, don't you agree that it is impossible that you would not know about these sums of money? You were something more than an ornament there, surely. And just this is a reason for this Tribunal and anybody else to believe that you would know about deposits in these great amounts, particularly in foreign currency. And I don't think that you have given any kind of satisfactory answer yet. Is your answer that you do not remember or is your answer that you absolutely did not know? Or is it both?

FUNK: The amount mentioned first, of a hundred million marks, that I consider absolutely absurd. The second sum of 500,000 dollars, that I consider possible. It is quite within the realm of possibility that such sums were taken away from people in these actions—for instance, from people who were taken into concentration camps, and also in other actions...

MR. DODD: But I'm not asking you if it is possible they were taken away—we know they were taken away.

FUNK: I knew that would have to be collected in the normal way, but the amount was not mentioned to me. I did not know the amount. I did not know about it.

MR. DODD: I am not going to go through these documents, but you have probably read of all the items listed, thousands of alarm clocks, and fountain pens. You knew about them, as a Minister of Economics, didn't you?

FUNK: I knew nothing about that.

MR. DODD: Would you know about the 1,000,000 carloads of textiles that these SS men said had been shipped or warehoused, which were composed of the clothing of the dead Jews and other people in concentration camps who had been exterminated? You had to know something about this as Minister of Economics?

FUNK: No, I did not know anything about these things. I explained this before this Court when I said that these things went to the Reichskommissar for the utilization of old material and they were sent directly from the collection camps to the various factories. Not a single person told me anything about confiscated textiles from concentration camps.

MR. DODD: Well, . . .

FUNK: May I say one more word in connection with something which refers to the Reichsbank matter. I myself am confronted here with, I would almost say, an incomprehensible matter, a puzzle. The fact that I was not informed of these deliveries of valuables, pearls, and so forth, is probably due to the fact that these things were not deposited for the use of the Reichsbank; the Reichsbank was only a clearing house and for that reason no one told me any of the details. But I, as president, bear the responsibility for everything that happened in the Reichsbank, together with the directors. If, however, officials were suspicious that things were happening which were the result of criminal acts, then it was their duty to tell me quite clearly and frankly and not do as I now remember Herr Wilhelm once did in a conversation when he said that it was a serious responsibility for the officials, a heavy burden—he used some such expression—on the officials. How could I, who at that time knew nothing about these matters, have inferred from this that it was a moral burden.

MR. DODD: I do not know how long you are going on with this, but as far as I am concerned, you've given me all the information I want about the matter. Really, Mr. President, I do not think this is being very helpful to the Tribunal. This last sort of statement is not in response to any questions I put to him. I just want to ask one or two more questions before lunch. Did you ever have any trouble with Oswald Pohl, the Finance Minister, the man who says that he talked this matter over with you, even to the point of the disgusting fact that the clothing came from dead Jews? Or did you have any trouble with him in your life—any personal difficulty?

FUNK: As far as I remember, I only talked with Pohl once and perhaps he visited me twice.

MR. DODD: The answer is no, is that right?

FUNK: No.

MR. DODD: Now, of course you have seen this affidavit. There he goes into very great detail about when he saw you, where he saw you, who else was present, even the number of people who were at your little lunch in the dining room there. Do you know of any reason why he should fabricate testimony like this against you? Should it help the Tribunal or should it help yourself? Why should

he lie about you in this terrible way? Can you give a suggestion, any motive, any cause?

FUNK: In my opinion the motive is purely psychological, because people who are in the terrible situation that Pohl is in, who are indicted for the murder of millions, usually attempt to incriminate others. We know that.

MR. DODD: May I interrupt you . . . You mean in the same position that you find yourself in?

FUNK: No, I do not regard myself as a murderer of millions.

MR. DODD: Well, I don't care to argue about that with you, I merely want to give you an opportunity to state to the Tribunal any reason that you might have—and I think you have. And then only one other thing. I want to ask you this—and there is no doubt in our minds. Although there were millions, there must have been millions, of valuables taken from the people who were killed in the concentration camps and looted through your Economic Ministry, assisted by your Reichsbank—do you want us to understand you knew nothing about that? Can you answer it briefly, yes or no? Am I right in so stating it—you knew nothing about it?

FUNK: I have never asserted that I knew nothing about it. I have always said that I knew that confiscated valuables were deposited in the Reichsbank by the SS and that foreign exchange, gold, and other foreign securities and bank notes were converted by the Reichsbank. But that I knew nothing . . .

MR. DODD: Wait a minute, please. I don't think you misunderstood my question. I was asking you about the textiles only at the beginning, and I think that you have told this Tribunal what you did know about the textiles. You did not know about the textile transaction at all, did you?

FUNK: No, I did not know that textiles from the concentration camps were used to this extent . . .

MR. DODD: That's all I want you to say, that's your answer.

Now, thousands of other articles of a personal nature, from wrist watches and fountain pens to ladies' bags, all kinds of jewelry and stones—an enormous part of these apparently, according to the testimony, was flowing through your Economic Ministry with the assistance of the Reichsbank, and you want the Tribunal to understand that you had very little knowledge if any, of all those transactions?

FUNK: I knew nothing about those things, nothing at all.

MR. DODD: And gold teeth, or gold dentures, were in the vaults of your bank, but you didn't know anything about that strange deposit; you knew nothing about that either? So you didn't know

anything about all these great sums of foreign currency actually going through your Reichsbank and deposited there, did you?

FUNK: I knew nothing about the huge amounts which are being mentioned here. I knew only that foreign currency was being deposited.

MR. DODD: Are you sure you were in the Reichsbank in those days?

FUNK: Yes.

MR. DODD: I have no further questions.

THE PRESIDENT: We will adjourn now.

[A recess was taken until 1400 hours.]

Afternoon Session

[The Defendant Funk resumed the stand.]

THE PRESIDENT: Dr. Sauter, have you any questions you want to put?

DR. SAUTER: No.

MR. FRANCIS BIDDLE (Member of the Tribunal for the United States): Defendant, I am not quite clear about your conversation with Himmler. Was this the first time that a deposit of this sort had been opened by the SS?

FUNK: Yes.

MR. BIDDLE: You have never discussed this with any SS personalities before?

FUNK: No, with no one.

MR. BIDDLE: And of course it was not Himmler's business to see that gold and notes were brought into the bank under the German law, was it?

FUNK: Himmler told me that large quantities of valuables had been confiscated by the SS and that they included valuables which interested the Reichsbank, such as gold, foreign currency, *et cetera* . . .

MR. BIDDLE: I did not ask you that. Will you listen now? Was it any of Himmler's business or duties to see that gold and notes were turned into the bank? That did not come under his jurisdiction, did it?

FUNK: Yes, if these things, for example, had been taken from the inmates of concentration camps, he would have had to . . .

MR. BIDDLE: That is exactly what I meant. So that you knew or suspected, since Himmler was dealing with you, that the gold and the notes had come from concentration camps which were under Himmler. Was that not the reason that you supposed that this material had come from camps? It was obvious, was it not?

FUNK: Not only from concentration camps. Himmler was also in charge of the customs police, and the SS also acted as police in the occupied territories. It did not necessarily follow that the material came from concentration camps alone, but . . .

MR. BIDDLE: Not alone; but you suspected it did come from the concentration camps when Himmler talked to you, did you not?

FUNK: Yes.

MR. BIDDLE: Did you ask him where it came from?

FUNK: No, I did not ask him.

MR. BIDDLE: He said the gold and notes were part of other property; there was other property, too?

FUNK: No, he said they were confiscated valuables. The interview was very brief and took place in Lammers' field headquarters, as I recall it, when I met him there. It was a very short conversation. He told me: "We have confiscated a large amount of valuables, especially in the East, and we would like to deposit them in the Reichsbank." May I add something? Then when these things came to the bank, Puhl and, as I recall, Wilhelm were present at a discussion, and they said that I should ask Himmler whether these things which had been sent in by the SS as their deposit—strictly speaking we were not allowed to touch their deposit—whether they could be used by the Reichsbank. I did ask him and he said yes.

MR. BIDDLE: Well, now, let us see. By the "East" he meant the Government General, did he not?

FUNK: At that time vast Eastern territories were occupied.

MR. BIDDLE: But he did not mean Germany; he meant occupied territories, did he not?

FUNK: He spoke of "the East." Well, I had to suppose he did.

MR. BIDDLE: You had no idea what he meant when he said "the East," I suppose?

FUNK: No. I thought the occupied territories in the East. That is what I understood. The Occupied Eastern Territories.

MR. BIDDLE: This was not one of your regular deposits; I think it would be appropriate to say that—it was not one of your regular deposits, was it? It was unusual?

FUNK: Certainly.

MR. BIDDLE: You did not ask him any questions about it at all?

FUNK: No, I did not speak with him any more than what I have said here. Last night I racked my brains to reconstruct everything, but I cannot remember anything beyond what I have said.

MR. BIDDLE: You were not curious about this deposit at all? You were not curious about it? It did not interest you?

FUNK: No, once or twice I talked to Puhl—once Wilhelm was there too—quite briefly.

MR. BIDDLE: Thank you; that is all.

THE PRESIDENT: The defendant may return to the dock.

DR. STAHLER: Mr. President, this morning you asked for information as to whether the questions for which I named the witness were dealt with previously. I have ascertained that in the session of 8 March 1946 the witness Milch was asked by me about one or

two letters which Obergruppenführer Wolff sent to him. The answer is by Milch. The letter is of May 1942. This is in the transcript (Volume IX, Pages 51/52).

Then in cross-examination this question was brought up again by Mr. Justice Jackson (Volume IX, Page 88). Then General Rudenko, in cross-examination of the same witness Milch, produced another letter from Himmler—to Milch, I believe—of November 1942 (Volume IX, Pages 128/129).

Up to now I have not been able to find anything more about it in the short time which was available. I do not recall having asked Göring about it. I do not think I did so, for this is quite a small point. I considered it cleared up sufficiently by the testimony of Milch. Milch was examined before Göring. In my opinion, this deals with other events. The question of making sea-water potable and the means to combat typhus were not discussed at all. Nor do I think that freezing experiments were mentioned, so that I think these are other subjects than the ones discussed by Milch.

THE PRESIDENT: Do you mean that the Defendant Göring did not discuss the subject of experiments on inmates of concentration camps at all? What you refer to is General Milch.

DR. STAHLER: Yes. As far as I recall the matter now—I was not able to investigate it as to Göring—as far as I recall, I asked only Milch about the subject. Then in the examination of Göring, which took place later, I did not come back to it because I assumed that this question had been cleared up by Milch. But I should like to examine the transcript carefully. At lunch-time I was not able to do so owing to the limited time.

In this connection I should like to point out one more thing. Mr. President, in my written application I made an application in case the witness Schreiber, whose statement was referred to by the Russian Prosecution a few days ago, is brought here as a witness. If the witness Schreiber is really to be produced, I ask to be permitted to examine Göring after the examination of the witness Schreiber so that it will not be necessary to recall him to the witness stand a third time.

THE PRESIDENT: The Tribunal will consider that, too. General Rudenko, can you inform the Tribunal whether Dr. Schreiber is going to be brought here, whether you are going to make use of the affidavit and have him brought here, or not?

GENERAL R. A. RUDENKO (Chief Prosecutor for the U.S.S.R.): We have taken all necessary measures in order to bring the witness Schreiber here to this courtroom, but we as yet have no information as to whether the witness will be brought before the case of the Organizations is closed. He is in a prisoner-of-war camp near Moscow.

I presume that in the course of today or tomorrow we will be in a position to inform the Tribunal more exactly.

THE PRESIDENT: Now, Sir David, have you been able to find out whether the Defendant Göring did give any evidence upon this topic?

SIR DAVID MAXWELL-FYFE: My staff are on that matter at the moment. They have not quite completed checking the transcript. I hope to be able to inform Your Lordship very shortly.

THE PRESIDENT: Very well. The Tribunal will deal with the question of documents on behalf of the Organizations, and I think that Dr. Servatius is going to deal with it first.

DR. ROBERT SERVATIUS (Counsel for the Corps of Political Leaders): Mr. President, first I shall present the contents of the document book, then I shall comment on the affidavits. I have already introduced the documents as such, following the taking of evidence; and the exhibit numbers were agreed on with the General Secretary.

On Page 1 is Document Number 10. It deals with statistics of the Party. It is an excerpt from an issue of *Der Hoheitsträger*. Its significance is that it indicates how many people are affected by the present proceedings. If you will look at Page 1 for the year 1935 the number of officials for Block, Zelle, Ortsgruppen, Kreise, and Gaue is given as approximately 600,000.

If you will look at Page 2, in the lower half of the page, the above figure is increased by the leadership of the organizations for the year 1935. In order to give the figures, there are the Frauenschaft and Frauenwerk (Women's Organizations), about 50,000; the Student's Associations, 1,600; the DAF (Labor Front) and so forth, 800,000; the Office of Public Welfare and NSV (Nazi Welfare), 300,000—I am giving round figures—and the Reich Food Estate, about 100,000; the Welfare Office for War Victims, 84,000. Those special offices amount altogether to 1,475,000. If the 600,000 previously mentioned are added, one reaches a figure of over 2,000,000.

THE PRESIDENT: Do these figures refer to persons who were Political Leaders within the definition?

DR. SERVATIUS: Yes, Mr. President.

THE PRESIDENT: Well, either the Gauleiter or the Kreisleiter...

DR. SERVATIUS: May I explain it briefly? One must make the basic distinction between the real Political Leaders who directed the political machinery, from the Gauleiter down to the Blockleiter, and besides them, the large number of people who worked in the Labor Front, NSV, and such other organizations, who were also

called "Political Leaders." This was clearly shown when the witness Hupfauer was examined here; he said that in his organization, which had 20,000,000 members, the leadership was carried out by "Political Leaders."

Later, in my closing speech, I will explain exactly what this means, but to begin with they are all included under the term: "Corps of Political Leaders." It is evident that the Indictment really meant only those who actually directed political offices, from the Gau to the Block; but they are all included in the word. That is why I have given these figures to clear up the matter.

THE PRESIDENT: What have we got to do with anybody except those from Gauleiter to Blockleiter? The rest of them are rank and file so far as the Tribunal is concerned.

DR. SERVATIUS: Mr. President, they are, to begin with, included in the term "Corps of Political Leaders," which the Indictment did not limit; it should have done so at the time. It is of significance because from these organizations into the technical staffs of these political offices . . .

THE PRESIDENT: You mean that the Indictment does not specify "Gauleiter down to Blockleiter," it says simply the "Corps of Political Leaders"?

DR. SERVATIUS: That is defined later, but at first in the introduction the whole "Corps of Political Leaders" is mentioned. If the Prosecution would clarify that, the number would be considerably reduced. I now only wanted to point out this statistical material . . .

THE PRESIDENT: Well, where was it that the Indictment was confined to "Gauleiter to Blockleiter"?

DR. SERVATIUS: In the Trial Brief. The offices are listed in detail, but it is never said that the others are omitted.

THE PRESIDENT: As I understand what you say, the Indictment charges the Political Leaders—the "Corps of Political Leaders"?

DR. SERVATIUS: Yes.

THE PRESIDENT: In that corps there are persons who were "Political Leaders" who are not included in the "Gauleiter down to the Blockleiter"?

DR. SERVATIUS: Yes.

THE PRESIDENT: Then at a later stage in the Trial Brief, the Prosecution limited, or purported at any rate to limit, their application for criminal declaration to the "Gauleiter down to the Blockleiter," the original scope of the Indictment.

DR. SERVATIUS: Mr. President, I understood this to mean that the staffs of the Ortsgruppenleiter and the Block and Zelle assistants

were omitted. Then the bulk would still remain, so that the problem was approached from the negative angle.

THE PRESIDENT: The Block- and Zellenleiter were not omitted, you say?

DR. SERVATIUS: No, only the assistants of the Block- and Zellenleiter, that is, their so-called staffs, and the staffs of the Ortsgruppenleiter, and I believe that...

THE PRESIDENT: That is what I said, that the original Indictment included the whole "Corps of Political Leaders," and these were limited to include only from the "Gauleiter down to the Blockleiter."

DR. SERVATIUS: I believe certain groups were omitted, though no one has said that the remainder was to be charged. It may be a misunderstanding. Perhaps the Prosecution could clear it up.

THE PRESIDENT: Colonel Griffith-Jones, could you tell us?

LT. COL. GRIFFITH-JONES: Perhaps I can be of assistance. The Indictment included all Political Leiter. When the case was presented, the Prosecution excluded from that total figure the staff officers on the staff of the Ortsgruppenleiter. Your Lordship will remember that the Corps of Political Leaders had its Hoheitsträger, the bearers of sovereignty; the Gauleiter, Kreisleiter, Ortsgruppenleiter, Zellenleiter, and Blockleiter. The Gauleiter, Kreisleiter, and Ortsgruppenleiter also had staffs, people working in their offices who are also Political Leaders but not Hoheitsträger; and the Prosecution excluded the staff officers and the Ortsgruppen staffs, leaving in all Hoheitsträger, from the Gauleiter down to the Blockleiter, and the staff of Political Leiter, or the Gau staff officers. That is, I think, how it stands at the moment.

THE PRESIDENT: You are agreed about that, Dr. Servatius? Are you?

DR. SERVATIUS: Yes, but then a formal statement must be made by the Prosecution. The Prosecution, as is well known, indicted the whole "Corps of Political Leaders." If they reserve the right to omit groups, and now wish to omit from the Indictment the Political Leaders in these organizations just mentioned, the NSV, Women's Organizations, and Labor Front, then they should make a formal application.

THE PRESIDENT: Well, now, Colonel Griffith-Jones, Dr. Servatius is submitting that you ought to make a formal declaration on behalf of the Prosecution that that is so.

LT. COL. GRIFFITH-JONES: My Lord, as I understand the position, all these Political Leiter to which Dr. Servatius is referring, the ones set out here, the Women's Organizations and so on, they

are all under the staff, they do work for the Political Leaders on the staffs of the various Hoheitsträger. I think it may be there is a possible exception in respect to the DAF, the German Labor Front. It had been suggested by the witnesses for the defense that there were other Political Leaders in the DAF who were not directly on the staffs of one of the ordinary Hoheitsträger; My Lord, if that is so, they of course are included in the Indictment.

THE PRESIDENT: This document does not appear to show whether or not these are staff officers. It simply gives us numbers.

LT. COL. GRIFFITH-JONES: It does not, but in fact that is the position that that was what made up the staffs of the various Hoheitsträger. The representatives of these various other organizations, the staff of each Hoheitsträger, the Gauleiter, Kreis-, and Ortsgruppenleiter, has very much the same form. It had its staff officer, its training officer, and so on; and it also had the representatives of these other organizations, such as the German Labor Front, the Welfare, the Women's Associations, the Student Associations, Teachers, and so on. It was the staff officers who made up the total staff. Perhaps I might just say that also this figure of 2,000,000 that has been given—of course that includes all the staff officers and the Ortsgruppen staffs, the ones which the Prosecution excluded, and it is the staff officers and the Ortsgruppen staff which makes up the majority of that total. I can give the Tribunal the exact figures, or as near as we have been able to estimate them. I am afraid I have not got them with me in Court at the moment. But the Tribunal will see that. I think I might say there were about 600*) Ortsgruppen and on each Ortsgruppe about 15 staff officers, so that the total is very considerable.

THE PRESIDENT: Those numbers would have to be deducted from the numbers that are here?

LT. COL. GRIFFITH-JONES: Those numbers would have to be deducted. The Prosecution have not included the number that Dr. Servatius has given the Tribunal now. From that you have to deduct the complete staff of all the Ortsgruppen, which forms a very large part of that total given you. Speaking from memory, the total, if you exclude that, was in the region of 600,000.

THE PRESIDENT: Perhaps you could give us the figures in writing, or perhaps you can state them now, because if there are 2,000,000 here, how many staff officers of the Ortsgruppenleiter are there, according to you?

LT. COL. GRIFFITH-JONES: My Lord, I will be able to tell the Tribunal within a quarter of an hour, if I might just send for the

*) This figure was actually given, although it should presumably read 60,000.

figures. I am afraid that I cannot carry them in memory. I will get them, and I will let the Tribunal know.

THE PRESIDENT: Very well.

DR. SERVATIUS: Mr. President, may I comment on that question? It is true that the staffs of the Ortsgruppenleiter were omitted. According to my calculations, they amount to about 1,000,000, but the number is increased by the fact that one and a half times, on an average, in the course of these years a turnover took place, so that one gets one and a half times the figures, and it is still a number amounting to millions. Another thing is that these Ortsgruppenleiter and these offices are not given according to the number of persons, but as offices, so that the deputies and successors are not included. Only a statistician can deal with this question in detail, but I do not believe that it is necessary to figure it out in detail to get a general impression that there are actually millions involved.

Now I will go on to Page 4. This is also an excerpt from *Der Hoheitsträger*. Unfortunately, it cannot be seen from the document that this is another issue of the *Hoheitsträger* of the year 1937, Second Series. Here one can see the percentages of Blockleiter, Kreisleiter, and Gauleiter. The majority—over 50 percent—are Blockleiter and Zellenleiter. These are not excluded from the Indictment. Their assistants are excluded. The core of the Political Leaders is formed by the Kreis- and Gauleiter, who amount to 3 percent.

The figures under (5) and (6) are also significant. The departmental offices amounted to 27.3 percent and the internal Party offices, the administration, to 16 percent.

These departmental offices are important because they include the Political Leaders of the Organizations, of the professional unions, the DAF, the NSV. But by no means were all Political Leaders of these formations at the same time on the staffs of the Gau, Kreis, and Ortsgruppe. Only a very few of them in each Gau, perhaps one or two, in the Kreis a few; perhaps a few also with the Ortsgruppen, so that there is only a fairly small number. The majority of these experts are in their own formations, of course.

Then I go on to Page 5. That is Document Number 12. It is significant in regard to the term "Corps of Political Leaders." Whether such a corps exists or can now be formed is doubtful. Here it says that a political organization is forbidden and the term prohibited. It is an order by Hess issued in the year 1935, with the legal justification that there can be no such special organization.

Then I come to Document Number 13. This is important for the following reason: One does not become a Political Leader by being appointed to an office, but by special nomination. It is stated here

that since this nomination as Hoheitsträger must be made by a special act of sovereignty, whoever is not nominated is not a Hoheitsträger and does not belong to the Corps of Political Leaders.

It appears that quite a number are not nominated, especially during the war none of those who, as substitutes, held lower offices in an honorary capacity.

Document Number 14 concerns the same question.

Document Number 15 also emphasizes in a similar way that such nomination is for public service and that it is therefore not merely a private appointment to an office.

In Document Number 16 on Page 9, we find the order that the Leiter in the DAF (Labor Front) are also Political Leaders of the Party. Thus, according to the concept of the Indictment, they belong to the Corps of Political Leaders unless excluded.

The next document, No. 17, gives the higher Führer Corps, Hoheitsträger down to Kreisleiter, and shows that the Ortsgruppenleiter and those below him are treated differently in regard to nomination. Hitler himself nominated the Gauleiter and their adjutants, the Gauamtsleiter, and Kreisleiter. That is of significance when judging these persons.

The next document, Number 18 on Page 11, shows the exaggeration of the concept of "Hoheitsträger" as opposed to the concept of the "Political Leader." It mentions the awarding of this title to motor vehicle drivers, telephone operators, caretakers of buildings, and orderlies, and it says that they should be made Political Leaders in the organizations rather than in the actual political department between Gau and Ortsgruppenleiter.

Document Number 19, on Page 12, says that nominations as "Political Leader" are suspended until further notice. It dates from the year 1944. The inference would be that those who received an office after August 1944 were in no case made "Political Leaders." In practice, this was already so before this time.

The word "Hoheitsträger" is of great importance. The Prosecution has placed great weight on it, and the small functionaries—the Zellenleiter and the Blockleiter—were not omitted from the proceedings because they were Hoheitsträger.

In Document Number 20, Page 13, Hess orders, on 14 April 1934, that Hoheitsträger will comprise only Gauleiter, Kreisleiter, and Ortsgruppenleiter. This is not expressly stated, but it can be concluded from the text.

The next document, Number 2 on Page 14, is important because it also closes the circle of Hoheitsträger with the Ortsgruppenleiter, excluding therefore the small officials as far as this term is concerned.

The next document is Number 21, on Page 15. It equally restricts the term to Gauleiter, Kreisleiter, and Ortsgruppenleiter.

In Document Number 1, on Page 16, the "Hoheitsgebiete" (areas of authority) are clearly determined. It is a book entitled: *The Administration of the National Socialist German Labor Party, 1940*, published by a Dr. Lingg. It says:

"For the execution of its task the Party is divided into four areas of authority: (1) Reich, (2) Gau, (3) Kreis, and (4) Ortsgruppe.

"At the head of each of these areas of authority is placed the respective Hoheitsträger: (1) the Führer, (2) the Gauleiter, (3) the Kreisleiter, (4) the Ortsgruppenleiter."

Document Number 22, on Page 77, of the year 1940, is an official order to the same effect which defines the term "Hoheitsträger."

Document Number 4, Page 18, is also to the same effect. It is an order of Hitler about the circle of persons allowed to determine the extent of damage after air raids. It says: "The competent Hoheitsträger, that is, Gauleiter, Kreisleiter, and Ortsgruppenleiter, are permitted to enter the areas affected."

In other words, when something has happened in the very area of the Blockleiter or Zellenleiter, he is not given access because he is not a Hoheitsträger.

I refer to Document Number 23, on Page 19, which is to the same effect.

Document Number 24, on Page 20, again confirms my submission.

Document Number 25, on Page 21, is an excerpt from *Der Hoheitsträger*. It deals with confidential information and tells how far this information may be passed on. Such confidential information may be passed on as far down as the Ortsgruppenleiter; Block- and Zellenleiter are not informed.

There follows Document Number 9, on Page 23; it is a decree of the Reich Finance Minister concerning the granting of marriage loans and various other subsidies. The document is of importance because it states which applicants must submit proof of their political reliability before being able to expect a grant. It shows that the Blockleiter and Zellenleiter must first prove their political reliability and cannot therefore be Hoheitsträger in the true sense of the word.

Now I come to another subject.

Document Number 26, Page 26. The question is to what extent SA and SS are subordinate to Political Leaders. It says there exists no such relation either for the SA, SS, Hitler Youth, or NSKK.

Document Number 27 is to the same effect. It confirms that the leaders of the SA groups or brigades were not under the orders of the Gauleiter.

The next document, Number 28, deals with recruitment groups and the question of how propaganda should be spread; assistance should be given by word and deed, and above all, people have to be won over and convinced. It also deals with spies and informers, a subject which comes up later.

The next document is Number 29. This refers to the relations between Party and State, and interference of the Party in State rights.

It is an instruction which says: "Keep away from measures to enforce that which is the State's responsibility. In calling upon State organs, it is to be carefully considered whether interference is justified."

Document Number 30 is on Page 31. It is a decree of Hess as to the attitude of a National Socialist, saying that he should endeavor to induce confidence and willingness to co-operate.

The next document, Number 31, also warns against attempts to misuse an official Party position in dealings with other offices for personal ends.

Document Number 32 deals with legal proceedings. It indicates that the Party has nothing to do with this and that it is to abstain from such proceedings. It says:

"The decision whether a punishable act shall be prosecuted or not rests alone with the Public Prosecutor and/or the Reich Minister of Justice."

The next document is Number 33. It is another order by Hess, of the year 1935. It refers to political appraisal reports and states that they may be issued only from the Kreisleiter upward. I should like to call special attention to this, because I consider it an essential indication concerning the higher Party leaders and a salient point conducive to proper estimation.

Document Number 34 concerns the problem of investigation, known as "spying" or "informing." It was issued by Hess in October 1936, and I quote:

"Never, even when dealing with the most unimportant fellow-Germans and their families, should Zellenleiter and Blockleiter become importunate, and they should never stoop to snoop and spy on them, for this would not breed confidence but distrust."

The next document, Number 35, is an order of 1937. It states that investigations and inquiries are in no way the task of the Party. These are up to the State agencies formed to disclose and eliminate such dangers.

In Document Number 36, on Page 37, this is stressed once more. It is a document concerning collaboration between Party offices and the Gestapo. It says:

"I prohibit all Party offices from conducting inquiries and interrogations in cases which are being investigated by the Gestapo."

The next document, Number 37, shows that the Political Leader's duty to report any incidents was no more compelling than that of any civil servant. The German Civil Service Law is quoted here. Paragraph 3 specifies:

"All circumstances which may endanger the interests of the Reich or of the NSDAP, even if not discovered in the course of his official duties, should be brought by him to the attention of his superior in office."

Document Number 38 is on Page 39. It concerns the expert agencies in the political staffs. It is a circular from the official book *Verfügungen, Anordnungen und Bekanntgaben* (Orders, Regulations, and Notices), Volume I. This deals with reports to be made by experts on their activities. The political situation report is to be rendered only by the Hoheitsträger. A difference is made between the two kinds. I am submitting it in defense of the experts on the political staffs.

The following documents concern the common plan against peace.

Document Number 39, on Page 41, is an excerpt from the commentary on the Party Program by Gottfried Feder, which is an authoritative publication of the year 1934. It says:

"We declare, however, that we do not contemplate enforcing by violence the Anschluss of Germans living outside Germany under Danish, Polish, Czech, Italian or French sovereignty."— I shall skip a sentence.—"Thus the postulate under discussion is devoid of any imperialistic aims."

Document Number 40 is on Page 42. It is an excerpt from the *Journal of Instructions of the Reich Leadership of the NSDAP*, and is an announcement made by Hess in 1933.

"In some foreign countries anti-German propaganda has recently made use of the untrue assertion that the NSDAP is contemplating to annex parts of Switzerland, Holland, Belgium, Denmark, *et cetera*.

"Though that supposition is utterly ludicrous, nevertheless it is believed in some quarters. The Reich Leadership, therefore, desires to state that no serious-minded person in Germany contemplates even touching the independence of other states."

Document Number 41 is on Page 43. This is another order of Hess, issued one year later, in October 1934. It says that the Germans and their Führer want to live together in peace and mutual respect with the other peoples and nations, and that they do not want any disagreement with anybody.

In August 1935, a year later, another order was issued by Hess to the Party; that is Document Number 42. It refers to Hitler's principal speeches, in which he repeatedly stresses his wish for a peaceful settlement of all unsettled questions. Statements made in foreign countries are declared to be malicious fabrications.

The next document, Number 43, is again by Hess, in January 1937. It refers to armaments, the purpose of which was to protect Germany against arbitrary actions coming from abroad.

I will come to another subject, that of the question of secrecy regulations, which disproves the existence of a common plan. First of all, the well-known secrecy order issued to the Wehrmacht also applies to the Party, that no office and no officer may have more knowledge of any matter than is absolutely necessary.

In Document Number 45 this order is extended to every agency, every official, every clerk, and every worker.

Document Number 46 deals with the question of the press. It concerns secrecy regulations to the extent that it says that important articles must be discussed with the Reich Press Agency before publication.

Document Number 47 is on Page 49. This is an order that discussions on the military situation are prohibited, and a case is quoted of a Blockleiter disclosing his most important instructions.

Document Number 48 is on Page 50. This document deals with the law concerning the interrogation of members of the NSDAP and its formations.

Secrecy is again assured here by the Official Secrets order; also, interrogations are to be made only when specially authorized and carried out only by Unterführer of the Party. Document Number 48 on Page 51 is a regulation for the application of this law. It determines who is considered an Unterführer in the eyes of the Party, and again I would point out that the last link in the chain of command is the Ortsgruppenleiter; Block- and Zellenleiter are again omitted, not even receiving the designation of "Unterleiter."

Document 49 is on Page 53. This is confidential information of the Party, dated 9 October 1942. "Preparatory Measures for the Final Solution of the Jewish Question in Europe. Rumors Concerning Conditions of the Jews in the East." It reads as follows:

"In order to be able to oppose the formation of rumors concerning the Jews, which are often of a wilfully tendentious

nature, the following statements on the present state of affairs are made:"

On the next page a statement is made of what is intended. First, to force the Jews out of the various fields of activity of the German people. Secondly, to endeavor to expel the enemy from the Reich territory.

The next document is Number 50. It deals with the idea of the conspiracy. Here the well-known Führer principle is shown...

LT. COL. GRIFFITH-JONES: I hesitate to interrupt, but before Dr. Servatius leaves that last document, Number 49 on Page 53: it is a document to which the Prosecution attach considerable importance now they have found it in the Defense document book. And at Page 54 it will be seen, halfway down in Paragraph 2, that the elimination of the Jews is no longer possible by emigration. I particularly draw the attention of the Tribunal to the last sentence on the following page, which is:

"It is in the nature of the matter that these partly very difficult problems will, in the interest of the final protection of our people, only be solved with ruthless severity."

My Lord, on the first page of that document it will be seen under the "Remarks" column, "Open only for G. and K." Dr. Servatius will correct me if I am wrong, but I presume that means for Gau and Kreis.

DR. SERVATIUS: I assume that the note "Open only for G. and K." means what the prosecutor has said, Gau and Kreis, but now I should like to read the whole document, since only then can the complete meaning be shown. Obviously, the writer's intention is to conceal the actual situation, and if it is said that there is no longer any possibility for emigration, the document shows that a settlement area in the East is to be created but not, as one might conclude, that extermination is the aim.

When it speaks of ruthless measures to be taken, or of ruthless severity, that was simply the customary expression found in Party writings, indicating that this measure of removal was to be carried out with ruthless severity, for I believe that it was sufficiently ruthless to remove these people regardless of the fact that they are now known to have been exterminated. I do not believe that I need read the whole document now, but I think that is the correct interpretation of the meaning.

Document Number 50 on Page 56 shows that in foreign policy, in particular, the Führer was entirely in charge; that even measures which struck every German as peculiar, as for instance the renunciation of the South Tyrol, were condoned following intimation from higher quarters.

Document Number 51 on Page 57 is to the same effect. It is a circular to the Party issued by the Party Chancellery in November 1942. It states that there can be "only one binding Party opinion" and refers to an earlier decree.

Document Number 52 on Page 58 must be understood in the same sense. It states that the Hoheitsträger are to act only in accordance with the directives received from the Führer.

Document Number 53 on Page 60 deals with the position of Bormann. It is stated here, and I quote:

"For years the Führer has been in the habit of entrusting Reichsleiter Martin Bormann with special missions of various kinds which do not come into the usual field of Reichsleiter Martin Bormann's activities in his capacity as Chief of the Party Chancellery, but which concern affairs where, outside the Party scope, instructions and opinions of the Führer have to be transmitted in his name to leading personalities of State and Government agencies."

This is of significance because Bormann decided very essential things in his capacity as Secretary of the Führer, for example, the subject of euthanasia.

Document Number 54 on Page 62 gives general points of view on political leadership, such as avoidance of differences of opinion among the leading Party members. A formation of cliques is thus practically made impossible.

The next document, Number 55, on Page 64, deals with the Foreign Organizations and explains the following document, Number 56, wherein the Hoheitsträger are classified, although in a somewhat different way. Since they do not have any territory of their own they are only given the rank of Gauleiter or deputy Gauleiter. It is the same with the Kreisleiter, Ortsgruppenleiter and Stützpunktleiter.

Document Number 57 on Page 68 emphasizes in this connection the principle: "National Socialism is no export commodity." It says that it is not proposed to win over other places abroad for National Socialism.

Document Number 58 on Page 69, is a circular on relations with foreign political groups, of the year 1942. It says the following:

"Any association of members of offices of the Movement at home or abroad with political or allegedly non-political groups in other states is determined exclusively by the relation of those groups to their own government with whom the German Reich entertains diplomatic relations. Any relations with such groups must without exception be discontinued, if they do not support their official government or if

they cause it difficulties. This holds good even if these groups describe themselves as National Socialist or Fascist."

Document Number 59 on Page 70 is from the *Reichsverfügungsblatt* (Gazette of Decrees). It is a decree of 4 November 1942 by Hitler. It says the following: "The living together of peoples calls for mutual and tactful consideration of their natural characteristics. The NSDAP and its organizations, therefore, have no European or world-wide missionary task to fulfill."

That concludes Document Book Number I.

THE PRESIDENT: Perhaps that would be a good time to break off.

[A recess was taken.]

THE PRESIDENT: Dr. Servatius, the Tribunal appreciates the way in which you are dealing with these documents; but, at the same time, are you not going over some ground which you will have to cover in your final speech?

DR. SERVATIUS: Yes, Mr. President; but in my final speech I shall touch upon these questions only briefly. First of all, they have to be submitted, and it has proved to be very useful in the question . . .

THE PRESIDENT: So far as the formal submission or offering of evidence is concerned, that can be done more shortly. If you are going to deal with the substance of the documents in your final speech, it is not necessary to take up time and give us the substance of the documents when you offer them in evidence. If you are going to deal adequately with it subsequently for your own purposes in your final speech, it means that you will do it twice over.

DR. SERVATIUS: Yes, Mr. President. The same questions will reappear once more with the affidavits that I am going to present. I cannot avoid at least mentioning the matters in court, for in my final speech I shall be very brief and refer to them only in a few words. I did not intend to . . .

THE PRESIDENT: I expect you to offer the documents now in evidence without dealing with the substance of them and then to deal with the substance in your final speech.

DR. SERVATIUS: Mr. President, in my final speech, which has been completed already, I deal with these matters very briefly, as I assumed that I would be able to deal with the substance now. Originally I should have arranged matters differently if we had then been told that the documents were to be submitted and explained, and that we might refer to them in the final speech. In that case my final speech would have been constructed in a different way from the way in which I have developed it now.

THE PRESIDENT: You will try to help the Tribunal, I am sure, by being as short as you can.

DR. SERVATIUS: Yes, indeed.

Document Book Number II begins with Document Number 60 and deals, first of all, with the question of coercion in accepting an office. First of all, there is a fundamental directive, according to which every member of the Party is compelled to collaborate and can be called upon to do so.

The next document deals with the same problem, and Document Number 62 again confirms the fact that, besides his professional activity, everyone is obliged to undertake Party tasks and it is significant that Party members who, without giving sufficient reasons, refuse to assume Party office, will be deemed to be acting contrary to the interests of the Party and are liable to be punished by the Party courts.

The next document shows that under the State Law for the consolidation of State and Party this violation of duty is punished by the State. In Paragraph 5 it says:

"In addition to the regular disciplinary penalties, arrest and detention may be decreed."

This is important in that physical coercion is introduced in the form of arrest.

The next document applies the status of public law to the Party statutes. This is Document Number 63. On Page 77 the practical conclusion is drawn that whoever acts contrary to the Party's tendencies can be expelled from the Party for lack of interest.

The next document, Number 8 on Page 78, shows a verdict where this actually took place when someone did not wish to accept an office. On Page 82 the official dismissal is confirmed. There was an appeal in this case, and the verdict was reduced from expulsion to release.

Document Number 64 contains a decision of the Supreme Party Court; someone was expelled from the Party for having deliberately neglected his duties in order to be expelled, or to be dismissed from his post.

Of special significance is Document Number 65. It says: "Expulsion from the Party is the greatest punishment." Reichsleiter Buch has repeatedly emphasized that under certain circumstances this means the loss of all means of existence and of all personal respect. Everyone knows that a definite punishment, no matter how long, will come to an end. But the loss of all means of existence here means that the person expelled and his family will never be able to obtain work or any livelihood.

In Document Number 66 conclusions are drawn as to civil servants who were expelled. Their appointments can be cancelled. Then there are several documents dealing with the coercion exerted on officials and employees by various Government agencies. This is Document Number 67, issued by the Bavarian Government, therefore not by the Party, saying what will happen if a person refuses an office.

Document Number 68 is a copy of a decree by the Ministry of the Interior; and this follows the same line. The official has to prove where he is working and what he does for the Party, otherwise a report is to be made.

Then Document Number 69 deals with teachers; it emanates from the State Minister for Education and Culture, dealing with Upper Franconia and Central Franconia. Teachers who prove in any way objectionable have to be reported by name.

In Document Number 70 the Reich Minister for Finance makes promotion dependent upon collaboration within the Party.

Document Number 71 deals with resignation and exclusion of civil servants; it says that they may not remain civil servants after they have left the Party. The least that the official can expect is that his promotion will be deferred. Bormann asks that he be notified at the same time of the decision concerning his exclusion as a member of the Party.

Then Document Number 72 deals with the experts' offices. Here it is emphasized that the experts' offices attached to the staff of the Hoheitsträger are to be run on non-political lines.

Document Number 73 gives special standing to the staff officials of the Reich Party Treasury who deal with financial control and accounts.

Document Number 74 again shows the separate development of the financial system apart from the regular political system.

Document Number 75 orders the separation of the Party's financial and political administration and the discharge of finance experts from the staff of the Gau leadership.

Document Number 75 also lays down the rule that the treasurers are responsible only to the Gau treasurer and must follow his instructions.

Document Number 76 deals with proceedings which the finance department can institute against any member, including the political staffs.

Document Number 77 shows the organization of the various offices in the staff. The distinction is made here between political leadership, administration, and Party courts.

Document Number 78 again deals with the separation of the Gau treasurers and cashiers.

Document Number 79 deals with the topic of the organization within the staff in the various spheres of responsibility.

Document Number 80 prohibits the interference of Party offices in Party court proceedings.

Document Number 81 is of significance insofar as the Party courts are put outside the Party organization and are made independent. As a result, Party judges are not Political Leaders.

Document Number 82 defines the position of the Party judge. It says: "He is subordinate only to the Führer," and therefore not a Political Leader.

The next few documents deal with the Church problem. First of all, we find the commentary given by Feder with reference to the Party Program. As far as cultural policy is concerned, it is stated that attacks on Christianity are to be avoided because they are clumsy and tactless; and at the end he emphasizes, "The Party is based on Christianity."

Document Number 84 is of significance, for it emphasizes in detail, as a Party commentary, what practical attitude should be taken toward Church matters. Under Points 27 and 29 it mentions full religious freedom and liberty of conscience, protection of the various denominations, repression and elimination of theological dogmas which are contrary to the German sense of morality, and so forth.

In Document Number 85, on the other hand, the Party turns against the so-called "Wotan Cult" and rejects it emphatically.

Document Number 86 prohibits interference by the State in Church discussions; it specifically says that any police interference, such as protective custody, confiscation, and the like, is forbidden. This document dates back to the year 1933.

Document Number 87 was issued in conjunction with a declaration of Reich Bishop Müller forbidding spiritual coercion. It is a directive of Hess dating back to the year 1933.

In the year 1935 a directive was issued by Hess which also opposed interference in Church matters. It states that the Party should abstain entirely from intervening in these questions and that individual action against churches is prohibited.

Document Number 89 is a circular letter taken from the Party regulations of the year 1937. It states that all denominations are to be treated alike and it decrees that the Party will remain aloof from all denominational groups. It rejects the creeds known as "Deutsche Glaubensbewegung" (German Faith Movement) and "Deutsche Gotterkenntnis" (Haus Ludendorff).

Document Number 90 deals with "National Socialist celebrations," and it condemns the attempt to bring about a substitute for religious services by means of certain celebrations of their own.

The next document, Number 91, deals with the practical consequences which result from the fact that when someone assumes a Church office he cannot be called to account for his actions but should be left unmolested.

Document Number 92 deals with the Reich Labor Service and states that the individual may not be impeded in any way. It merely opposes the formation of denominational bodies. Then we come to the treatment of students of divinity and the avoidance of polemics on Church matters in the Labor Service.

Document Number 93 deals with the book *The Myth*. When looking at it carefully, it is evident that it did not receive the Party's official seal of approval.

Document Number 94 deals with lynching. It refers to the Japanese measures concerning the sentencing to death of airmen participating in air raids there. The document condemns a similar attitude in Germany. This is in the year 1942.

Document Number 95 deals with the treatment of prisoners of war. It states that they were to receive sufficient food and that their treatment, although strict, should not be rough, and must be just and decent.

Document Number 96 deals with the employment of Eastern workers. This is a circular by the Reich Propaganda Leadership, which was also sent to Political Leaders. It says that the workers were to be reasonably treated, and therefore would have to be properly fed, and that "they must not be confused with prisoners of war."

Document Number 97 deals with the religious needs of the Eastern workers, and it says that Orthodox clergymen may be appointed.

Document Number 98 deals with the question of the interruption of pregnancies of female Eastern workers. This is a confidential communication by the Party Chancellery, which states that only with the consent of the worker concerned may such an interruption of pregnancy be carried out. It is only at the request of the pregnant woman that the pregnancy may be interrupted.

Document Number 99 deals with protective custody. This exceptionally severe measure may only be resorted to when the facts of the case and the question of guilt have been thoroughly investigated, and it is expected that it will be asked for only in really urgent and well-founded cases. This circular is addressed to the Kreisleiter.

Document Number 100 deals with the care of families of political prisoners and of the prisoners themselves after their release. The peculiar fact arises that the relatives of the political prisoners who are in concentration camps are taken care of both as to their economic and their political needs while, after their return, the internees released from concentration camps will continue to receive economic care.

Document Number 101, on the Jewish question, condemns rumors and states:

"Terror actions against Jews are to be avoided as provocations, so that it will be possible to counteract the foreign propaganda about atrocities and boycotting, and brand it as lies."

The next document is of significance insofar as the Prosecution has stressed the consumers' co-operative associations, which were incorporated together with the trade unions.

Document Book Number II has now been discussed in detail. Certain other applications have been granted me. Document Number 59-a has been admitted. It states that Himmler had only the Party rank of a Reichsleiter, but that he was not actually a Reichsleiter, which may be of legal significance.

Then we have another document which has been admitted, taken from a Leitz folder in the Gestapo office at Düsseldorf and dealing with the ill-treatment of foreign workers. In that document beating, detention, and ill-treatment are prohibited, and a Special Court sentence is mentioned according to which the guard personnel of a camp were sentenced to imprisonment for not less than 4 months for having deprived people of liberty and caused them grievous bodily harm.

Thus, Mr. President, I have submitted all the actual documents. I shall now turn to the affidavits which have been granted me.

THE PRESIDENT: You are going to deal with your affidavits now?

DR. SERVATIUS: Yes, Mr. President.

The Tribunal has before it a list showing these 64 affidavits which are granted to me. I should like to proceed now according to that list.

Affidavit Number 1 has been translated, and I shall submit it to the Tribunal. Up until now we have only had this document in English.

This is an affidavit furnished by a 60-year-old Landgerichtsdirektor (judge) in Ratisbon, who had been a Block Leader. He states how he had to take over this office and explains in detail what the work consisted of. He mentions the significance of the

organization book, which is of some importance inasmuch as many conclusions are drawn from it concerning the size of the organization and the activity of the various members. It is frequently repeated that this book was only a draft and was to be a working basis rather than a final official Party solution.

Document Number 2 has not been translated. It may be found in the transcript of 16 July 1946 before the first Commission. This is the testimony of a Kriminalobersekretär (clerk of Criminal Police) of Munich, who shows how his application was received; at first he was turned down as unreliable for the post of Blockleiter, but later on was installed nevertheless. The point of the matter is to show that these were not important political offices such as could only have been carried out by a so-called "Hoheitsträger." The witness answers the various questions.

Affidavit Number 3 was taken in the same session of the Commission. This is a commercial employee who was a Block Leader for eight years.

Then we turn to Affidavit Number 4, to be found on the same page. This is sworn to by a head dairyman who for ten years was a Block Leader in a small country town, and who was a former member of the Trade Unions. He deposes on the question of spying and informing. He also deals with the card index which was kept of the inhabitants, and the orders and instructions that he received.

Affidavit Number 5 comes from a Wiesbaden locksmith who is 72 years old, who for many years was a Block Leader and then later a Cell Leader. He deals with the question of spying and says that it was unwise and that it created ill will and mistrust. He also mentions the reason for his joining the Party and he describes the type of people from whom the Block and Cell Leaders were taken; inn-keepers, tailors, locksmiths, carpenters, and similar people.

Now I shall turn to Affidavit Number 6, which has been translated. This is the testimony given by a government office employee from Stuttgart. He gives information about conditions before the war and detailed statements on the various points which are of importance in connection with the matter of Block Leaders.

Affidavit Number 7 has not been translated. It may be found in the transcript of the Commission. This witness was a wartime Block Leader and an engineer. He defines his attitude toward the well-known card-index system and describes what a Block Leader had to do in his area. He mentions everything, from the collection of Party subscriptions to snow-sweeping and such work, in which he had to assist in the general interest.

Document Number 10 is the testimony of a bricklayer's foreman, who deals with the relationship with the Church in the district of Cologne, and says that at the creation of this cell they were all

strictly orthodox members of the Evangelical Church; that the parson was a member of the Party and that in the neighborhood theologians appeared as speakers; however, all that was changed in the year 1935 with the beginning of the German Christian movement.

Document Number 11 has also been translated. It comes from a Kreisamtsleiter—that is a professional Party official in the district of Cologne and Euskirchen. He deals with the card-index system.

I have omitted Document Number 9. It comes from Brake in Oldenburg and deals with general matters.

Now I should like to refer to Affidavit Number 16, and here I must make a correction. I have repeatedly referred to these affidavits as “documents,” which may bring about confusion. Documents are in the document book, whereas the affidavits have been numbered separately.

Affidavit Number 16 was made by an engine fitter who was a member of the Metal Workers' Union and who knows 200 Blockleiter. He deals principally with the question of nomination and confirmation of Political Leaders and he says that this hardly ever happened.

Affidavit Number 18 was sworn by a Zellenleiter in Bremen who was Verwaltungsoberinspektor (senior administrative inspector). He deals with the question of accepting office under coercion. He says that he had to fill out questionnaires which were added to his personnel file.

Affidavit Number 19 was sworn by a Block- and Zellenleiter at Hamburg, who deals with the question of whether a functionary is a Hoheitsträger or not, and he gives a detailed statement of facts which may be of service in judging this matter.

Affidavit Number 20 comes from Berlin and it describes activities in the metropolis; the collection of winter relief contributions and other contributions, the distribution of pamphlets, collections, and so forth. It also deals with the question of obtaining information on individuals, and the procedure followed. If negative reports were turned in in answer to requests through official channels, an extensive investigation from higher authorities would take place in order to check the correctness of the accusation.

Affidavit Number 12 comes from Berlin-Hessenwinkel, which is in the Soviet Zone. This is a publisher who gives a clear survey of conditions that prevailed in his area.

Affidavit Number 17 comes from Dresden and enumerates the activities of Blockleiter in simple matters and non-essential things. He compares the members of the Ortsgruppen staffs with the Block- and Zellenleiter and concludes that the Block- and Zellenleiter were less influential than the members of the Ortsgruppen.

Finally we have Affidavit Number 21 which comes from Eisenach and which also deals with the question of the treatment of the population; winning of confidence, exemplary behavior, no chicanery, spying prohibited.

Affidavit Number 13 comes from the Gau organization leaders of the Gau Munich, Upper Bavaria, and deals with the evidential value of the organization book which I mentioned previously; it deals therefore with the question of Hoheitsträger and the authority of the individual. It says that one passage of the book is particularly exaggerated: the one dealing with the opinions and plans about Block- and Zellenleiter who are named for propaganda reasons as the Party's most important people.

Three more affidavits follow, all dealing with Block- and Zellenleiter, which are:

Affidavit Number 14, the statement of an Amtsgerichtsrat (judge), who deals with the question of authority. Then there is a farmer from Westphalia who was elected mayor. He also states, in connection with the Hoheitsrechte, that they did not exist in the case of Block- and Zellenleiter, and that spying activity never took place, nor any activity, connected with a conspiracy.

Affidavit Number 15 is the affidavit of a full-time Kreisleiter at Nürtingen. He gives a survey of the Block- and Zellenleiter in his district and how they were composed: 40% industrial workers, 20% small farmers, 20% members of professions and civil servants. He then deals with the tasks involved; the issuing of food cards was the most important task. As far as the organization book is concerned, he said that it was merely a routine compilation.

Affidavit Number 24, made by Karl Hederich, has been translated. It deals with the matter of the number of Political Leaders, which I touched upon when I submitted my documents.

This witness was in the Reich Leadership of the Party and he was the deputy chairman of the examination board for literature. He dealt with statistical material and had to summarize it. Therefore, he is well-informed as to the questions which he treats in his affidavit. In his affidavit he shows that the number of the Political Leaders was not just 600,000, but in reality at least one and a half million. He emphasizes in this connection that this figure is set very conservatively and that he had taken into consideration that one person might have had more than one office.

Affidavit Number 25 is in Commission Report Number 1. It deals with the significance of the organization book, the terminology of which is of fundamental importance in these proceedings. The author says that he had talked this matter over repeatedly with the expert assistant of the author of the book, that is the witness

Mehnert, who stated that the book did not represent actual circumstances, although it was hoped to do so in the future.

Next, Affidavit Number 26 made by Foertsch. He is the former Gau Organisationsleiter of Munich, Upper Bavaria. He, too, says that the book was a theoretical work.

Affidavit Number 27 is a second affidavit by the same Hederich of the Reichsleitung just mentioned, in which the significance of the organization book is described in detail, based on personal knowledge of its contents.

Affidavit 28 is a second affidavit by the Gau organization leader of Munich, Upper Bavaria, Foertsch, wherein he defines his attitude to the question, "What is the Corps of Political Leaders?" He states that one should clearly differentiate between official position (Dienststellung) and official rank (Dienststrang). He says that only a fraction of those people who held an office in the Party were also appointed "Political Leaders." For instance, he estimates that in the Gau Munich, Upper Bavaria, about 20 percent of the people who held Party offices were "Political Leaders," while the balance of 80 percent were never nominated Political Leaders; therefore, as to the legal aspect, a considerable reduction in numbers must be made. Then he points out that the granting of the title "Political Leader" and the instalment in office were carried out by different agencies.

Affidavit 29 was sworn by the witness Davidts and states that the speakers, such as Reich speakers, Gau speakers, and Kreis speakers, did not as such have the rank of Political Leaders.

Then follows Affidavit Number 30, which is a document by Alfons Schaller, Kreisleiter at Cologne. He deals with the well-known card-index which was in use in the Gau Cologne, Aix-la-Chapelle, and explains its existence on the basis of local circumstances; that is to say, since the large card-indexes had been destroyed by air raids, they were to have been compiled afresh by the lower offices, although, he says, these card-indexes were in practice not re-established.

Affidavit 31 is made by a Richard Schaller and deals with political appraisals. He states that the offices under the Kreisleitung could not issue any such appraisals.

A document by Gauleiter Sprenger was submitted by the Prosecution, Document Number D-728. At the time, I disputed the authenticity of the document, and various witnesses testified about it. Here we have an affidavit made by a man who was adjutant to the Gauleiter and worked with him as Gau manager for years. He says, according to his personal knowledge, that judging by the nature of these letters, they could not possibly come from the source to which they are attributed, and he adds to his affidavit the statements of other people who told him so, too.

SIR DAVID MAXWELL-FYFE: My Lord, I am very anxious that the Prosecution's case should rest on documents which are unchallenged as far as it is humanly possible. Therefore, rather than have any dispute on the document, the Prosecution will not rely on that document which is dealt with here.

DR. SERVATIUS: Mr. President, if I understand correctly, this Document D-728, by Sprenger, is being withdrawn. Is that correct?

THE PRESIDENT: Yes; go on.

DR. SERVATIUS: Then I will omit Affidavit 33, which deals with the Sprenger document.

Affidavit 34 is sworn to by an Oberlandesgerichtsrat (Provincial Judge), who presided over a Supreme Party Court, and he states his opinion that Party judges were not Political Leaders, although later, in 1943, a certain change was made in the organization book, according to which they came closer to the Party.

Mr. President, may I refer once more to the document which has been withdrawn, D-728, and ask that the excerpt recorded from that document be stricken from the record.

SIR DAVID MAXWELL-FYFE: I make no objections, My Lord. When I withdrew the document, I withdrew it entirely from the record. Certainly.

DR. SERVATIUS: Now, I shall turn to the various departments...

THE PRESIDENT: Go on, Dr. Servatius.

DR. SERVATIUS: Now, I shall turn to the affidavits dealing with the expert appointments in the staffs of the Hoheitsträger. In the Hoheitsträger's staffs there were various groups of offices, comprising the regular political leadership offices, Party administration offices, and finally professional and specialists' offices. These specialists' offices were as a body and in matters of discipline subordinate to the Hoheitsträger, but they received their instructions directly from the Reichsleiter.

I shall begin with Affidavit 35, deposed by Schön, a Gau training leader in Mainfranken. He deals with the training material for the schools and also with the problem of severing connection with the Church. In this connection he says that it was prohibited. He says further that he never in any way participated in the planning of any war crimes or crimes against humanity. He testifies as to the activities of his office.

Affidavit Number 36 is made by Dr. Schulz, chief leader for education of the Gau propaganda office in Gau Lower Silesia. He states in detail what kind of information was received concerning the outbreak of the war, and that everything happened very rapidly

and surprisingly. He further talks about the setting up of the DAF and its propaganda activities. He states that it is essential to note that only 4% of the people in office were paid officials and 96% of them were honorary officials, also that 76% belonged to the Christian denominations.

The next group of affidavits deals with the Party administration.

We have Affidavit Number 37, given by Paul Künzler, who was in the finance administration. He confirms the exclusive activities in finance and technical administrative matters, and how the personnel were kept away from all political tasks.

The third group of expert offices comprises the expert liaison agents between the Party branches, the professional representatives, the general expert counsellors and offices, and finally the office of welfare and public care. To the liaison experts belonged the Women's League (Frauensschaft), the Teachers' League, and the Students' League. They are independent organizations, which have no connection with the Hoheitsträger through an office in their staffs. Only the local leaders form the liaison with the Gau- and Kreisleiter in an advisory capacity. Before the Commission two female witnesses for the Women's League, Westernacher and Paul, were heard, and for the Teachers' League, a Dr. Kutover.

As Affidavit Number 38, we have a statement by Frau Künast, Gau department leader in the Berlin mother's service. It says that she had no connection with the Gauleiter or any of his collaborators, and that she was directly subordinate to the Women's League Gau Leadership.

In Affidavit Number 39, a lady physician, Dr. Hildegard Brauns, testified as to the activity of the Women's League's district leaders in Wesermünde and the manner in which conferences were carried out; she also says that at conferences which did not deal with purely feminine matters the women had to leave the room, and they were never called in for political work.

The professional group was composed of teachers, civil servants, technicians, physicians, and lawyers. For the educators and teachers, I cannot submit an affidavit as yet. For technical reasons it was impossible for me to do so.

Concerning civil servants, I have Affidavit Number 40, made by Dr. Schenk, who also confirmed that at conferences of Hoheitsträger with their staff officers these groups did not participate, and he says that since 1943 the office for civil servants was closed down since its work was not considered sufficiently important.

Dealing with the Kreis and Gau offices for technical science I have one affidavit given by Schönberger, a Kreis technical office leader of Cologne, who describes his activity, which was purely

technical, in connection with electric power, building, transport, and so on. He says that he was called in only for practical work of a technical nature.

Affidavit Number 42 is from the Gau technical office leader for Pomerania, Mackels; he makes statements on the same lines as the previous witness and says that all work had to be done without pay, and outside of his usual occupation.

Then follows the Office of Public Health. Here Affidavit Number 43 applies, which was sworn to by a Dr. Sassé, head of the Kreis public health office in Iserlohn. He says that the local leaders of the National Socialist physicians' league were at the same time leaders of their respective Gau offices for public health. He states that he was consulted as far as professional work was concerned, while at the inner staff conferences the physicians were not admitted, so that they were not informed along political lines.

Then follow the tasks of the legal offices. Affidavit Number 44, by a Kreis legal office leader, Dr. Steinhäuser of Augsburg, deals with the task of the lawyers' league; he says that the legal offices which were attached to the staff had no political significance, since as early as 1942 they were dissolved as being non-essential to the war effort.

The next group are expert offices and expert advisers, the DAF leaders, representatives of handicrafts and commerce, the office for agrarian policy, the office for communal policy, the economic consultants, and delegates for racial questions. In this connection I should like to submit Affidavit Number 45, made by a Kreis leader of the DAF, from Neu Ulm, whose name is Haller. He describes in detail just what the DAF men had to do and what their position was, and emphasizes that exclusively social work represented the only activity which was carried on in his sphere.

For the office of trade and commerce, I cannot give you any affidavits, since I have no witness at my disposal.

Then follows Affidavit Number 46, made by the former Reich Minister for Food and Agriculture and Reich Farmers' Leader, Darré. He deals extensively with the development of the Reich Food Estate and clarifies the question as to how far a farmers' leader can be active in the Party or to what extent he can belong to the Reich Food Estate and shows that the Reich Food Estate was entirely independent of the Party and was a separate professional organization which until 1942 succeeded in retaining its independence of the Party. He expresses his views on various questions in detail, particularly as regards the attitude of the Reich Farmers' organization toward the Church.

Then I shall turn to the Office for Communal Politics. I have two affidavits, one made by Dr. Plank, of the Office for Communal

Politics in Nuremberg. He says that the Party concerned itself with the so-called human leadership, whereas expert legal and administrative questions...

THE PRESIDENT: Dr. Servatius, I do not know whether Sir David Maxwell-Fyfe was going to refer us to these passages in Göring's evidence this evening; maybe he was. Perhaps we had better break off now because we may not be able to finish the whole of this affidavit summary. Were you, Sir David?

SIR DAVID MAXWELL-FYFE: I was going to inform Your Lordship of the fact that we had not been able to find any passages in the examination of the Defendant Göring. It extends over certain ones. I hoped we had not missed them, but we have been through them and cannot find them.

THE PRESIDENT: Well, then...

SIR DAVID MAXWELL-FYFE: My Lord, that leaves the application of Dr. Stahmer in this position. The document that reference is made to is Number 008 (GB-586), which is a letter of the witness Sievers, and it contains the sentence:

"As I have informed you, the direction for carrying out the experiments is in the hands of the Director of the Hygienic Institute of the Reich University of Strasbourg, Professor Dr. Haagen, Major in the Medical Corps, and Consulting Hygienist to an air fleet, who was commissioned with this task by the Reich Marshal, the President of the Reich Research Council..."

That, My Lord, is the effect of it. The position is that when Field Marshal Milch was giving evidence, letters were put to him on Document Number 343-PS, the second of which, under date of the 31st of August, said that he had heard with great interest of the reports of Dr. Rascher and Dr. Romberg.

"I am informed about the experiments. I shall ask the two gentlemen to give a lecture combined with the showing of motion pictures to my men in the near future."

Then Your Lordship may remember that Field Marshal Milch said that he was only acting as the signatory for his own medical inspection in the air force when he signed these letters and he could not remember anything about them. My Lord, that was the way the evidence was left. As to the rulings of the Tribunal, there are two that seem to be applicable. One was that when the Tribunal decided what the order should be—final speeches of the defendants before the taking of evidence of the Organizations—the Tribunal stated on the 31st of May that the defendants will be allowed to call to the attention of the Tribunal any circumstances developed in the hearing of the Organizations which is thought to be helpful to their defense;

and, My Lord, previously the Tribunal have laid down the general ruling that certain sub-paragraphs of their ruling of the 23rd of February do not limit the power of the Tribunal to allow a defendant to be recalled for further testimony in exceptional cases if, in the opinion of the Tribunal, the interest of justice so requires. My Lord, the Prosecution feel naturally reluctant even to suggest to the Tribunal what is an exceptional case and what are the interests of justice in a particular case, but, My Lord, they do want to make two points—one particular to this application and one in general. The point peculiar to this application is that it was known, of course, when the Defendant Göring went into the witness box, that there were these letters in existence and that his second-in-command, Field Marshal Milch, had said that that medical inspection of the corps of the air force was dealing with these experiments and were in touch with the SS on them. My Lord, as far as we can find, the matter was not pursued after that; therefore, at that time, the defendant had notice of the general position although not—I quite agree with Dr. Stahmer—with these particular experiments dealing with spotted fever. My Lord, the general point—the Prosecution desire to emphasize this—is that this procedure ought to be confined to exceptional cases where the interest of justice requires this course very clearly. It would be unfortunate if this procedure of recalling were to become common or were to be dealt with on any points which are not of primary importance. Your Lordship, of course, remembers that the English rule is that the procedure is only used for matters which are strictly *ex improviso*. As I say, the Prosecution here cannot say that the particular point of spotted fever is not *ex improviso*, but the general position of experiments was brought to the defendant's attention before he gave his evidence and therefore does not arise as an unforeseen point. I do not think that the Prosecution can help the Tribunal further regarding this matter.

THE PRESIDENT: The Tribunal will consider the matter.

On Monday the Tribunal will sit until 1 o'clock. After 1 o'clock they will sit in closed session.

SIR DAVID MAXWELL-FYFE: I am much obliged.

[The Tribunal adjourned until 19 August 1946 at 1000 hours.]

TWO HUNDRED AND SIXTH DAY

Monday, 19 August 1946

Morning Session

MR. DODD: Mr. President, I would like to be heard very briefly this morning on the application of Dr. Stahmer for permission for the Defendant Göring to take the stand. I made no objections Friday, but I feel that I should make one so that the Tribunal will know what our attitude is.

I do not want it to be understood that I am in any conflict with my distinguished colleague, Sir David Maxwell-Fyfe, but I do wish to add a few comments on behalf of the United States.

I would like to point out to the Tribunal that the reasons given by Dr. Stahmer, as we understand them, are the evidence or the testimony of the witness Sievers and the document which was offered during his examination, wherein there is some indication that the Defendant Göring had authorized or ordered a Dr. Haagen to institute these medical experiments.

Now, it seems to me that the reasons which I called to the Tribunal's attention at the time of the Funk application apply here. Of course, I accept the ruling of the Tribunal with respect to the Funk application with good grace. I do not want to have it appear that I am raising objections against a matter that has been ruled on.

THE PRESIDENT: Which application did you say?

MR. DODD: The Funk application. It seems to me that there is a similarity in these matters, and particularly the Funk experience now would seem to have some bearing on this Göring application. It is my own judgment, which I respectfully offer for the Court's consideration, that Funk did not really add anything *pro* or *contra* to the proof in this case by his reappearance on the stand. He only succeeded in taking up a little of the Tribunal's time.

Now I suggested at the time of the Funk application that he had already denied really the heart and soul of the Pohl affidavit and that he could not do much more than reaffirm it on the witness stand, and that is, I respectfully suggest, almost precisely what happened.

I think the same will be true with respect to Göring, and I would like to call to the Court's attention that, long before Göring took the

witness stand, the Prosecution had offered its proof concerning these Luftwaffe medical experiments, so that he knew about them; his counsel knew about them, and if his counsel had cared to inquire about them, he could have done so on Göring's direct examination; but he chose not to do so. He did not raise the question at all. He passed it by and preferred, as was his right, I assume, to rest the matter with Göring's witness Milch, and we cross-examined, through our chief counsel, Mr. Justice Jackson, the witness Milch on that question.

If Göring wishes merely to deny that he had any knowledge or participation in these Luftwaffe medical experiments it is a very simple matter, and there is some precedent here for it now in view of the Frank affidavit. I suggest he might file a very brief affidavit that would be no more than a few short sentences saying he did not have knowledge and that he did not participate in these experiments. The Tribunal allowed Frank to do that. He went pretty far, if I may say so with great respect. His affidavit took 20 minutes. I certainly would not think it would be necessary for Göring to take anywhere near that time. As an alternative, and I have not had time to talk with my French and Russian colleagues, Sir David Maxwell-Fyfe and I agree, and I think they will, that the record might show—we would quite agree that the record showed—that Göring denies that he had knowledge of or participated in the Luftwaffe experiments. That would be satisfactory to us. In any event, what we would like to avoid is any kind of a procession to the witness stand by these defendants. They have had such a full hearing. This Tribunal has been so patient that I think it is imposing on the Tribunal if they take the stand for these purposes which can be accomplished in a much more simple manner.

I must say to the Tribunal that I have very grave doubt that Göring really wants to take the stand for this simple purpose. I think he wants to filibuster against judgment here. I think I would be remiss in my duty if I did not so advise the Tribunal this morning. Therefore, we object very strongly, if I may say so with great respect, and ask that either he submit his denial in the form of an affidavit or that the stipulation in the form we suggested be accepted by the Tribunal, and in any event that he and any other defendant who filed a similar application be refused at this stage of these proceedings the opportunity again to get on this stand and again take up time with matters that really do not go to the heart of the proof. I would be the last man here to try to cut out of this very important trial anything that I thought was really vital or important. I would not cast any shadow of unfairness, or any suspicion of it, upon this splendid record the Tribunal has compiled in matters of fairness to these defendants. I do not believe any prejudice will be evidenced if we ask Göring to fill out a brief affidavit

or if we ask his counsel to agree to our offer to stipulate. Thus we will save much of the Tribunal's time and we will get on further with these proceedings.

THE PRESIDENT: The Tribunal will consider the matter. Dr. Servatius, you were going through these various affidavits, with great ability, as I said on Friday, were you not?

DR. SERVATIUS: Yes.

THE PRESIDENT: Is it not the case that all these affidavits are summarized in the proceedings before the Commission and we therefore have before us, in the evidence before the Commission, a summary or a reference to each one of these affidavits?

DR. SERVATIUS: Mr. President, that is only partially true. I, personally, was not able to attend all the sessions of the Commission. I do not have an exhaustive picture. The affidavits which I wish to submit now I shall characterize quite briefly before turning to the collective affidavits which were not dealt with before the Commission. There are but a few left.

THE PRESIDENT: Up to the present, I am only pointing out to you with reference to the past. Up to the present you have drawn our attention to a number of affidavits. I find in the record before the Commission that nearly all of these affidavits have been literally and expressly summarized by counsel on behalf of the Corps of Political Leaders. The Prosecution has stated its position with reference to those affidavits.

DR. SERVATIUS: Yes, Mr. President, a very brief compilation was made, and it was submitted at the beginning of the presentation of evidence. Perhaps I can briefly treat the last ones so that I can pass on to the collective affidavits.

THE PRESIDENT: I hope you will be very short, then, and confine yourself only to these affidavits which have not been summarized before the Commission.

DR. SERVATIUS: I refer to Affidavits Number 47 and 48. Both of them deal with the communal policy. It is an office of but little significance. I refer here to the contents.

Then there is the affidavit of a Gau economic adviser. The essential thing is his statement that during his two years of activity he had but one opportunity to speak to the Gauleiter personally.

Of particular significance, perhaps, is Affidavit Number 50, by the Plenipotentiary for Racial Policy. It sets forth that he had nothing whatever to do with the actual racial policy as we have come to know it during these proceedings.

Then follows the NSV; the affidavit of a Gauamtsleiter who points out the spatial separation of the various offices.

The last is an affidavit by a Gau department head for the care of war victims, which sets forth the position of these agencies.

Thus I am through with the individual affidavits. I should like to submit a few more affidavits.

THE PRESIDENT: You mean you got as far as 64?

DR. SERVATIUS: Yes.

THE PRESIDENT: Very well.

DR. SERVATIUS: No, Mr. President, that is a mistake; up to and including Number 52. Number 53 begins the collective affidavits. Before I turn to those I should like to submit four single affidavits first, which are occasioned by subject matter which was mentioned rather late by the Prosecution. The first one is an affidavit by Gauleiter Hoffmann. It deals with the euthanasia program and what his Gau knew and thought about it. This is Affidavit Number 65. I submit this affidavit.

THE PRESIDENT: Is this an affidavit which has not been submitted to the Commission?

DR. SERVATIUS: It was not submitted to the Commission, for at that time the Commission had already concluded its hearings.

THE PRESIDENT: You cannot put in any new affidavits. The Tribunal so rules.

DR. SERVATIUS: Mr. President, they were not dealt with in the Commission and in no other way have they been a topic of the proceedings, but they are answers to new matters brought up by the Prosecution; I must surely have the opportunity of dealing with them. New documents were submitted in the course of the examination of witnesses, and I have received permission to deal with them. I ask permission to have these four brief documents admitted for that purpose.

THE PRESIDENT: I suppose that is right, if they are dealing with new documents.

DR. SERVATIUS: Yes.

THE PRESIDENT: There are only four affidavits. Is that it?

DR. SERVATIUS: Yes, only four.

The next one deals with Document EC-265, which was a telegram of Ambassador Abetz dealing with the expatriation of the German Jews in France. He explains this incident and defines his attitude. I submit this affidavit.

Affidavit Number 67 deals with the document which has been submitted as USSR-143, concerning the Styrian Home League, and affirms that this was not a part of a Party organization but a local association.

The last affidavit deals with Document EC-68. It is an affidavit, also Number 68, and it concerns the confidential letter of the Baden Farmers' Association and also deals thoroughly with matters which are known to the High Tribunal regarding the treatment of the Polish workers.

In the next affidavit I turn to the collective affidavits, which are 38,000 in number. On a previous occasion I gave a much greater number. I am afraid I was misled by the description that was given to me, and the report which was presented by Colonel Neave, in which he also says that there are 155,000 affidavits, contains the same error. Out of 38,000 affidavits certain extracts were dealt with by experts, such as the Church question and the Jewish question, and the statements were then summarized.

THE PRESIDENT: Oh yes, now you are dealing with Number 53.

DR. SERVATIUS: Yes.

THE PRESIDENT: Well now, on Page 3777 of the transcript before the Commissioners that affidavit is fully set out, I mean to say it is fully summarized.

DR. SERVATIUS: Mr. President, I just wanted to give an explanation so that a picture can be obtained as to how these summaries were arrived at. However, if the Tribunal does not consider it necessary for me to go into...

THE PRESIDENT: Well, Dr. Servatius, we have got an enormous number of documents in this case, and surely to have the same thing done twice over at this stage is unnecessary.

Have you got Page 3777 before you?

DR. SERVATIUS: No, I have not.

THE PRESIDENT: As I understand it, 53 is a collective summary and report on the affidavits which follow, is that not so?

DR. SERVATIUS: Yes.

THE PRESIDENT: Well then, in this transcript of the evidence before the Commission it says that the result consists of the group report by Karl Hederich and of the following individual declarations: Jewish persecutions—that is 54; treatment of foreign civilian labor and prisoners of war—55; disassembling of trade unions—56; concentration camps, by Richard Müller—57; operational staff Rosenberg, by Richard Müller—58, and so on right down the list.

DR. SERVATIUS: Yes. Then that has been read. However, I clearly did not receive this report. If it is contained therein, then I do not need to submit it.

THE PRESIDENT: It is already set down before the Commissioner and is in the transcript.

DR. SERVATIUS: The matter discussed was that certain of these main affidavits were translated and were to be submitted. That was the thing I wanted to do now, and I wanted in each case to cite the contents of the individual affidavits as they concern the various points. Now, the first affidavit, 53, only states how the entire thing was done. That was the guide to this inquiry, as I might say. Then comes the next one which deals with the Jewish question; that is Affidavit Number 54.

THE PRESIDENT: What I am pointing out to you is that what you are saying is set down identically in this transcript. What is the point of repeating it for another transcript?

DR. SERVATIUS: Mr. President, I do not know how far this report went.

THE PRESIDENT: Well, it sets out the contents of 53, 54, 55, 56, and there is Müller, 57.

DR. SERVATIUS: Mr. President, is it possible that I should receive a copy of this report, and in case I find it necessary to make remarks that I be permitted to do so?

THE PRESIDENT: I am told you have got the German of this. It is the transcript of what happened before the Commissioner and your representative, Dr. Link, is the man who was doing it. It is on Page 3777.

DR. SERVATIUS: Because of the quantity of material I overlooked the fact that this was already set down. Therefore, I refer to it without dealing with the affidavits one by one.

As far as the Church question is concerned I should like to refer particularly to one point. There are two theologians who very extensively deal with all the internal circumstances, which seem to be of great significance to me.

Mr. President, I have concluded my submission of documents.

With reference to the statements during the last session concerning the number of active members, I had a statistical report prepared yesterday. Perhaps I may submit this for the benefit of the Tribunal—not as evidence—so that, on the basis of the statistical Party book which is in the library of the Prosecution, it can be figured out what is actually included in the Indictment. I should like to submit this as an aid to the Tribunal rather than as a piece of evidence, if I may. It is only in the German language for the time being.

THE PRESIDENT: Have the Prosecution any objection to the submission of this document?

SIR DAVID MAXWELL-FYFE: My Lord, of course we have no idea what is in the document at the moment. But, My Lord, I think we shall make no objection to it.

THE PRESIDENT: Perhaps you can look at it and we will have it handed to us later.

SIR DAVID MAXWELL-FYFE: My Lord, if I understood Dr. Servatius correctly it is on the numbers of those who are to be included in the organizations. Colonel Griffith-Jones has prepared an exact statement of those whom the Prosecution asks to be included and their numbers, which he proposed to give to the Tribunal at the close of Dr. Servatius' speech, which may remove some of the difficulties which Dr. Servatius has in mind. But, My Lord, I make no objection to the document going in to assist the Tribunal.

THE PRESIDENT: Very well.

DR. SERVATIUS: I did not quite follow as to when I am to receive these figures, after or before my final submission. It is surely of import to me to know that in advance.

THE PRESIDENT: I think you will receive the document to which Sir David Maxwell-Fyfe was referring before you make your final submission, because after you have dealt with your documents the other representatives of the organizations will have to deal with their documents and their affidavits. We will have it during that time.

DR. SERVATIUS: May I submit this report?

THE PRESIDENT: Yes.

DR. SERVATIUS: Then I conclude my statement herewith, Mr. President.

THE PRESIDENT: Now which of the organizations shall we take next? I beg your pardon. Yes?

LT. COL. GRIFFITH-JONES: I do not know whether it would be convenient for the Tribunal if I submitted some particulars of the figures which we were discussing the other day.

THE PRESIDENT: Could you not put in or hand to Dr. Servatius this statistical summary and then deal with the rest of the matter in argument? I understood from Sir David that you have a statistical document showing the number of Political Leaders whom the Prosecution contend are involved.

Well, Dr. Servatius wants to see that and, therefore, if you will give him that, that will be all that is necessary, will it not?

LT. COL. GRIFFITH-JONES: My Lord, yes, except simply to explain what the document is, which will take two minutes. I think it will be of assistance to the Tribunal.

THE PRESIDENT: If it will only take two minutes.

LT. COL. GRIFFITH-JONES: They are figures taken from the *Organization Book*. On Page 1 the Tribunal will see the total

numbers set out of all the Political Leaders whom the Prosecution are including in the organizations; the Hoheitsträger, the staff of the Reichsleiter, the staff of the Gauleiter, the staff of the Kreisleiter. For the information of the Tribunal I have also included the staff of the Ortsgruppenleiter of 340,000. The total is 940,000. You deduct again the Ortsgruppen staff which I excluded and you get your figure of 600,000.

My Lord, in the subsequent pages particulars will be found of the officeholders on the Reichsleiter, Gauleiter, and Kreisleiter staffs. The Reichsleiter, I think, speaks for itself. The Tribunal perhaps will look at Appendix "C." There it will be seen that the offices on the Gauleiter staff are set out.

My Lord, those are all taken from the *Organization Book* and I would only say that those show the maximum establishment of the Gau and Kreis staffs and they were not by any means always up to strength, so that the figures, the total figure of 600,000, is to be the maximum that is possible.

THE PRESIDENT: Now we will deal with the Gestapo.

DR. RUDOLF MERKEL (Counsel for the Gestapo): Mr. President, first of all I should like to have permission to discuss my document book. I have already introduced the various documents, with the exception of Number Gestapo-31, which I submit at this point.

Numbers Gestapo-1 and 2 deal with the concept and the aims of a political police system in general. I ask the Tribunal to take judicial notice of both these documents, and I request the same with reference to Numbers Gestapo-3 to 8. They contain the basic laws and directives dealing with the origin, the development and the aims and purposes of the Gestapo, first taking into account Prussia and finally the entire Reich.

Number Gestapo-9 is a copy in extract of the law dealing with German police officials, dated 24 June 1937. I shall read Paragraph 1 from it. This is found on Page 28 of Document Book I.

"This law affects the executive officials of the Civil Police, the Criminal Police of the Reich and of the communities, the Military Police, and the Gestapo, as well as other police executive officials of the Security Police (police executive officials)."

From this we can see that police executive officials had a special position already in that they alone were subordinate to the law affecting police officials, not the other branches, such as, for instance, the administrative officials.

Number Gestapo-10 contains the temporary provision for execution of this law which we have just mentioned. It gives a

definition of the executive police officials. I quote from Part I, concerning Paragraph 1 of the law; and this may be found on Page 33 of the document:

"Police executive officials are, in the Reich Criminal Police, the Gestapo, and also in other branches of the Security Police: Criminal Assistants (Kriminalassistenten), Criminal Senior Assistants (Kriminaloberassistenten), Criminal secretaries (Kriminalsekretäre)," and so forth.

By the law of 19 March 1937, the officials of the Gestapo became direct Reich officials. I quote from Number Gestapo-11, Page 36 of the document book, Paragraph 1:

"The following become direct officials of the Reich:

"(2) Officials of the Security Police (Gestapo and Criminal Police), but not the administrative police officials serving with the Criminal Police in the State Police Administrations."

I ask that judicial notice be taken of Number Gestapo-12. It is a copy of the law of 17 June 1936, dealing with the assignment of the chief of the German Police to the Reich Ministry of the Interior.

I also ask that judicial notice be taken of Number Gestapo-13, which concerns the employment of inspectors of the Security Police.

Number Gestapo-14 was already submitted, as Exhibit USA-266, as evidence that the Party was prohibited from taking action in matters which were a concern of the Gestapo. I quote from Figure 1, Paragraph 2, which is at Page 42 of the first document book:

"I forbid all offices of the Party, its branches and affiliated associations to undertake investigations and interrogations in matters which are the concern of the Gestapo. All occurrences of a political-police character, without prejudice to their being further reported along Party channels, are to be brought immediately to the knowledge of the competent offices of the Gestapo, now as before."

From Page 2 of the same document, Page 43 of my document book, I quote the third paragraph:

"I particularly emphasize that all plots of high treason against the State coming to the knowledge of the Party are to be reported to the Gestapo without delay. It is in no way a task of the Party to make investigations or inquiries of any kind in these matters on its own initiative."

THE PRESIDENT: From which page was it that you were reading then?

DR. MERKEL: Page 43, Mr. President, of the German document book.

THE PRESIDENT: May I have the heading?

DR. MERKEL: Yes, the heading is "Reporting of Treasonable Activities to the Gestapo," and from that I read the third paragraph, starting with the words: "I particularly emphasize that..."

THE PRESIDENT: Yes, I see.

DR. MERKEL: That the assumption of political offices by officials and employees of the Gestapo was not desired may be seen from Page 3 of this document, which is Page 44 of the document book, the last paragraph:

"Since it"—that is, the Gestapo—"is still in the process of organization and the available officials and employees are very much in demand, they are to take over positions in the Party only to the extent to which this is compatible with their official duties in the Gestapo."

From Number Gestapo-15, which is an excerpt from the *Reich Administrative Gazette* of 1935, I quote evidence of the fact that it was possible to enter a complaint against measures of the Gestapo through investigation channels. This is the first paragraph, Page 46 of the document book:

"Since the Law on the Gestapo of 30 November 1933 became effective, orders of the Gestapo Office can no longer be contested according to the provisions of the Law on Police Administration. The only remedy against them is a complaint through investigation channels."

Further, to clarify the legal status of the Gestapo and of the Gestapo Office, I should like to quote Page 3 of this same document, which is Page 48 of the document book. I shall quote Paragraph 2:

"In accordance with all this, the legal status of the Office of the Gestapo, since the Law of 30 November 1933 became effective, is the following: The office is part of a special government organization, the 'Secret State Police,' which forms an independent branch of the Administration of the Prussian State. It has, like the Secret State Police as a whole, a special field of duties: the management of affairs of the Political Police."

Of Numbers Gestapo-16 and 17 I ask that judicial notice be taken. They deal with the introduction of the laws establishing the Gestapo in non-German areas. Number Gestapo-18 deals with the Border Police as a part of the Gestapo. It is the copy of a circular by the Reich and Prussian Ministry of the Interior dated 8 May 1937. I shall quote from Number III. This is Page 53 of the document book.

"The execution of police tasks at the Reich Frontier is entrusted to the Border Police Offices."

I shall omit the next sentence.

"The Border Police Commissioners' Offices, including the Border Police posts established by them, are, as previously the border stations in Prussia and Baden, branch offices of the State Police Offices competent for their district."

Number Gestapo-19 is a copy of a circular issued by the Chief of the Security Police and the Security Service, dated 30 June 1944, in which the unification of the military and political police counter-intelligence machinery is ordered.

The responsibility for intelligence protection of the armament industry as well as of all other war plants and vital industries was henceforth the responsibility of the Chief of the Security Police and of the SD and the offices of the Gestapo subordinate to him.

The carrying out of intelligence protection as well as the direction and employment of the counter-intelligence organs within the plants were now exclusively the task of the Gestapo offices, in keeping with the instructions given by the Reich Security Main Office.

I ask that judicial notice be taken of Number Gestapo-20. It contains a directive issued by Himmler on 25 October 1938, dealing with the erection of a central office for registration for police service. Through the setting up of this office it was possible to order candidates to do service in the Gestapo against their will.

I also ask that judicial notice be taken of Number Gestapo-21. It concerns directives for qualification tests for applicants for service in the Security Police. I make the same request with reference to Number Gestapo-22, which is a directive of 14 December 1936. It says that candidates for Criminal Police service will have to meet the same tests as candidates for the regular Criminal Police.

Then I ask that Number Gestapo-23 should be given judicial notice, which is a decree of 2 June 1937, saying that civil police and military police officials were detailed for service in the Gestapo, and therefore, they did not come to the Gestapo voluntarily.

THE PRESIDENT: What you are doing now isn't assisting the Tribunal in the very least. Would it not be better to submit all these documents, that is to say, to put them in, and ask us to take judicial notice of them, which we shall do, because they are decrees, and then to refer to any particular paragraphs in them when you come to make your argument? I say that because this is meaningless to us to read excerpts; and it is confusing to read a number of them without making any submissions at all about them. When

you come to make your argument, you can draw our attention to any particular passage you want to in order to explain the arguments, but this is not doing you any good at all.

DR. MERKEL: Yes, Mr. President, I have made provisions for that in my final summation. However, there I have naturally tried to be very brief, and only to refer to these documents, on the assumption that I might read them during the submission of documents. However, it will suffice me if the High Tribunal wish merely to take judicial notice of these documents.

THE PRESIDENT: It is much more informative, to our minds, than to have it separated between the reading of the documents now and your final argument. If we have to listen to the same sort of thing from all other organizations—why, it is beyond human ability to carry all these things in our minds.

Dr. Merkel, if there are any special passages in these decrees or documents which you wish to draw our attention to now, in order that we may read them carefully before you make your speech, well and good; but it is no good going through one after the other like this without making any comment at all. Do you follow what I mean?

DR. MERKEL: For that reason I only read brief sentences from the most important of these documents and asked that judicial notice be taken of the rest.

THE PRESIDENT: I don't know what you call a very few brief ones, but we have had about 15 or 20 already. That doesn't seem to me to be very few.

DR. MERKEL: Of course we must take into consideration that we have only three hours at our disposal for the final summation. For that reason it seemed suitable, first of all, to submit my documentary evidence in such a way that the documents could, as far as possible, be read to the Tribunal, and then, in the final speech be referred to in a summary way. For this documentary material must at some time be submitted to the High Tribunal in some form or another, and we considered it more suitable to separate the two, to submit the documentary material now, briefly, and in our final summation to restrict ourselves to an evaluation of this evidence which had been submitted.

Apart from that, I have almost concluded my submission of these individual documents. In the second volume of my document book there are but a few documents from which I wish to quote a few brief passages.

THE PRESIDENT: Go on, then.

DR. MERKEL: Number Gestapo-32, the first one in Document Book Number II, shows that the combating of partisan bands was

not the concern of the Party or of Himmler, but of the Army. I refer in this connection to an affidavit deposed by a certain Rode, which has already been submitted as Exhibit USA-562.

Number Gestapo-33 shows that the orders regarding the execution of Russian prisoners of war in the concentration camps came from the Inspector of Concentration Camps and not from Department IV of the RSHA.

Numbers Gestapo-35, 36, and 37 deal with protective custody, and I ask that judicial notice be taken of them.

Number Gestapo-38 is a copy of a letter of the Inspector of Concentration Camps dated 15 October 1936. I quote from Figure 2, on Page 101 of Document Book Number II:

"Besides the Chief of the German Police, the following are authorized to enter concentration camps:

- "a. The Chiefs of the three SS Main Offices,
- "b. The Administrative Chief of the SS,
- "c. The Chief of Personnel of the Reichsführer SS,
- "d. The SS Gruppenführer."

Then also Figure 4:

"All other SS members, representatives of offices, and civilians desiring to enter premises in which prisoners are lodged or engaged in work for the purpose of visiting, will require my express written authorization."

Number Gestapo-39 deals with the same topic.

I submit Numbers Gestapo-40, 41, 42, 43, 44, and 45 as proof of the fact that concentration camps were not under the Gestapo but, instead, under the SS Economic and Administrative Main Office.

Numbers Gestapo-46 and 47 follow a similar vein. Number 46 is a questionnaire addressed to August Eigruber of 26 March 1946; and Number 47 is a questionnaire addressed to Friedrich Karl von Eberstein, dated 26 March 1946. Both have already been submitted by defense counsel for the Defendant Kaltenbrunner.

Numbers 48 and 52 deal with the recruitment of foreign workers for the Reich area, and show that this was the sole responsibility of the Plenipotentiary General for the Allocation of Labor.

The setting up of corrective labor camps may be seen from Gestapo-54 to 57.

The seizing and securing of cultural articles in the occupied territories are matters contained in Numbers 58 and 59.

Number Gestapo-60 is the well-known decree about third-degree interrogations.

Number 61 is a copy, in excerpt form, of a letter from Heydrich to Göring, dated 11 November 1938, and shows that the Gestapo took steps against the excesses during the night of 9 to 10 November 1938.

Number Gestapo-62 is a copy, in excerpt form, of testimony given by Dr. Mildner on 22 June 1945. It refers to the deportation of the Jews, and the subordination of the concentration camps under the SS Administrative and Economic Main Office.

This concludes my documentary evidence.

As far as the affidavits are concerned, I submit to the Tribunal first of all the German copies of the transcripts taken before the Commission, which I did not have up until now. They are copies of the transcript of 9, 19, and 27 July, and 3 August. They are contained, in summary form, in Gestapo Affidavits 1 to 91.

THE PRESIDENT: Dr. Merkel, isn't necessary for you to submit copies of the transcript of the Commission's evidence; it comes to us directly from the Commission, so you need not trouble about that.

DR. MERKEL: Very well, Mr. President.

THE PRESIDENT: It is suggested to me that perhaps it would be better for you to offer it in evidence and give it a number in your list of numbers.

DR. MERKEL: Then I shall give the transcript of 9 July the Number Gestapo-63; 19 July shall be Number Gestapo-64; 27 July, Number Gestapo-65; and 3 August, Number Gestapo-66.

I should like to suggest that the submission of these affidavits be effected in the following way so that time can be saved. Twenty-two out of the 91 have been translated. I shall now summarize the most important of these 91 affidavits according to subject matter, and I shall also read into the record a few brief passages from the affidavits which have been translated and seem to me to be of especial importance. Of the remaining affidavits I ask that the Tribunal take judicial notice.

Besides 91 individual affidavits, a collective affidavit is at hand summarizing 1265 individual affidavits. This summary, in line with the resolution of the Court of 5 July 1946, was prepared by former members of the Gestapo who are now imprisoned, and the authenticity of this summary was certified by me. I ask your permission to read that brief summary into the record too.

I turn to the first group, and I shall summarize Affidavits Number 1, 2, 3, 4, 9, 13, 71, and 90. They deal with the occupied countries. Jewish questions here were handled by a special detachment under the command of Dannecker. From 1940 to 1942 they were attended to by the French Government, in agreement with

the military commander and the German Embassy. Detention camps in France were supervised by the military commander.

The recruitment of French laborers for the Reich area was undertaken by the military commanders. In May of 1942 the Secret Field Police were arbitrarily taken into the Security Police. Police executive power, up until April of 1942, lay in the hands of the French police and of the German military police units.

From Affidavit Number 2, which has been translated, I ask permission to read the following: Page 1, Paragraph 2:

"From October 1940 until October 1941, I was chief of the branch office of the Security Police and of the Security Service in Dijon, and from December 1943 up to the retreat from France I was commander of the Security Police and of the Security Service in Dijon.

"Composition of the Security Police Command Dijon:

"There were about 10 Gestapo members; 13 Criminal Police (Kripo) members, and 69 emergency draftees (Notdienstverpflichtete).

"As can be seen from the list, of the 92 male members of my command at the time, only 10 belonged to the Gestapo. In this connection it must be taken into account that of these 10 Gestapo members, the majority did not volunteer for the Gestapo but were transferred or detached to it, or joined it for some other reason, without those concerned having been able to exert any influence on the decision or to resist it."

I shall skip the next sentence.

"The Security Police Command Dijon must be regarded as an average command in France in respect of its strength as well as of its composition."

On Page 3 of this affidavit, after the heading "Jewish Questions," I shall read the brief paragraph which follows. It reads:

"Recaptured prisoners of war were in no case brought to a concentration camp or shot by the Dijon office, but immediately turned over to the nearest competent army office."

THE PRESIDENT: Where are you reading now?

DR. MERKEL: The second passage in Affidavit Number 2, at Page 3 of the German original; it follows directly after the brief heading, "Jewish Questions." It is the next paragraph.

THE PRESIDENT: Yes.

DR. MERKEL: I shall skip the next four paragraphs and read on:

"There were no special Security Police or Security Service prisons in the Dijon area. Furthermore, no arrestees in any

prisons were ever executed by order of the Security Police (Sipo) or Security Service (SD) to prevent their liberation by Allied troops."

Dealing with Affidavit Number 3, I ask to read the beginning of the second paragraph:

"In September 1941 I was transferred from the Infantry to the Secret Field Police and, without my having anything to do with it, in June 1942 I was assigned to the office of the Commander of the Sipo and the SD in Poitiers."

Next paragraph:

"The Security Police Command at Poitiers was composed of about 5 officials of the State Police, about 5 officials of the Criminal Police, and some 80 former members of the Secret Field Police who, like myself, were discharged jointly from the Wehrmacht and were emergency draftees in the Security Police."

On Page 2 of this affidavit, under the heading "Commando Order," I should like to read the following:

"This order is known to me only in its basic outlines through Wehrmacht reports, the press, *et cetera*."—I shall omit the next sentence.—"This order was not carried out in the Poitiers region. I can mention two examples:

"In June 1942, in a joint operation by the Security Police and the Wehrmacht, a camp with 40 English parachute troops was raided, whereby during the short fight 3 Englishmen were killed, while all the rest were taken prisoner and handed over to the Wehrmacht, although it was established that the group had carried out sabotage on a railroad 3 kilometers from Poitiers, more than 200 kilometers behind the invasion line, and had provided French partisans with arms and organized them."

And the next paragraph as well...

THE PRESIDENT: What does that mean, "200 kilometers behind the invasion line," in reference to June 1942?

DR. MERKEL: That is the town of Poitiers which is about 200 kilometers behind the invasion line.

THE PRESIDENT: There was no invasion in 1942.

DR. MERKEL: In June 1944. That is a typographical error.

THE PRESIDENT: Go on.

DR. MERKEL:

"Likewise, in March 1944, in the same territory, 5 American airmen, who were encountered wearing civilian clothes and

in company of 40 armed partisans, were taken prisoner and turned over to the Luftwaffe."

Next I should like to summarize those affidavits numbered 5, 6, 7, 8, and 14. Mr. President, I beg your pardon that the numbers are not in consecutive order, but this can be explained by the fact that these affidavits, insofar as they came from camps, were received at very long intervals. Also the witnesses who deposed affidavits here in the Nuremberg prison arrived one at a time; therefore it is unavoidable that these affidavits are not numbered consecutively. I should like to repeat the numbers: 5, 6, 7, 8, and 14. They prove that the Gestapo not only did not take part in the excesses of 9 and 10 November 1938, but took steps against them and in numerous cases undertook arrests of members of the SA, the Party, and the SD. The 20,000 Jews who were arrested were largely released again after their emigration papers had been procured.

Numbers 15 to 21, 29 to 34, 72, 73, 76, 84, and 85 deal with the following: The offices of the Security Police and the Security Service in occupied countries were not made up of voluntary members. Administrative officials or technical officials of the Gestapo had nothing to do with carrying out orders, and in view of the strictest secrecy which was preserved, they could not know anything about details. Employees and emergency draftees cannot be considered as accomplices in, or as having had knowledge of, the possible criminal nature of the organization. New members were not brought in by voluntary recruitment but rather as a result of assignment, orders, and transfers.

I shall read the following into the record from Affidavit Number 15, the second paragraph:

"In May 1919, I was assigned to the Political Police, newly established as Department VI with Police Headquarters in Munich."

THE PRESIDENT: Wait a minute. Are you reading Affidavit Number 15?

DR. MERKEL: Yes.

THE PRESIDENT: You say the second page, the second paragraph, and you begin something about 1919. I do not see that.

DR. MERKEL: No, Mr. President, it is the first page, the second paragraph, right at the beginning of the affidavit.

THE PRESIDENT: On the first page, it begins, "On 1 January 1913."

DR. MERKEL: "On 1 January 1913." I had only omitted this first sentence and the third sentence begins with:

"In 1933 I was transferred together with almost all other members of this office to the Bavarian Political Police which, with almost the same personnel setup, was in turn transferred to the Secret State Police in Munich. The entire personnel was screened politically by the SD, whereby a large part of the civil servants and employees of the former political department of Police Headquarters were judged negatively."

Then I shall read from Page 2 of the German text, under Number 2:

"While I was in charge of the office from 1933 to 1939 I always pointed out to the officials under me that it was forbidden to maltreat prisoners. I did not hear of any of my officials laying violent hands upon a prisoner."

Under Number 4 I shall read the penultimate sentence of the first paragraph:

"I learned that persons frequently posed as Gestapo officials. These persons also committed criminal acts. Because of the increase of such incidents, Himmler issued a decree according to which all persons who impersonated Gestapo officials were to be put into a concentration camp."

From Affidavit Number 16 I should like to read the following from Page 1, the fourth paragraph:

"On the basis of my activity with the Gestapo Office in Berlin I can confirm the fact that the Gestapo Office was made up almost exclusively of officials of the former general Criminal Police as well as of the Berlin Police Administration, who were all transferred to the State Police."

THE PRESIDENT: You are reading 16, are you? Which page?

DR. MERKEL: The paragraph from which I was reading is on Page 1. It begins with "In 1935" and the fourth sentence is: "On the basis of my activity..."

THE PRESIDENT: "In 1935, without being consulted, I was ordered and transferred..."

DR. MERKEL: Yes, quite, Mr. President, that is the paragraph. And in this paragraph the fourth sentence reads: "On the basis of my activity with the Gestapo Office in Berlin..." Then I shall read the following paragraph:

"As in the Gestapo Office in Berlin, so the great majority of the police personnel of the State Police offices throughout the Reich consisted of old professional police officials who had been transferred from the old 1-A section of the Criminal Police and the other branches of the Police to the State Police,

or had been assigned there without their personal wish being taken into consideration."

Then I shall skip a paragraph:

"Transfers back were entirely out of the question, because there existed an order which absolutely prohibited this. If, in spite of this, requests were handed in for transfer back or transfer from the Gestapo to another branch of the Police, such requests were usually answered with disciplinary transfer. Such requests were not made because the Gestapo was considered a criminal organization, but mostly for purely personal reasons."

From Affidavit Number 18 I should like to read the following, on Page 3 of the German original:

"1. Officers: There were 50 or 60 officers' positions in the whole Security Police Force.

"2. Administrative Officials: The administrative officials were engaged exclusively in office work for the entire police administration. They were strictly separated from the executive officials by different regulations concerning their career, by different titles, and different duty passes. Above all they had nothing to do with executive work. A change in their position and activity never took place.

"3. Executive Officials: They executed the real tasks of the Gestapo as laid down by law. In this connection it should be noted, however, that a number of these officials also were engaged in pure office work, as is the case in every office.

"4. Civilian Employees: The civilian employees were mainly typists and other office personnel and personnel for subordinate work.

"5. Emergency Draftees."

Here I shall read only the end of this paragraph:

"No right whatsoever to complain existed if an emergency draftee was assigned to the Gestapo instead of some other governmental office or some private enterprise."

I shall omit two paragraphs and shall read the third one which follows:

"I estimate that the Gestapo had about 10,000 emergency draftees by the end of 1944.

"6. Men detailed from the Waffen-SS: In order to meet the personnel requirements of the Gestapo, members of the Waffen-SS who, due to wounds and other physical handicaps,

could not be utilized at the front any more, were detailed to the Gestapo in increasing numbers during the war."

THE PRESIDENT: I think we had better break off now.

[A recess was taken.]

DR. MERKEL: From Affidavit Number 18, I should like to read Section 7, relative to the members of the former Secret Field Police.

"With the transfer of the tasks of the Secret Field Police to the Security Police, at first in the occupied territories in the West, the members of the Secret Field Police were also taken over into the SIPO, or into the Gestapo. This transfer was done by order, so that none of the transferred men could have done anything against it."

And then the final sentence of that:

"Altogether approximately 5,500 men were taken over."

And the first sentence of the following paragraph:

"Particular importance was attached to secrecy in the Gestapo."

I skip the following sentence, and continue:

"Particularly by means of the Führer order of 1940, which was extended immediately by the Reichsführer SS to include the Security Police, the keeping of secrecy was pronounced the supreme duty of all members of the Security Police, and thus of the Gestapo. All members of the individual offices were now and then reminded of this secrecy pledge which they had signed. In that connection it was pointed out time and again that any offenses against the secrecy regulations would be severely dealt with and, in important cases, even be punishable by death."

From Affidavit Number 20, I beg permission to read from Page 1, the second paragraph:

"The members of the administrative service in the lower, middle, and higher grades were, at the request of the Gestapo, and after 1937 of the Main Office of the Security Police, selected from the civil service staff of all offices, especially the police administration, and were transferred to the Security Police or the Gestapo."

From Number 30 I shall read the following, on the first page under the heading "Organization and Composition of the Gestapo in Bielefeld," the second sentence:

"When this Gestapo office was founded in 1934, about eight criminal investigation officials and two police administration officials of the Bielefeld State Police, and about 5 criminal

investigation officials from branch offices were transferred to the Bielefeld Gestapo. The transfer was made without previously obtaining the consent of the officials."

Then, from Page 3 of the same affidavit, I beg to be allowed to quote one example of the composition of a fairly large Gestapo office.

"Organization and composition of the Gestapo in Brno. In the spring of 1944, the personnel comprised about 800 persons, distributed approximately as follows: administrative officials, about 35; executive officials, about 280; drivers and employees, about 110; frontier police officials, about 65; criminal investigation employees, for instance interpreters, about 90; prison supervision personnel, about 80; female office personnel, about 90; other auxiliaries, about 50."

And then the second paragraph after that:

"When the Gestapo office in Brno was created, about 400 officials were transferred from offices in the Reich proper, without their consent, to Brno or to the branch offices connected with Brno. More than half of the personnel consisted of emergency or labor draftees."

From Affidavit Number 31, I shall read on Page 2, at the beginning:

"At the end of 1944 the Gestapo consisted of approximately the following: administrative officials, 3,000; executive officials, 15,500; employees and workmen, including 9,000 emergency draftees, 13,500. Grand total, 32,000. These members of the Gestapo may be considered to be the permanent ones inasmuch as they made up the normal staff. In addition to these persons, there were the following groups: detailed from the Waffen-SS, 3,500; taken over from the Secret Field Police, 5,500; taken over from the military counter-intelligence of the OKW, 5,000; personnel of the former military mail censorship, 7,500; members of the customs frontier guard, 45,000."

Then I come to Affidavit 34, where I shall read from the first page, under the heading "Professional career," the last quotation.

"1 April 1933; transfer, that is, assignment to the Gestapo Department of Berlin. I received at that time a letter which ran as follows:

"By virtue of the authority vested in me by the Reich Minister of the Interior, you are hereby as of... transferred to the Gestapo Office."

"I had nothing to say in the matter of this transfer. The endeavor of my superior in the Police Presidency to save me from this transfer, failed."

I now beg to be permitted in connection with the relationship of the Gestapo to the Frontier Police, to read the following from Affidavit Number 22; this is on Page 2 of the German original:

"The members of the Frontier Police were taken over from the Frontier Police, which existed in Bavaria already before 1933, into the Frontier Police of the Gestapo. Later on, after the annexation of Austria, the Austrian Frontier Police were added as well. The incorporation of the Frontier Police officials in the Gestapo was not voluntary either in Bavaria or in Austria. On the contrary, the officials were transferred as a group when control of the Gestapo was transferred to the Reich or when the annexation of Austria took place."

I skip the following sentence.

"The officials could not object against their transfer to the Gestapo on the grounds of legal regulations concerning civil servants. They had to obey this transfer."

Then the second paragraph further on:

"The tasks of the Frontier Police consisted mainly in the supervision of the traffic of persons across the frontier, the carrying out of police instructions with regard to passports, and in the supervision of the traffic of goods in connection with the customs authorities. Political tasks, such as those of the Gestapo in a stricter sense, were not the business of the Frontier Police."

I skip the next sentence and go on to quote:

"I know from my own experience that the tasks of the Frontier Police and its activity did not change after 1933."

Then the last paragraph:

"I must also draw attention to the fact that the same tasks as those of the Frontier Police were performed at many small frontier passages by members of the Reich Finance Administration and the Customs Administration. In this the customs officials were bound by exactly the same instructions as members of the Frontier Police."

Numbers 23, 24, 35, and 39 deal with the question of secrecy.

"No department within the State Police knew anything about orders issued by any other department. Even private conversation was forbidden. In view of the strict secrecy only the few persons of the Reich Security Main Office immediately concerned knew the individual measures taken."

From Number 35 I read the following; and this is on Page 8 of the original, the second paragraph:

"Discussion of the subject matter was centered in personal conferences between the department chief and group chief

or their deputies on the one hand, and as hitherto between the department chief and his department heads on the other."

Then the beginning of the following paragraph:

"In view of this form of personal co-operation it follows that only the persons actually and directly taking part in a matter were informed about it, the more so as, due to the directives which had been issued, the principles of secrecy were strictly observed in Department IV."

Then the beginning of the next paragraph:

"Still another decisive fact must be given consideration in this connection. During the course of the war up to September 1944—and particularly in the course of aerial warfare—Department IV in Berlin was decentralized in an increasing measure to various quarters of the city."

Then also on Page 12 of the affidavit, the second paragraph in the German text:

"In view of the practice of absolute secrecy and isolation of information prevailing in all fields, it should be clear of itself that a problem which had as little to do with general tasks and activities as the physical extermination of Jews was, if that is possible, kept even more strictly secret. All plans and measures in connection therewith could of necessity have been discussed only within the closest circle of persons directly involved, for all other members of Department IV never received knowledge of it."

And then the beginning of the next paragraph:

"The same must have been true with regard to knowledge about the reports concerning mass shootings in the East, as quoted by the Prosecution. It is not known in detail who could have had knowledge of such reports besides the Reichsführer SS and some individual department chiefs. If such knowledge should, at the most, have extended even to the competent group chiefs and specialists, it is still far from being the case, as asserted by the Prosecution, that the bulk of the personnel in Department IV, or even in the Reich Security Main Office or in the offices throughout the Reich, were informed."

From Affidavit Number 39 I beg to be permitted to read the following from Page 3 of the original:

"Upon my assuming office in the Reich Security Main Office in August 1941, Müller declared to me that in his sphere of activity he placed great value upon observing the stipulations

for secrecy and that he would proceed without clemency and with the severest measures against violations thereof."

And then the last sentence of the same paragraph: . . .

THE PRESIDENT: We have heard about this secrecy over and over again, not only in your affidavits, but throughout the Trial. Surely it isn't necessary to read the paragraphs of these affidavits about secrecy. We quite understand that everybody alleges that.

DR. MERKEL: Affidavit Number 25 contains an opinion about Exhibit Number USA-219. It deals with the transfer of 35,000 prisoners capable of work to armament plants attached to concentration camps.

The affidavit originates from a local office chief of the Gestapo and I shall quote from the third sentence of the third paragraph:

"As another case, the order by the Chief of the Security Police and the SD of 17 December 1942, according to which at least 35,000 persons capable of working were to be transported to concentration camps to work in the armament plants there, was not carried out by many Gestapo offices. These persons were to be recruited from the prisoners in the corrective labor camps of the Gestapo offices. This was at variance with the practice applied until then, and by many office chiefs known to me was interpreted as an arbitrary measure. At conferences in the Reich Security Main Office, I learned that the office was unable to comply with the request of the Reichsführer SS to provide prisoners, because the Gestapo refused to provide prisoners from their corrective labor camps and hid behind pretexts."

The summary of Affidavit Number 36 states that in the spring of 1944 the bulk of the members of the Department of Foreign Intelligence (Amt Ausland Abwehr) in the OKW were forcibly transferred into the Security Police.

Affidavit Number 40 states that the order for the evacuation of Jews from Hesse in 1942 came directly from the Chief of the Security Police, not from Department IV of the Reich Security Main Office. Commitment for work in the East was given as the reason for the evacuation.

Affidavit Number 42, and to some extent 91, deals with the decree that the crucifixes should be removed from schools. From Affidavit Number 42 I shall read the second sentence on the first page:

"Approximately in 1942, as I remember, Gauleiter Adolf Wagner, in his capacity of Bavarian Minister of Culture, gave the order to have the crucifixes removed from all Bavarian schools."

I skip the following sentence:

"Enforcement (of this ruling) met with the greatest difficulties due to the attitude of the population, so that the departments of the Party which were dealing with the execution of that order called upon the Landräte and the district police offices for assistance. Since the affair had a political character, the Landräte approached the State Police department in Nuremberg with a request for advice or assistance. As an expert for Church matters, I stated to the first Landrat approaching me that the Gestapo in Nuremberg would not help with this decree unless directly forced to do so, and that he would not receive any assistance from the State Police in the execution of the order. Even in the case of unfortunate complications for Political Leaders, the State Police would not introduce any police measures."

I shall skip the following sentence.

"I then reported the matter to the Chief of Police who without any reservation shared my point of view. In agreement with him, I then informed the other Landräte concerned by telephone to the effect that they should act accordingly in this matter."

Affidavit Number 43 says that, upon objections raised by the competent commander of the Security Police, the intention of the Landrat to turn the Protestant church in Welun into a cinema was thwarted.

THE PRESIDENT: Dr. Merkel, you heard what I said to Dr. Servatius, did you not?

DR. MERKEL: Yes, Mr. President.

THE PRESIDENT: Isn't the state of affairs exactly the same in your case, that all these affidavits have been summarized in the transcript before the Commission, which we have got before us in writing, and therefore what you are doing is simply cumulative?

DR. MERKEL: I had merely thought that in order to support these summaries in the record, short extracts from these affidavits...

THE PRESIDENT: It is no use telling me what you merely thought. You heard what I said to Dr. Servatius, that the Tribunal did not want to hear the same thing over again that appears in the transcript of the proceedings before the Commissioners. It was all gone into perfectly clearly with Dr. Servatius, and it was explained to him in your hearing that we cannot carry all these things in our minds and that it is useless to go over them twice unless there is some matter of very great importance which you want to draw our attention to before you make your final speech; and I said that before and I don't want to have to say it again.

DR. MERKEL: In that case, if I may, I shall refer to the summaries of the transcripts of the Commission with reference to the numbers following up to 91, and shall assume that the Tribunal will take notice of the contents of these summaries. I shall then have only one collective affidavit left. If the Tribunal wishes me to do so, I can read the summary contained in that affidavit; as far as I know, that has not been translated. There are six pages of this summary of 1,276 individual affidavits which do not appear in the Commission report.

THE PRESIDENT: Yes, go on.

DR. MERKEL: Regarding the question of compulsory membership, 665 affidavits are available. They state that when the Gestapo was created, the requirements for personnel were for the most part met out of the existing Political Police. Regarding forced membership of emergency draftees, there are 127 affidavits which deal with the same subject.

785 affidavits state that they had no knowledge of the crimes of which the Gestapo is being accused.

39 affidavits deal with the difference in organization between the Gestapo in the Reich and the Security Police in occupied territories.

195 affidavits state that the writers had no knowledge of inhuman treatment and atrocities in the concentration camps. A few officials who had entered concentration camps on conducted visits failed to notice any irregularities there; nor did released detainees speak about concentration camps in a derogatory manner.

133 affidavits state that no participation or supervision of the excesses of 9 and 10 November had taken place.

67 affidavits state that the looting of private or state property was expressly forbidden to members of the Gestapo.

135 affidavits state that a large number of Gestapo members knew nothing about the existence of the Einsatzgruppen or of atrocities committed by them.

218 affidavits state that the "Bullet Decree" was unknown to the majority of the Gestapo officials, and that recaptured prisoners of war were turned over to Wehrmacht offices.

168 affidavits state that enemy parachutists were turned over to the Air Force by the Gestapo, and 23 affidavits state that the Reich Security Main Office was responsible for the imposition of protective custody.

181 affidavits speak of punishment of members of the Gestapo by SS and Police Courts for misconduct during and off duty.

With that, Mr. President, I have come to the end of my submission of documents and affidavits.

LIEUTENANT COMMANDER WHITNEY R. HARRIS (Assistant Trial Counsel for the United States): May it please the Tribunal, I have just two short comments to make concerning documents which were presented here on matters regarding which I think he was in error, and I respectfully request the Tribunal to turn to his Number Gestapo-33.

THE PRESIDENT: Yes.

LT. COMMANDER HARRIS: Dr. Merkel has cited this document as evidence that the executions in concentration camps were ordered by the WVHA, but I would respectfully invite the attention of the Tribunal to the sentence in the center on the first page, and I quote: "For this measure permission of the Chief of the Security Police must be obtained."

THE PRESIDENT: Commander Harris, the Tribunal thinks that this is a matter which can be dealt with in argument and not at this stage.

LT. COMMANDER HARRIS: Very well.

THE PRESIDENT: Now, the Tribunal will hear the case of the SD. Is counsel for the SD not present?

DR. STAHLER: He is being called and will be here any moment.

THE PRESIDENT: Marshal, have you made any effort to get—to obtain the presence of this counsel? Have you communicated with him?

THE MARSHAL: We got in touch with his office, and we are looking for the defense counsel right now.

THE PRESIDENT: The Tribunal will adjourn now until tomorrow morning at 10 o'clock.

[The Tribunal adjourned until 20 August 1946 at 1000 hours.]

TWO HUNDRED AND SEVENTH DAY

Tuesday, 20 August 1946

Morning Session

THE MARSHAL: May it please the Tribunal: the Defendant Hess is absent.

DR. RUDOLF DIX (Counsel for the Defendant Schacht): May I be permitted quite briefly to submit to the Tribunal a possible precautionary application regarding evidence. I repeat: it is a possible precautionary application which will only be operative under certain conditions which I am about to explain. I beg the Tribunal to remember that I wanted to call Frau Struenk and Generaloberst Halder as witnesses for the same subject on which the witness Gisevius testified as a Defense witness for Dr. Schacht. The application to hear Generaloberst Halder I withdrew at an early stage, whereas the examination of Frau Struenk as a witness was granted by the Tribunal. However, after hearing the witness Gisevius and the witness Focke, I decided in the interest of time to withdraw my application for these witnesses as I considered that their testimony would be cumulative.

Now these two witnesses, Frau Struenk and Generaloberst Halder, will no longer be cumulative if the Tribunal should adopt the view, which I do not hold, that the testimony of the witness Gisevius insofar as it was in favor of Dr. Schacht was weakened in any way by the statements of the witness Von Brauchitsch.

It is not my task to represent the material or ideal interests of the witness Gisevius; nor is it my task to strengthen the credibility of the witness Gisevius insofar as he has incriminated other defendants or other persons. It is merely my duty to furnish evidence in defense of my client, Dr. Schacht. It is my own personal opinion—and that speaks against my own application—that the testimony of Gisevius with reference to Dr. Schacht, that is, his testimony regarding the purpose of armament as Schacht intended it to be, Schacht's real attitude towards the regime, and especially Schacht's active part in the resistance movement—that this testimony has in no way been shaken by the testimony of the witness Brauchitsch, to the effect that he did not know the witness Gisevius at all. These subjects of evidence have not only been proved by Gisevius; but, as far as the purpose of armament and the inner attitude towards the

regime are concerned, has also been proved by every affidavit submitted; as far as the beginning of the resistance movement and the contact with Kluge are concerned, that has been proved by the witness Focke; the affidavit of Schmidt proves the attempts to avert war at the last . . .

THE PRESIDENT: Dr. Dix, I think you must make up your mind whether you want to make an application or not. If you want to make an application, you must make it in writing. The Tribunal is not inclined to entertain possible precautionary applications which are not in writing.

DR. DIX: I intend to leave it to the decision of the Tribunal. I am merely making a suggestion because it is my personal view . . .

THE PRESIDENT: The Tribunal has made a rule that applications must be in writing. That rule has been applied to every other counsel appearing on behalf of the defendants. The Tribunal thinks that rule should be adhered to by you too. Therefore, if you wish to make an application you should make it in writing.

DR. DIX: Very well, then I shall gladly make my application in writing. Does the Tribunal wish me to indicate now briefly what it will contain, or is it sufficient merely to state my intention of making an application in writing?

THE PRESIDENT: I do not see any reason for departing from the rules.

DR. DIX: Then I shall make my application in writing.

THE PRESIDENT: I have two announcements to make. In the first place, with reference to the application of Dr. Seidl, who does not appear to be present, the Tribunal has had a report, dated the 17th of August 1946, on the condition of the Defendant Hess from Captain G. M. Gilbert, the prison psychologist. This report will be communicated to the Defendant Hess' counsel, to the Prosecution, and to the Press. The Tribunal will not call for any further report upon the Defendant Hess at the present time.

In the next place, with reference to the application by Dr. Stahmer, dated the 14th of August 1946, the Tribunal will treat this application as an exceptional case, and they will allow the Defendant Göring to be recalled to the witness box to deal with the evidence upon experiments which was given after the Defendant Göring gave his evidence, and upon no other subject.

The Tribunal rejects the application to call another witness, and the Tribunal will hear the Defendant Göring in the witness box now.

[The Defendant Göring resumed the stand.]

THE PRESIDENT: You understand, Defendant, of course, that you are still under oath?

GÖRING: Yes, of course.

DR. STAHLER: Were you the President of the Reich Research Council?

GÖRING: Yes.

DR. STAHLER: When and by whom was the Reich Research Council established? What were its tasks?

GÖRING: As far as I remember it was established by me either in 1942 or at the beginning of 1943.

It embraced every sphere of science, physics, chemistry, technology, medicine, and philosophy and united in itself the various institutes of the State, the Kaiser Wilhelm Institute, the institutes of the universities, the economic research institutes, which were all carrying out the same kind of research work. Commissions were formed in every sphere, and together they saw to it that research in a particular field was not carried out on parallel lines but as a joint project. It was also their task to correlate the various spheres of research work, such as physics and chemistry.

At the head of each one of these commissions was a plenipotentiary. A prime consideration of all this research work was, of course, the application of results to the necessities of war, and for that purpose also special representatives were appointed. The Reich Research Council literally assigned thousands of research tasks and since I personally am, of course, not an expert, I was head of the whole institution only to lend it my authority and especially to provide the necessary funds. These tasks were allotted under the title "Reich Marshal of the German Reich, President of the Reich Research Council."

DR. STAHLER: What position within the Air Force, and what tasks did the Medical Inspectorate of the Air Force have?

GÖRING: It had the task, as in all other branches of the Armed Forces, of taking care of the hygiene and health of the Luftwaffe, and of all other tasks in that sphere.

DR. STAHLER: Did the Medical Inspectorate have any connections with the Reich Research Council?

GÖRING: Naturally it had loose connections with the Reich Research Council in order to obtain the results of the clinical and medical research work and to communicate to the Research Council its own wishes on research tasks in which it was particularly interested.

DR. STAHLER: Did you assign the Reich Research Council or the Medical Inspectorate of the Air Force or any other authority at any time tasks for medical experiments on detainees in concentration camps, for example Dachau, or any other camps?

GÖRING: I should like to say quite clearly on this point that there cannot possibly exist a single letter which I signed, and that not a single person can possibly allege that I, myself, at any time whatsoever assigned a single task or gave even a hint in that respect.

DR. STAHLER: Did you have knowledge of the fact that a certain Dr. Rascher, or an Oberfeldarzt of the Air Force, Dr. Seltz, carried out medical experiments on detainees in the concentration camp of Dachau?

GÖRING: Dr. Rascher was, as I heard here in Nuremberg and as I gathered from the documents, a medical officer of the Air Force Reserve. Since later on, as appears from his correspondence, he was apparently not successful with his experiments, he left the Air Force and became a medical officer in the SS. I myself have never seen or met him, nor do I know the second name which you mentioned; and I do not even know whether he was a medical officer of the Reserve or on active service.

DR. STAHLER: Did you give to any agency, or did you instruct anyone to give to any agency, orders to carry out subpressure chamber experiments on detainees in concentration camps?

GÖRING: I have already said that I did not do so. It is obvious that if anybody had approached me, shall we say from the Medical Inspectorate or from the Reich Research Council, and had told me that it would be serving a useful purpose if we carried out research on typhoid or even cancer or in other fields, I would of course have said that that was a very praiseworthy enterprise. But I would never countenance the fact that human beings should be used in an inhuman manner for this purpose. And if someone had told me that experiments with subpressure chambers were going on, I should not have inferred that detainees were being used for the purpose, all the more since I knew that every aviator had to enter a subpressure chamber to test his reaction to such conditions.

DR. STAHLER: Did you commission the Reich Research Council or the Medical Inspectorate of the Air Force or any other authority to carry out experiments for making sea water potable?

GÖRING: I have never heard of these experiments. They would have interested me greatly because we as airmen repeatedly discussed this point, not so much as to how to make sea water potable, but as to how an airman who was adrift in the sea in a lifeboat could obtain drinking water at all, and all airmen were told at that time that there was only one way: that they should have fishing tackle aboard their lifeboats so that they could catch fish and—in a quite primitive way—squeeze the fish with a cloth; under such circumstances that was the only method of obtaining potable water. That is why that point is particularly clear in my memory.

DR. STAHLER: In May 1944 this matter is supposed to have been discussed during a conference in the Air Ministry. Did you convene that conference or were you informed of it afterwards?

GÖRING: No. Daily conferences of all offices and of all departments were always taking place in the Air Ministry and they could not possibly all have been communicated to me or convened by me from headquarters.

DR. STAHLER: Discussions with the Air Force are supposed to have taken place at Dachau on the same question. Were they ordered by you or did you hear of them?

GÖRING: No.

DR. STAHLER: For this purpose the Air Force is said to have made working space available at Dachau. Did you know of this?

GÖRING: No, I had no knowledge of this at all.

DR. STAHLER: Do you know a medical officer of the Air Force Reserve, Dr. Denk or Ding?

GÖRING: Neither under the name Denk or under the name Ding.

DR. STAHLER: Did you give orders, or did you instruct anyone else to give orders, to carry out freezing experiments which are said to have been carried out by a certain Professor Wolfslöhner, a medical officer of the Air Force Reserve, on detainees at Dachau?

GÖRING: No, as far as I remember from the documents Rascher carried out these experiments. Wolfslöhner is as unknown to me as are the other names. There were thousands of medical officers and Reserve medical officers in the Air Force.

DR. STAHLER: Did you ever commission Dr. Haagen, Professor at the University of Strasbourg, who is said to have been Oberstabsarzt of the Air Force and consulting hygienist, to carry out with all means experiments to combat typhoid?

GÖRING: I also gathered from the documents that Dr. Haagen was a medical officer in the Air Force Reserve, and consulting hygienist not of the Air Force but of an air fleet, that is, a unit of the Air Force. I do not know him, and have never given him a commission; he could obviously be heard on that point at any time.

Apart from that, a commission of this sort would certainly have remained in my memory because it would have somewhat astonished me, since I myself was immunized against typhoid three times and I did not think that further research in that sphere was taking place.

DR. STAHLER: Now, how do you explain that the witness Sievers, in a letter addressed to Obergruppenführer Pohl and dated May 1944, stated that Professor Haagen had been ordered by the Reich Marshal and President of the Reich Research Council to carry out such experiments?

GÖRING: This can be explained as follows: firstly, as I said earlier, the letter heading for all such commissions given by the Reich Research Council was worded: "The Reich Marshal of the German Reich," signature: "The President of the Reich Research Council." It was the custom in Germany that the personal title was given rather than the office of the person in question; for instance: "The Reich Minister of Finance," not "The Reich Ministry of Finance." Secondly, the witness Sievers himself testified here—and he gave a rather large figure—that tens of thousands of commissions were given under my name without my knowing anything about them; which, indeed, would have been quite impossible. Thirdly, it was well known in the whole of Germany that hardly any name was used as much as mine. If anyone wanted to achieve anything at all, he quite happily wrote "The Reich Marshal desires, orders, or would like to see this or that done."

It was for that very reason that in 1944 I created a special department calculated to prevent the misuse of my name for such matters.

DR. STAHLER: What was your attitude, as a principle, with regard to the carrying out of medical experiments on human beings?

GÖRING: I already . . .

THE PRESIDENT: I think the defendant has already told us what his basic attitude was.

DR. STAHLER: Very well, Mr. President. Then, with reference to this subject, I have no further questions. I must merely reserve the right to put further questions as soon as the witness Schreiber has appeared here. A statement from this witness was submitted to the Tribunal, but it has not yet been introduced in evidence, so that I cannot at this moment deal with it.

THE PRESIDENT: The Tribunal doesn't know what you are talking about because the Tribunal has not yet allowed the witness Halder to be called; but you must conclude your examination of the defendant now.

DR. STAHLER: I believe I have been misunderstood, Mr. President, I was speaking of the witness Schreiber. A statement of the witness Schreiber was submitted, and the Tribunal ruled that Schreiber should appear here as a witness. I shall, therefore, have to reserve the right . . .

THE PRESIDENT: The interpretation came to us as Halder.

DR. STAHLER: No, no—Schreiber, Professor Schreiber of the Russian statement.

THE PRESIDENT: If this Schreiber is brought here in accordance with the Tribunal's order, then no doubt you will have the opportunity of cross-examining. Dr. Stahlmer, if you want to put any

questions to the Defendant Göring, you must put them now because the Tribunal doesn't propose to have the defendant recalled again should the witness Dr. Schreiber be produced. Therefore, if you have any questions to put to the defendant on the subject which Dr. Schreiber might be called to deal with, you must put them now.

DR. STAHLER: Did you never receive from Hitler an order or some special authority to carry out preparations for bacteriological warfare?

GÖRING: I have never received authority or an order of the kind mentioned by General Schreiber of the Medical Service in his letter to the Soviet Government.

DR. STAHLER: Did you have knowledge of the fact that your medical officers were working on preparations of this sort?

GÖRING: No, and this letter does not say anything about medical officers, but merely that a Luftwaffe officer . . .

THE PRESIDENT: One minute. Will you just wait one minute. Go on, Dr. Stahlmer. You will confine yourself to the matters with which you have dealt in your written application with reference to Dr. Schreiber.

DR. STAHLER: Did you have knowledge of the fact that the working association "Bacteriological Warfare" existed?

GÖRING: That such a working association existed I did not know. What I did know, however, was that as a matter of course defensive measures against bacteriological warfare were discussed. It must not be forgotten that to a certain extent this type of warfare had already been instituted against us by the dropping of destructive potato beetles and so on. Measures were taken, on the one hand, to carry out preparations for defense against such warfare; then possibly—I do not know this, but it is quite possible—preparations may have been made to enable us to reply, should the enemy start this bacteriological war.

DR. STAHLER: Do you know Professor Blommen?

GÖRING: No.

DR. STAHLER: Then you did not commission him to prepare such measures?

GÖRING: That is hardly possible.

DR. STAHLER: I have no further questions, Mr. President.

THE PRESIDENT: Do the Prosecution desire to ask any questions?

SIR DAVID MAXWELL-FYFE: Defendant, I first want to know how much of the witness Sievers' letter you agree with or disagree with. Do you agree that the directions for carrying out the spotted fever experiments were in the hands of the director of the Hygienic

Institute of the Reich University of Strasbourg, Professor Dr. Haagen, major in the Medical Corps, and consulting hygienist to an air fleet? Is Sievers right in saying that?

GÖRING: I have no means of checking that; it is possible.

SIR DAVID MAXWELL-FYFE: I see. Now, are you disputing that Dr. Haagen was—I quote—"commissioned with this task by the Reich Marshal, the President of the Reich Research Council," or do you again say that you have no means of checking that?

GÖRING: I said quite clearly that I know nothing about it; and it is interesting that he also speaks of the Reich Marshal and the President of the Reich Research Council, that is, the heading under which all the thousands of research commissions were given.

SIR DAVID MAXWELL-FYFE: To put it quite bluntly, your defense to this is the rubber-stamp defense that your signature on the orders was merely a rubber-stamp for the equivalent signature as President of the Reich Research Council? Is that what you want the Tribunal to understand?

GÖRING: No, I am not saying that at all. If my signature was given, then it had its full value; but it was not given. As I said earlier, this was the heading, the letter heading of the tasks set. These task allotments were signed by some subordinate department dealing with these matters. If I signed a letter, I alone assume the responsibility for it. It would be only too easy for the Prosecution to put such a letter before me or to question Herr Haagen.

SIR DAVID MAXWELL-FYFE: Then you say that if instructions went out from the Reich Research Council you knew nothing about them. That is your answer, as I understand it.

GÖRING: The details, of course, I did not know, because firstly, that was impossible if only from the point of view of time; my day, too, only had 24 hours. Secondly, I emphasized that I was not an expert in any way, but that my task was to give general instructions to the men working in research, to centralize the research work of every sphere, and to provide the very large funds required.

SIR DAVID MAXWELL-FYFE: Did you see, Defendant, the letter goes on to say: "In accordance with his instructions"—which were said to come from the Reich Marshal, the President of the Research Council—"In accordance with his instructions, Dr. Haagen has to report about his work to the Chief of the Luftwaffe Medical Services."

GÖRING: That is possible; it is possible that he was given that order. However, he did not report to me, and the Chief of the Medical Inspectorate did not report to me either.

It is for that reason that my defense counsel applied to have the Chief of the Medical Inspectorate appear here as a witness, in order to make this point abundantly clear.

SIR DAVID MAXWELL-FYFE: So that in both these capacities—in these two of your capacities—the Reich Research Council and the Medical Department of the Luftwaffe were both acting without any knowledge of yours? In these experiments which were concerned with the condition of, among others, the service for which you were responsible, you say both of these bodies were acting without your knowledge? That is what you say? Is that right; are you sure it is right?

GÖRING: That is absolutely right. A short explanation, in this connection. Well, you see, it is absolutely...

SIR DAVID MAXWELL-FYFE: Just a moment. I would like you to consider one or two points before you commit yourself too deeply to that.

Do you know that in May of 1942 Field Marshal Milch was expressing your special thanks to the SS for their co-operation in the altitude experiments?

My Lord, that is Document Number 343-PS, and it is the letter that begins, "Dear Wolff." Wolff was one of Himmler's personal staff. If my recollection is correct, he was the liaison between Himmler and Hitler, certainly at one time.

And your second man, Defendant, Field Marshal Milch, was expressing the special thanks from the Supreme Commander of the Air Force to the SS for their extensive co-operation in the altitude experiments.

Are you saying that Field Marshal Milch, when he wrote that—or when he signed it on behalf of your medical department—was merely expressing a *chanson de malaise* and was not conveying your thanks to Himmler?

GÖRING: Not only am I saying it, but Milch himself testified to that quite clearly while he was in the witness stand; if you will read the record, you will find that he expressly admits that I had no knowledge of these details.

Apart from that I must mention that we employed a certain method of correspondence which may perhaps not seem quite fitting here, but it nevertheless existed: if a representative of a Ministry wrote a letter of thanks which was not of a personal nature, he always had to express thanks on behalf of the chief, in the name of the chief, and I believe that rule exists everywhere.

SIR DAVID MAXWELL-FYFE: I just remind you: what the witness Milch said was that these letters were put in front of him by your medical department. These experiments mainly and greatly

concerned the Luftwaffe. Are you saying that the thanks of the Luftwaffe and of the Supreme Commander, yourself, were given without any reference to you at all?

GÖRING: Field Marshal Milch did not say that the letters were put before me, he said they were put before him.

SIR DAVID MAXWELL-FYFE: That is what I said: I said "before him." I didn't suggest they were put before you at all.

GÖRING: It probably came through incorrectly. Then he goes on to say that he expressed his grateful thanks, because the inspectorate had told him that it was no longer interested in the matter since the high-altitude experiments had already been carried out voluntarily by our young medical officers, and he spoke about that at length.

SIR DAVID MAXWELL-FYFE: But you know, it didn't stop with your young medical officers. Your service provided the equipment for Dachau for these experiments.

GÖRING: The translation is not coming through.

SIR DAVID MAXWELL-FYFE: I will repeat that. It did not stop there. Your service was providing the equipment for these experiments for Dachau.

My Lord, the reference to that is Exhibit GB-582, Document Number 2428-PS, which is an affidavit by the detainee Anton Pacholegg, who was at Dachau. He says that the Luftwaffe delivered, here at the concentration camp at Dachau, a cabinet constructed of wood and metal, measuring one meter square and two meters high, and so on. He describes the equipment.

[Turning to the defendant.] Are you saying that the supplying of equipment for these experiments at Dachau was done without any reference to you on these particular Air Force experiments?

GÖRING: In the first place, it was not the Air Force which was carrying out the experiments at Dachau, it was the medical office of the Air Force Reserve, Dr. Rascher. Whether Dr. Rascher obtained the order to do so from the Medical Inspectorate, and in what form, I do not know.

Secondly, it was not wood or various parts which were sent there, but a so-called high-altitude chamber. That is the thing I mentioned before, which every airman had to enter to test the reaction of his body to altitude and pressure conditions. It was not difficult for Rascher, therefore, to go to the inspectorate, to the Technical Inspectorate, and ask for such a chamber without giving exact details of the type of experiments for which he wanted to use it, and whether his experiments entailed any danger for the people subjected to them.

Thirdly—I should like to stress this again—the Prosecution has repeatedly said, and only lately Justice Jackson in his final speech especially emphasized, that I had my fat fingers in every pie. I want to say that if I held as many offices as I am being accused of having held, then you will understand that I could not have concerned myself with every high-altitude chamber used for experiments.

SIR DAVID MAXWELL-FYFE: But did you not concern yourself with the experiments to test the flight clothing for the Luftwaffe when the concentration camp detainees were dressed in various types of flight suits with jackets? I mean, Defendant, you have been a practical airman yourself, with a very gallant record of service in the air in the last war. What I am suggesting to you is that these matters were matters that were not only within your administrative interest in your positions, but they were within your personal interest as an ex-air officer. That is why I am suggesting to you that you would have, and did have, an interest in these experiments.

Putting back your memory, are you sure that you don't remember about the experiments on these concentration camp detainees for testing air clothing?

GÖRING: Sir David, I am not only absolutely sure that I do not remember, but I am absolutely sure that it was not so. I emphasize that I am not saying I do not remember; I am saying with absolute certainty that this was not so.

Secondly, you are quite right: naturally I took the greatest interest in the welfare of my airmen, and also in their clothing. As airmen we repeatedly discussed among ourselves what the best type of combination would be. Had I been told that heatable combinations would be used, then on the strength of my own experience I would have said that I did not want them, because at the end of the last war I myself once wore such a heatable suit with the result that I badly burnt myself.

SIR DAVID MAXWELL-FYFE: Well, now, take another experiment. It must have been the same in your Air Force as in ours, that one of the greatest difficulties, or one of the things that one wanted to deal with, was those who came down, in our parlance, who came down into the sea; that is, what could be done and for what time they would survive.

Do you say that you did not know about the cold test? According to this affidavit to which I have referred, Dr. Rascher conducted this cold test. That was for the Luftwaffe also. That was to see the resistance of the human body to immersion in water. Do you say that you knew nothing about that experiment also?

GÖRING: I knew neither Dr. Rascher nor any of his experiments. The symptoms of cold experienced when the men fell into the water

were known. Against freezing there existed an excellent powder, or some such stuff. Moreover, I knew that everything had been done to construct life belts in such a way that they would permit breathing in spite of breakers, and so on, and we also observed and studied the precautionary measures, the clothing, and the rescue methods of our opponents. I remember that I once held a pamphlet of that type in my hand, but that is all.

Apart from that, people have been falling into the water for years, and have always done the most suitable thing under the circumstances: they have moved about, they have taken alcohol, and so on, to get warm again.

SIR DAVID MAXWELL-FYFE: Well now . . .

GÖRING: I beg your pardon, but there is one thing to which I attach very great importance, and it is this: The experiments with women, and so on, which were described here, are so utterly in contradiction to my views as regards women, that I would have resented such experiments most deeply, not just afterwards, but at the time.

SIR DAVID MAXWELL-FYFE: Well, now, just one other experiment, then I will pass to the question of knowledge of these experiments at that time. Did you or did you not know that the Sanitätswesen of the Luftwaffe were, in May 1944, working on experiments to render sea water drinkable, in which concentration camp inmates were used?

GÖRING: No, that I did not know. But I would like to explain how it may have happened. Not even the Medical Inspectorate need have known of it. A task was set by the inspectorate, and even assuming that I had done so, it does not at all follow that experiments were carried out on human beings, which endangered their lives. If a medical officer of the Luftwaffe Reserve had any sort of connection, let us say, with Himmler or his Research Institute, for instance as a member of the SS, which was quite possible, then these were cross-connections of which the Luftwaffe Medical Inspectorate need not have known anything whatever. Not all methods of procedure were reported to superior authorities.

SIR DAVID MAXWELL-FYFE: The first letter that I put to you was dated 26 May 1942. You say that the facts which Field Marshal Milch was concerned with—I want to get it as exact as possible—were merely formal methods of conveying the facts of that date? Do you remember that on 28 July 1942 Hitler issued a Führer Decree, countersigned by the Defendant Keitel and by the witness Lammers, establishing a Co-ordination Staff for the Armed Forces to deal with health? That is on 28 July 1942. It was to co-ordinate the coming tasks in the field of health for the Armed Forces, the Waffen-SS, and subordinate organizations. And, if I may remind you so that you may fit it in your memory, “for the purpose of a comprehensive

treatment of these offices, a sanitary officer of the Navy and a sanitary officer of the Air Force will be assigned to work under him"—that is the Sanitary Inspector of the Army. Now listen to this: the latter, that is, the medical officer of the Air Force, in a capacity as a Chief of Staff; that is the time when Field Marshal Milch was writing to Wolff about these experiments.

Two months later there was a Führer Decree, and one of your officers was to be Chief of Staff of this Co-ordination Staff. Are you telling the Tribunal that you did not know about the Führer Decree and that your officer was so appointed?

GÖRING: Before giving my answer, may I have a look at the decree?

SIR DAVID MAXWELL-FYFE: Would you like . . . ?

GÖRING: Yes, I should like to see it.

SIR DAVID MAXWELL-FYFE: I have only the English copy.

[A document was handed to the witness.]

GÖRING: Yes, that is just what I wanted to find out. This decree has nothing whatsoever to do with experiments. It begins with the following—I shall translate it freely, I do not know the language so well.

"A planned co-ordination is necessary for the personnel and material in the field of health and in the whole Medical Inspectorate. I therefore decree as follows . . ."

The decree created the post of the chief of the medical department—I no longer know the exact designation—in order to solve the shortage of medical officers and of medical supplies—that is especially emphasized here—and, of course, if necessary, to carry out joint research work.

What we did in the field of research, especially during the war, is of course quite clear. Since the Army was providing the bulk of the medical officers and was receiving the largest amount of medicines and material, the Sanitary Inspector was put at the head of the department. Since the Air Force was the second largest branch of the Wehrmacht, the Chief of Staff was chosen from the ranks of the Luftwaffe. That is quite understandable.

SIR DAVID MAXWELL-FYFE: The point that I am putting to you, and I think you have gathered it, is that on 28 July 1942 there was this additional interest in medical matters and research which made Hitler assemble this co-ordinating staff. Now, I want you just to remember how that interest in medical matters was shown in your service. A month later, on 31 August 1942, your second man Milch was writing to Himmler. My Lord, this is Document Number 343-PS, the Exhibit USA-463.

"Dear Herr Himmler: I thank you very much for your letter of 25 August. I have read with great interest the reports of Dr. Rascher and Dr. Romberg. I am informed about the current experiments. I shall ask the two gentlemen to give a lecture combined with the showing of motion pictures to my men in the near future."

Now, assume that Milch is telling the truth for the purpose of this question, and that that letter was put in front of him by the head of your medical department for his signature; assume that, if you like. There is no reason to suppose that the head of your medical department was telling lies in the letter he put before Milch; no reason to assume that that letter is untrue, and if, in your service, lectures were given on these experiments with motion pictures to the men, are you still telling the Tribunal that you, as the head of the service, knew nothing about these experiments for your service that were going on?

GÖRING: I am telling the Tribunal only the truth. First, this letter need not by any means have been submitted to Milch by the Sanitary Inspectorate just because it was a direct letter between Himmler and Milch. Secondly, while he was in the witness stand here, Milch . . .

SIR DAVID MAXWELL-FYFE: Excuse me for interrupting you. I am only quoting Milch's evidence. I was asking you to assume for the moment that Milch's evidence is true. It was suggested to Milch that his evidence wasn't true, and the truth was that you said it was his own letter. I am asking you to assume that Milch is telling the truth; this is the letter put before him by the sanitary department. That is why I put it that way. Now, continue your answer.

GÖRING: I am afraid I did not understand you quite clearly. Did you read me a letter from Field Marshal Milch or did you read the testimony which Milch gave here? The translation did not make that quite clear.

SIR DAVID MAXWELL-FYFE: I read to you a quotation from a letter of Field Marshal Milch to Himmler. And I informed you, in case you didn't remember, that Field Marshal Milch—that that letter was put in front of him by your medical department and that he signed it blindly. That was Milch's evidence. I asked you to assume that Milch was telling the truth. I don't mean that for the moment. I am asking you, as head of your service, if these experiments were the subject of lectures and motion pictures shown to your own men serving under your command? Are you still telling the Tribunal that you knew nothing about them?

GÖRING: I already said quite clearly and plainly that I myself knew nothing about them. I did not say that Field Marshal Milch

had made an untruthful statement. After all he must know whether the letter was submitted to him by the inspectorate or not; as far as I recall his testimony here on the witness stand, he cleared up this matter completely and emphasized that he made no report whatever to me about the details of these experiments.

But, Sir David, may I once more direct your attention to this decree. I have meanwhile glanced through the whole of it. It has nothing at all to do with these experiments but, as I said earlier, Part 1 deals with the medical departments of the three Wehrmacht branches, and Part 2 deals with the relation of the army and civil medical health services from a purely organizational and administrative point of view.

SIR DAVID MAXWELL-FYFE: Witness, I just passed the decree, you know. I want your answer. Do you say that you did not know that lectures and motion pictures were shown to the men under your command, dealing with these experiments? I just want your answer quite clearly—yes or no. Did you or did you not know?

GÖRING: No, I knew nothing about that. May I ask you once more to take into consideration that the Ministry was an administration of its own, whereas I, at headquarters, dealt rather with strategic and tactical matters. I would certainly have objected to such experiments; even though the Russian Prosecution, I believe, at one time distorted this, I maintain this. In 1934 I strictly forbade experiments and tortures to be carried out on living animals; kindly do not expect me to have permitted them to be carried out on human beings.

SIR DAVID MAXWELL-FYFE: It is not for me to comment. Plenty of people have standards with regard to animals which they do not apply to fellow-men. But this is a matter of comment and I do not wish to pursue it.

Now, in November 1942—you referred to it in giving your evidence—Dr. Rascher was transferred soon after that from the Air Force to the SS. Before he was transferred, Himmler wrote to Milch on that subject after describing the experiments on the behavior of the human organism at great heights, in prolonged cooling, and similar problems. I quote Himmler's words, which are of vital importance to the Air Force in particular:

"These researches which deal with the behavior of the human organism at great heights, as well as with manifestations caused by prolonged cooling of the human body in cold water, and similar problems which are of vital importance to the Air Force in particular . . ."

Then he says:

"Unfortunately you had no time recently when Dr. Rascher wanted to report on the experiments at the Ministry for Air.

I had put great hopes in that report because I believe that in this way the difficulties, based mainly on religious objections, which obstructed Dr. Rascher's experiments for which I have assumed responsibility, could be eliminated. The difficulties now are still the same as before. In these Christian medical circles the standpoint is being taken that it goes without saying that a young German aviator should be allowed to risk his life, but that the life of a criminal who is not drafted into military service is too sacred for this purpose and one should not burden oneself with this guilt."

Then Himmler goes on to say that in view of the importance to the Air Force and also to the Waffen-SS, "however, in this connection, I suggest that in view of the liaison between you and Wolff," that is, Milch and Wolff, "a non-Christian physician should be in charge who would, at the same time, be informed of the results."

Are you saying, Defendant, that you never heard, although Hitler had heard, that Christian medical circles were protesting against these experiments?

GÖRING: I think you mean Himmler, not Hitler.

SIR DAVID MAXWELL-FYFE: Himmler, I am sorry. Although Himmler knew, you say you did not know that Christian medical circles were apparently, according to this letter, publicly and insistently protesting against these experiments? Did you not know that?

GÖRING: No, and they did not protest publicly. But I am very grateful to you for having brought up this letter which I no longer remembered among the many documents which have been submitted to me. It underlines clearly and unmistakably what I said before and I am happy that by the Christian medical officers who are mentioned here, the inspectorate of my Luftwaffe is apparently meant, because only the inspectorate could raise protests. And that is also the reason why this Rascher had apparently to leave the Air Force as his co-operation with the inspectorate no longer satisfied Herr Himmler; and therefore he transferred him to the SS. That emphasizes exactly what I said.

SIR DAVID MAXWELL-FYFE: I want you—again, I want you to apply your mind to this. You and Himmler were still on good terms in 1942, weren't you?

GÖRING: Until the end, Himmler always adopted a very polite attitude towards me, as befitted him.

SIR DAVID MAXWELL-FYFE: You were more than that. Within a few days of this letter you sent him an attaché-case of crocodile leather, a box of cigars, and a notebook for Christmas. This means

that you were on good terms with Himmler at this time. Do you mean to say that you never heard, that Himmler never said to you, that Milch never told you, that your medical officer never said to you, that these experiments were being carried on and were causing protest in Christian medical circles? Did everyone conspire, Defendant, to keep you in ignorance of every matter that might be embarrassing to you? Now, is that the answer?

GÖRING: The experiments and knowledge of them have nothing to do with the crocodile attaché-case and the notebook. These were Christmas presents in return for a present which Himmler always gave me for Christmas on behalf of the SS, and I always wanted to respond to this gesture. Secondly, no attempts were made to hide anything from me intentionally, but the various spheres of activity were divided; there were important matters, very important matters, and routine matters which were treated by certain departments. The Medical Inspectorate was one of them. It was impossible to bring everything to my knowledge.

Apart from that, I wish to emphasize again that I never heard of a public protest by Christian circles or doctors in Germany against such experiments during the war; such a protest would not, in fact, have been possible.

THE PRESIDENT: Have you any question to put, Dr. Stahmer?

DR. STAHLER: I have no further questions.

THE PRESIDENT: The Defendant can return to the dock.

Dr. Gawlik.

DR. GAWLIK: Your Lordship, may I first of all apologize for my failure to be ready for the submission of my documents yesterday. I regret that this resulted in a delay of the proceedings, but defense counsel for the Organizations were informed that the sequence for the submission of documents would be different from that of the examination of witnesses, and the sequence of which we were informed was the following: Political Leaders, Gestapo, SS, and SD. I therefore assumed that I would follow the SS with the submission of documents. I ask the Tribunal to take into consideration that I am at present preparing my final speech and that I am therefore not able to participate in all the sessions.

THE PRESIDENT: Are you saying that you are not able now to participate in the session?

DR. GAWLIK: Now I am ready, Your Lordship.

THE PRESIDENT: I do not know how any such misunderstanding as you indicate can have occurred, because no order was given by the Tribunal that there would be any alteration of the order, and counsel for the defendants and the defendant organizations must

understand that they must be here when their case is called on, and the Tribunal can't be kept waiting as it was yesterday. This is the first occasion on which it has happened, and the Tribunal hopes it will not happen again.

DR. GAWLIK: Your Lordship, it is a notice dated 1 August which is posted on the blackboard in counsel's room.

THE PRESIDENT: Just what does it say?

DR. GAWLIK: It says that for the examination of witnesses, the sequence was altered and the SD witnesses were heard before the SS witnesses, but that for the submission of documents and the final speeches, the old sequence will be followed, and then the sequence is quoted: Political Leaders, Gestapo, SS, and SD.

THE PRESIDENT: The Tribunal will inquire into that matter.

DR. GAWLIK: First of all, may I submit the records with regard to the witnesses I have examined. I shall now begin with the submission of affidavits. On account of the pressure of work in the Translation Division, only some of the affidavits have so far been translated. I request that those affidavits...

THE PRESIDENT: Dr. Gawlik, as you weren't present the other day, perhaps I had better tell you what the Tribunal's wishes were and are with reference to these affidavits.

A large number of these affidavits, if not all, have been summarized and the summaries set out in the transcript before the Commissioners, and therefore for you to give a summary again of these affidavits merely creates on the transcript of the Tribunal a repetition of the summary which is already in the transcript before the Commissioners. The Tribunal does not desire that. Therefore, if you will confine yourself to commenting on or summarizing the affidavits which have not been summarized before the Commissioners, that is all that is necessary, subject of course to offering them in evidence.

Is that clear? I wasn't suggesting that you should bring before us affidavits which haven't been brought before the Commissioners, but I was merely telling you that we don't want to have a repetition of summaries which were put before the Commissioners and which are set out in the transcript before the Commissioners.

DR. GAWLIK: That was not my intention, Your Lordship. I have only asked for some of these affidavits to be translated, and I was going to submit only those completely translated; but of those which I wanted to submit I have received only a part fully translated. Therefore I cannot at this moment submit the translation of all the affidavits I propose to use, and so I request that I may submit some of them later.

THE PRESIDENT: Very well. Before you begin, this will be a convenient time to break off.

DR. GAWLIK: Very well.

[A recess was taken.]

DR. GAWLIK: I shall present my affidavits in the order of the points of the Indictment, as they appear in the trial brief against the Gestapo and SD; that, I believe, would be of aid to the Tribunal. This order will not agree with the sequence of the numbers, but I believe that can be put up with, because this method will enable the Tribunal to see that I have endeavored not to present cumulative evidence.

First, I come to the point of conspiracy, to the tasks, aims, and activities of the SD from its foundation to the establishment of the RSHA. On this point I submitted Affidavit SD-27 by Dr. Albert; a summary appears in the transcript of 23 July 1946.

The next affidavit refers to the assertion of the Prosecution that it was a task of the SD to obtain secret information on actual and possible opponents of the Nazis. The reference is the trial brief against the Gestapo and SD, Statement of Evidence III b, Page 17 of the English version. In this connection I submitted Affidavit Number SD-28 by Dr. Albert; the summary of the contents is also shown in the records of the Commission on 23 July 1946.

Then on this point also I now submit Affidavit Number SD-1, by Ferdinand Sackmann.

THE PRESIDENT: Go on.

DR. GAWLIK: The next affidavit will prove that the reports of the SD to the Party Chancellery were not made for the purpose of supporting a conspiracy. On this topic I have submitted Affidavit Number SD-27. The short summary appears in the transcript of 3 August 1946.

The next affidavit was submitted to prove the aims, tasks and activities of Group III-D of the RSHA and in connection with the fact that Group III-D did not support a conspiracy. For this point, I have submitted Affidavit SD-40, by Ohlendorf. The summary appears in the transcript of 23 July 1946.

My next affidavits refer to the aims, tasks, and activities of the branch offices and the confidential agents, and to the fact that the tasks, aims, and activities of the branch offices and confidential agents were not to support a conspiracy. In this connection, I submit Affidavit SD-65, by Professor Ritter. I asked for the complete translation of this affidavit, but I have not yet received it since the Translation Division is overburdened with work. I particularly call

the attention of the Court to this affidavit. It was deposed by one of the best-known German historians, and I should like to quote the following from it:

"Question One: 'Please give details of your profession.' Answer: 'Since 1925 I have been Professor of Modern History at the University of Freiburg.'"

I omit one sentence.

"Second question: 'Were you a member of the NSDAP or any of its branches?' Answer: 'No.'"

"Third question: 'Were you a member of a resistance group against the Hitler regime and were you persecuted by it?' Answer: 'Yes. I belonged to the circle of friends of Dr. Goerdeler who selected me as Minister of Education in his new Cabinet. In November 1944 I was arrested in connection with the events of the 20th of July and was placed before the People's Court in Berlin. On the 25th of April 1945, I was liberated by the Russian Army.'"

THE PRESIDENT: The translation came through to us as "November 1934." Was it 1944?

DR. GAWLIK: Yes, November 1944.

THE PRESIDENT: Very well.

DR. GAWLIK:

"Fourth question: 'Do you know the activities of the SD Arbeitsgemeinschaft and where did you obtain your knowledge?' Answer: 'Yes. My knowledge originates from my activity as Chairman of the Purification Committee of the University at Freiburg.'"

"Fifth question: 'What were the tasks of the SD Arbeitsgemeinschaft?' Answer: 'First, to keep the supreme SD command—I do not know the exact term—informed of feelings among the population and the criticism expressed on Party measures.'"

To save time, I should like to omit the rest of this answer; I also omit the next question and come to Question Number 7:

"'What were the aims, tasks and activities of the confidential agents (Vertrauensmänner)?' Answer: 'The aims and tasks were essentially the same as in the case of the Arbeitsgemeinschaften to which the confidential agents belonged; but while the other members of the Arbeitsgemeinschaften were asked for information and requested to attend conferences with the SD only occasionally, the confidential agents were in constant contact with the SD.'"

"Eighth question: 'Was it the task of the confidential agents to collect and pass on remarks hostile to the State and to watch persons hostile to the State?' Answer: 'I do not know of a task of this sort.'

"Ninth question: 'What was the purpose and what was the aim of the SD reports within Germany?' Answer: 'In contrast to the frequently "rosy" official Party reports, the SD reports were to give a picture corresponding to the actual conditions and feelings of the people. In the field of cultural policy, in addition, inadequacies and deficiencies were to be pointed out.'

"Tenth question: 'Did the SD in Germany watch and report on your lectures and addresses?' Answer: 'Yes. I know that in the branch of the SD in Karlsruhe or in Strasbourg a number of reports and stenographic notes on my lectures and addresses were found. I can also say that several scientists and high officials corresponded with me on the SD's activity...'

THE PRESIDENT: Dr. Gawlik, I think it would be more convenient to the Tribunal or more easy for them to follow if you could summarize the affidavit rather than read it.

DR. GAWLIK: I have only a few more brief questions to read from this affidavit. I ask the Tribunal to take into consideration that this is the only affidavit which I want to read. I attach special importance to this affidavit because its author is not an SD member but a man who was himself watched by the SD.

THE PRESIDENT: Very well.

DR. GAWLIK:

"I can also say that several scientists and high officials corresponded with me on the SD's activity and confirmed that my presentation of the facts agreed in all points with their experience.'

"Eleventh question: 'Did the SD cause Gestapo measures to be taken against you as a result of watching your lectures?' Answer: 'I know of none.'

"Thirteenth question: 'Did the Gestapo arrest or warn you because of your lectures?' Answer: 'No. I was warned once by the Gestapo but on the basis of a denunciation of which I knew and which did not come from the SD.'

"Fourteenth question: 'For what reason were you arrested?' Answer: 'On account of my connections with some leading men of the 20th of July.'

"Fifteenth question: 'Did the examining officials in the case against you know the contents of your lectures?' Answer: 'No, apparently not. They accepted without contradiction that

as part of my defense I referred to the proper "patriotic attitude of my lectures." I consider it out of the question that the Gestapo officials knew my lectures and the SD reports based on them.

"Sixteenth question: 'What was the attitude of the Political Science Faculty in Freiburg toward the Hitler Reich?' Answer: 'Not only the Political Science Faculty of the university but the majority at least of the Liberal Arts professors were opponents of National Socialism. This was well known to Dr. Scheel, the head of the Reich Organization of University Teachers, and he had announced that after the war the whole university would be dissolved.'

"Seventeenth question: 'Did the SD know of this attitude?' Answer: 'There can be no doubt of that.'

"Eighteenth question: 'Did the SD cause Gestapo measures to be taken against the Faculty of Political Science or any other members of the teaching staff?' Answer: 'I know of none.' "

I also submitted on this point an affidavit by Hans Timmermann, Number SD-29, which is in the transcript of the Commission of 23 July 1946. Then, by Dr. Horst Laube, SD-31, also recorded in the transcript of 23 July 1946. Furthermore, SD-26 by Dr. Zirnbauer. Of that there is no summary in the transcript; therefore, may I make a brief statement about it?

Zirnbauer submitted two original reports which as an honorary agent he had sent to the SD, and he testified on oath that these were reports which he had prepared as confidential agent of the SD. I should like to state that these are the only two original reports which I was able to obtain.

Annex 1 is a report stating that the publication of the Alsace-Lorraine catalogue of the geographical economic section of the Saarbrücken Municipal Library was absolutely necessary.

Annex 2 is a report on Salzburg concert life.

I further submitted Number SD-30 by Zellern, also in the transcript of the 23d of July 1946.

The next affidavit refers to the assertion of the Prosecution that the SD was all the time a part of the SS; the reference is the introduction to the trial brief against the Gestapo and the SD, Page 12 of the English version and Page 67 of the English version.

In this connection I submitted Number SD-32; the short summary is in the transcript of 23 July 1946.

The next affidavit refers to the assertion of the Prosecution that the SD played a role in the execution of one or more specific tasks, the reference being the Indictment against the SS, Number II, Page 8

of the German translation. In this connection I submitted an affidavit by Otto Ohlendorf, and the short summary is in the Commission transcript of 23 July 1946.

The next affidavits . . .

THE PRESIDENT: You didn't give the number of that affidavit, I think.

DR. GAWLIK: Number SD-23, Your Lordship. No, I beg your pardon, it is Number 33.

The next affidavits refer to the assertion of the Prosecution that the SD and Gestapo together formed a unified police system; these are Statements of Evidence Numbers II B and III B of the trial brief against the Gestapo and the SD, Pages 9 and 17 of the English version. In this connection I have submitted SD-2 by Otto Ohlendorf; the short summary is in the transcript of 9 July 1946.

Furthermore, Number SD-34; a short summary of the contents is in the transcript of 23 July 1946. SD-35 is by Dr. Hoffmann, and the short summary is in the transcript of 23 July 1946; SD-36 is by Otto Ohlendorf, and the short summary of the contents is in the transcript of 23 July 1946.

The next affidavit is to prove that the SD had no executive power. In this connection I have submitted Affidavit Number SD-20 by Alfred Kutter, and the short summary of the contents is in the transcript of 9 July 1946.

The next two affidavits supplement the affidavit of Dr. Wilhelm Hoettl, Prosecution Document 2614-PS. I submit in this connection a supplementary Affidavit Number SD-37 by Dr. Wilhelm Hoettl.

THE PRESIDENT: That has been submitted to the Commissioner, has it?

DR. GAWLIK: Yes, Your Lordship. The summary is in the transcript of 23 July 1946. I have asked that this affidavit be translated completely; and I am submitting the complete translations.

I further submitted on this point SD-38 by Theo Gahmann; the short summary of this affidavit is in the transcript of 23 July 1946.

The next affidavit proves that the SD had no influence on the selection of SA leaders. The reference is Statement of Evidence Number III B, Page 18 of the trial brief against the Gestapo and SD. On this point I submit Affidavit SD-4 by Max Jüttner. The short summary of the affidavit is in the transcript of 9 July 1946.

The next seven affidavits tend to prove that the SD had no influence on the selection of Party leaders. The reference is Statement of Evidence Number III B, Page 18 of the English trial brief. On this topic I submit Affidavit SD-5 by Otto Frehrer, for the former Gau Mainfranken, SD-6 by Otto Biedermann for the former Gau Thuringia, SD-7 by Siegfried Uiberreither for the former Gau

Styria, SD-8 by Karl Wahl for the former Gau Schwaben, SD-9 by Paul Wegener for the former Gaue Mark Brandenburg and Weser-Ems, SD-10 by Albert Hoffmann for the former Gaue of Upper Silesia and Westphalia-South. SD-39 is by Adam Foertsch for the former Gau of Upper Bavaria. I do not yet have the translation of this, and I shall hand it in later.

The next affidavit refers to the assertion of the Prosecution that the SD scrutinized the loyalty and reliability of State officials. The reference is Statement of Evidence III B of the trial brief, Page 18 of the English version. In this connection I have submitted affidavit SD-3 by Dr. Werner May. The short summary of the contents is in the transcript of 9 July 1946.

I now come to Crimes against Peace. With the next affidavit I want to prove that the SD was not used in the border incidents of August 1939, and that the members of the SD had no knowledge of them. Statement of Evidence V, Page 23 of the English version.

In this connection I submitted Affidavit SD-11, by Dr. Marx. The short summary of the contents is in the transcript of 9 July 1946.

I now come to War Crimes, first of all to Statement of Evidence VI A of the trial brief against the Gestapo and SD, Page 25 of the English version. In this connection I submit Affidavit SD-41 by Karl Heinz Bendt. The summary of the contents is in the transcript of 23 July 1946.

I have also submitted on this point Affidavit SD-42 by Walter Schellenberg. The summary of the contents is in the transcript of 23 July 1946.

I shall also later submit the complete Affidavit SD-43 by Heinz Wanninger, and SD-44 by Otto Ohlendorf. The summary of the contents is in the transcript of 23 July 1946.

I have also submitted on this point Affidavit SD-45 by Erwin Schulz, the summary of the contents being in the transcript of 23 July 1946; and SD-46 by Otto Ohlendorf, the summary of the contents being also in the transcript of 23 July 1946.

With the next three affidavits I want to prove that the members of the Leitabschnitte (the central regional authority), the Aussenstellen (branch offices) and the Vertrauensmänner (confidential agents) had no knowledge of the activities of the Einsatzgruppen employed in the East. In this connection I have submitted SD-47 by Wilhelm Düroff, which refers to the former Gaue South-Hanover and Brunswick. SD-48 by Karl Heinz Bendt refers to the former Oberabschnitte Neu-Stettin, Breslau, Düsseldorf. SD-49 by Adolf Rott refers to the former SD regional authority at Neustadt-Weinstrasse and at Saarbrücken. These three affidavits were submitted on 23 July 1946.

The next affidavit refers to the assertion of the Prosecution that the SD Abschnitt Tilsit participated in the liquidation of Jews and Communists in the border areas, Statement of Evidence VI A of the trial brief. I shall submit a complete translation of my Affidavit SD-12 by Wilhelm Sieps later. The summary of the affidavit is in the transcript of 9 July 1946.

The next affidavit refers to Prosecution Document 1475-PS and Statement of Evidence VI A of the trial brief, Page 25 of the English version. In this connection I submit the affidavit of Gerti Breiter, Number SD-69.

The next affidavit is intended to prove that the SS Major Pütz mentioned on Page 26 of the English trial brief against the Gestapo and SD did not belong to the SD but to the Gestapo.

In this connection I have submitted Affidavit SD-50 by Heinz Wanninger. The summary is in the transcript of 23 July 1946.

The next affidavits refer to Statement of Evidence VI F of the trial brief, Page 54 of the English text.

The first subject of evidence is this: in Prosecution Documents 553-PS, 498-PS, and 532-PS, SD does not mean Domestic Intelligence, Amt III, or Foreign Intelligence, Amt VI or Amt VII, but the Security Police. In this connection I submit Affidavit SD-52 by Wilhelm Keitel. The summary of the contents is in the transcript of 23 July 1946.

The next subject of evidence is that the SD did not participate in lynchings. In this connection I have submitted SD-51 by Walter Schellenberg; the summary of the contents is in the transcript of 23 July 1946.

Furthermore SD-68, by Hans Steiner. The summary of the contents is in the transcript of 3 August 1946.

The next two affidavits refer to the assertion of the Prosecution that the SD murdered prisoners in the prisons to prevent their being liberated by Allied troops, Statement of Evidence VI J, Page 56 of the English version of the trial brief.

On this subject, I have submitted SD-13 by Horst Laube. The summary of the contents is in the transcript of 9 July 1946. SD-14, by Fritz Wolfbrandt, is in the same transcript.

The next affidavit refers to the assertion of the Prosecution that the SD participated in the forcible confiscation and partitioning of public and private property; Statement of Evidence VI K, Page 67 of the English version. In this connection I have submitted SD-15 by Kurt Klauke. The summary of the contents is in the transcript of 9 July 1946.

The next affidavits refer to the assertion of the Prosecution that the SD persecuted Jews, Statement of Evidence VII A of the English

text of the trial brief. I have submitted in this connection Affidavit SD-16, by Walter Keinz. The summary of the contents is in the transcript of 9 July 1946. SD-17, by Emil Hausmann, is in the same transcript. Also SD-53, by Emil Fröschel, in the transcript of 23 July 1946, and SD-54, by Dr. Laube, in the same transcript.

The next affidavits refer to the charge that the SD persecuted the Church: Statement of Evidence VII B, Page 63 of the English text of the trial brief.

I have submitted in this connection SD-55, summary of the contents being in the transcript of 23 July 1946. Walter Keinz, SD-18, is in the transcript of 9 July 1946.

I shall submit later a complete translation of SD-19 by Helmut Fromm, summary of the contents being in the transcript of 9 July 1946.

With the next affidavit I wish to show the methods, aims, activities, and tasks of the SD in the Government General. On this topic I shall later submit a complete translation of Affidavit SD-56 by Helmut Fromm, summary of contents being in the transcript of 23 July 1946.

The purpose of the next affidavit is to prove that the Police in France was called SD. I have submitted in this connection an affidavit by Dr. Laube, SD-23, with a summary of contents in the transcript of 9 July 1946.

The next affidavit is submitted as proof that the members of the Gestapo and Kripo in Belgium and Northern France wore the SS uniform with the SD insignia. I have submitted SD-24 by Walter Hofmeister, and the summary of contents is in the transcript of 9 July 1946.

With the next affidavit I want to prove that the members of the SD employed in Belgium and Northern France did not belong to Amt III. For this point I have submitted SD-25 by Walter Hofmeister, summary of contents being in the transcript of 9 July 1946.

The next affidavit indicates that membership in the SD Amt III during the war was in general not voluntary, but was based on a legal order. In this connection I have submitted SD-57 by Bernhard Dilger, in the transcript of 23 July 1946; SD-58 by Dr. Ehlich, in the same transcript; SD-59 by Karl Heinz Bendt, in the same transcript; SD-60 in the same transcript, and I shall submit later SD-21 by Oskar Eiseler, summary of the contents being in the transcript of 9 July 1946.

With the next affidavit I want to prove that withdrawal from the SD was not possible for full-time and salaried members. I submit SD-22 by Werner May, summary of contents in the transcript of 9 July 1946.

The next three affidavits refer to the tasks, aims, and activities of Amt VI. On this subject I shall submit later SD-61 by Walter Schellenberg; the summary of the contents is in the transcript of 23 July 1946. Furthermore, SD-62 by Walter Schellenberg; summary of contents is in the same transcript. Furthermore, on the tasks and activities of Amt VI, I submit Affidavit SD-66, by Otto Skorzeny.

The next affidavit refers to the aims, tasks, and activities of Amt VII. I submit this affidavit provisionally, as the Commission did not decide whether Amt VII falls under the Indictment. The chairman of the Commission told me that the Tribunal would decide this question. The affidavit is SD-63 by Dr. Dietl, which I shall submit later.

The next affidavit refers to the assertion of the Prosecution that the immigration offices had the task of carrying out evacuations with the aim of permanent colonization of the occupied territories and the destruction of the national life of these territories, thus favoring constant expansion of the German borders. (Trial brief against the SS, III G, Pages 33 and 35 of the German translation.) I have submitted in this connection SD-64 by Martin Sandberger, summary of the contents being in the transcript of 23 July 1946.

Now I have an affidavit to refute Affidavit F-964, which was submitted by the Prosecution during the examination of the witness Dr. Hoffmann. I was not able to submit this affidavit to the Commission because the Commission had already concluded its sessions when I received it. May I therefore submit it now under SD-65.

THE PRESIDENT: You have one 65 already, haven't you? It came through in the translation.

DR. GAWLIK: That should be SD-71, Your Lordship. From this affidavit I shall read the following, briefly:

"To establish my knowledge of the facts given, I, Georg Schräpel, state the following: From 1930 to 1939 I was Government Councillor in Brunswick. In 1939 I was temporarily in the Reich Criminal Police Office in Berlin, and from 1941 to 1945 I was Section Chief of Personnel in the Main Office of the Security Police of the Reich Ministry of the Interior. From January 1944 on, I was also in charge of the Personnel Department of the Secret State Police, Gestapo. My last rank was Regierungsdirektor and SS Standartenführer."

As to the facts:

"At no time during the existence of the Gestapo and the SD were instructions or decrees issued by the Chief of the Security Police and the SD, or by the Reich Ministry of the Interior, ordering that the activities of the Gestapo, either at its headquarters or at its agencies throughout the Reich, were

to be influenced or supervised by the SD. The agencies of the Gestapo were at all times completely independent. The independence and the special position of the State Police made all general influence of the SD impossible; supervision would not have been tolerated either by the Chief of Amt IV or the Chief of the Security Police, because such supervision would have been quite incompatible with the actual responsibility of the State Police itself."

I ask that I may be allowed to submit this affidavit later when I have the translation.

Now I have a collective statement on 6,123 affidavits. I have not yet received the translations. I beg your pardon, I have the French translations; may I be allowed to submit those. I also submit the list of these affidavits. From my collective statement I ask only to be allowed to read Subject 18, concerning participation of SD members in executions in the areas of the Einsatzgruppen. On this subject I have 140 affidavits from agencies of the SD in all parts of Germany for the period from 1939 to 1945, which state the following:

"The agencies and members of the SD Amt III had no knowledge of the participation of SD members in executions carried out by the Einsatzkommandos in the East."

I now come to the presentation of my documents, which are also numbered according to the trial brief against the Gestapo and SD. The first document refers to the charge of conspiracy.

I submitted as Document SD-1 an agreement between Himmler and Ribbentrop on the establishment of a uniform German Secret Intelligence Service. The document has already been submitted under USSR-120. I quote from this document the following: "The Secret Intelligence Service has the task, as far as foreign countries are concerned, of gathering for the Reich information in the political, military, economic, and technical spheres." And the following paragraph: "Information received by the Secret Intelligence Service from foreign countries will be put at the disposal of the Foreign Office by the Reichssicherheitshauptamt."

SD-2 is an excerpt from the special alert procedure of the Security Police and the SD in case of escapes. I shall not read this document, but I would like to call the attention of the Tribunal to the fact that; although Amt III and Amt VI were united with Amt IV and Amt V in the Reichssicherheitshauptamt, Amt III and Amt VI had no police tasks, and there was a strict division between the offices of the Security Police and those of the SD; Amt III and VI were not entitled to institute alert proceedings.

The next six Documents SD-3, SD-4, SD-5, SD-6, SD-7, and SD-8 belong together. They are excerpts from decrees by the Reich

Minister of Justice, SD-3; by the Reich Traffic Authority, SD-4; by the Reich Food Estate, SD-5; by the Reich Forestry, SD-6; by the Reich Ministry for Armament and War Production, SD-7; and by the Reich Ministry for Food and Agriculture, SD-8: all concerning the co-operation of these agencies with the SD.

I particularly call the attention of the Tribunal to the tasks of the SD as shown in these documents: to inform the leading Reich authorities of the effect of official measures on the population. I submit these documents also as evidence that it was the task of the SD to co-operate not only with the State Police, but with all agencies of the State.

The next document is SD-12. With this I want to prove that the SD, in the years around 1936, did not have the significance ascribed to it by the Prosecution.

The next document is SD-13. It is an excerpt from the circular decree of the Chief of the SIPO and the SD of 16 October 1941. This document shows that the SS and Police jurisdiction applied only to full-time and salaried members of the SD, but not to honorary members and not to those who were carrying out individual tasks. The majority of the members of the SD were honorary members, and were therefore not under the SS and Police jurisdiction.

The next document is SD-14. It is an excerpt from a decree of the Party Chancellery, from which I quote the following: "Only the Hoheitsträger of the Movement, from Kreisleiter up, are entitled to issue political appraisals or certifications of political reliability." This document refers to the trial brief against the Gestapo and the SD, Statements of Evidence III and IV. The next document, SD-15, deals with the same subject of evidence. It is an excerpt from the circular decree of the RSHA, dated 12 June 1940. This decree shows that as from 1 July 1940 the information bureau of the Amt I, SD, was transferred to Amt IV, C 1; thus for political information of all kinds the Gestapo Amt became competent, and the Gestapo had no more support from the SD.

The next document is SD-15-a, which refutes 3385-PS submitted by the Prosecution, and shows that the SD was neither the only information service of the Party, nor the information service of the Party at all. Within its political organization, the Party had its own political situation reports, and from the Kreisleiter up, it has specific reports from all offices.

Document SD-16 is an excerpt from the memorandum by Hitler about the problems of a Four Year Plan.

With SD-17 I want to prove that the activity of members of the SD in the occupied territories was not a voluntary one, but was based on a legal order. I quote from this document the following:

"Refusal of departmental personnel to undertake employment in occupied territories.

"The order..."—I omit the details—"has approved on principle that personnel in public service can be compelled to undertake work in places other than the regular place of service. Since it is not intended to limit this order to apply only to Reich territory, a staff member—provided the terms of the special service order have been complied with, especially now in time of war—may also be called upon and detached to fulfill a mission in the occupied territories."

With the next documents, SD-18 to SD-22, I want to refute the assertion of the Prosecution that the SD had special units in prisoner-of-war camps with the task of segregating and executing racially undesirable persons; the reference is the trial brief against the Gestapo and the SD Statement of Evidence III B.

Document SD-18 is an excerpt from the circular decree of the Chief of the Security Police and the SD. I call the attention of the Tribunal to the file note "IV A," which shows that the Gestapo was competent in this matter. Moreover, the decree is addressed to all State Police authorities and to the commander of the Security Police in Lublin.

I should also like to call the attention of the Tribunal to the file note "IV A" of the next document, SD-19. I quote the following from this document. "The State Police directorates are again requested to speed up the current examinations which are still incomplete."

Document SD-20 concerns employment of Russian prisoners of war...

THE PRESIDENT: Dr. Gawlik, what is the meaning of SD-19, Paragraph 2? The writing refers especially to various figures and then "Number 92/42 Top Secret," according to which the selection of all prisoners of war is to be made in the future in the General Government only. Why do you select prisoners of war? What does that mean?

DR. GAWLIK: That is the charge which the Prosecution has made, and I want to prove that this was done by the Gestapo alone. This decree orders that in future these selections are to be carried out only in the Government General. But that is not relevant in this connection, Your Lordship. I am only concerned with Paragraph 3.

THE PRESIDENT: But it is a document of the SD, is it not?

DR. GAWLIK: Yes.

THE PRESIDENT: It is an administrative ruling, is it not?

DR. GAWLIK: Your Lordship, the Chief of the Security Police and the SD had seven Ämter. It is, therefore, important which of

his Ämter acted. Amt IV was the Secret Police, the Gestapo. Amt III was the Inland SD, Amt VI was the Foreign Intelligence Service. Each of these offices had its own chief, and Amt IV was an organization different from that of Amt III and of Amt VI. Above these seven offices was the Chief of the Security Police and of the SD. This title does not in itself show that the SD had anything to do with any matter, but one must examine which of the offices acted: Amt IV, III, or VI. And for that reason I called your Lordship's attention to the file note "IV A," that is Amt IV, the Secret State Police, Gestapo. This shows that Amt III and Amt VI had nothing to do with this matter, but that it concerned Amt IV only. This is also shown by the numeral "III," which expressly lists only the State Police directorates.

THE PRESIDENT: Very well, we will adjourn now.

[A recess was taken until 1400 hours.]

Afternoon Session

DR. GAWLIK: In answer to the last question of Your Lordship I think it would assist the Tribunal if I were to indicate briefly the nature of my evidence and what I propose to establish by means of these documents.

It is assumed by the Prosecution that the Gestapo, the Security Police, and the SD are independent organizations. The Gestapo is indicted separately, the Kripo (Criminal Police) is not indicted and the SD is indicted as a part of the SS. Over all of them was the Chief of the Security Police and the SD, so that in a small way it can be compared with the position of the Defendant Göring, who was the Commander-in-Chief of the Air Force, Prussian Minister President, and Reich Hunting Master.

Thus one cannot conclude from that which office it was; that only becomes apparent from the file numbers and the people who dealt with these files and I am trying to establish that by means of my documents.

I now come to Document SD-20 which deals with the employment of Soviet Russian prisoners of war. One paragraph deals with the very questions which Your Lordship addressed to me with reference to the previous document, and I shall, therefore, read this paragraph.

"In order to avoid any delay in moving new arrivals of prisoners of war into the Reich, the sifting out of political commissars and 'politruks' by the Einsatzkommandos of the Security Police will in future be carried out in the Government General only.

"In the Government General the sifting will continue to be carried out by the Security Police."

By this I wish to establish that we are here purely concerned with a measure of the Security Police, not of the SD.

It then goes on to say:

"In order to insure a more rapid execution, the Security Police will reinforce its Einsatzkommandos in the Government General."

I then pass on to Document SD-21. In this connection I beg to draw the Tribunal's attention to where it expressly says:

"If occasion arises the request by the Kommandanturen to examine certain Arbeitskommandos through the Security Police is to be complied with."

I beg to draw the attention of the Tribunal to the file reference, "IV," that is, measures by Amt IV. Amt IV was the Secret State

Police, the Gestapo. Had it been the SD, then the file reference would have had to be III or VI. I now come to . . .

THE PRESIDENT: In the document you have just been dealing with you have got "2 A III E" at the top, and you have "III B" a little bit further down.

DR. GAWLIK: Your Lordship, the one at the top is the general collection of decrees of which there are several volumes, which I obtained from the library here; and "2 A III E" refers to this general collection of decrees. The fact that it was Amt IV can be seen from the file reference "IV A 1 C 2468 B/42 G."

THE PRESIDENT: Just by the first of April 1942, there is III B. What does that mean—OKW File Number 2 F 2473, Prisoner-of-War Organization III B?

DR. GAWLIK: I have not got that. Your Lordship, I have not got that here, I do not know . . .

THE PRESIDENT: Immediately under the words: "Re: labor detachments for agricultural work."

DR. GAWLIK: May I ask Your Lordship, did you refer to SD-21? That is a military file reference, Your Lordship. It says OKW, High Command of the Armed Forces, file reference of the Armed Forces, Chief of Prisoner-of-War Organization III B, and that III B has nothing to do with Amt III.

THE PRESIDENT: All right, go on.

DR. GAWLIK: I now come to Document SD-22. Here we are concerned with an extract from the directives for the Kommandos of the Chief of the Security Police and of the SD to be assigned to the prisoner of war camps. The date is 17 July 1941.

I beg to draw the Tribunal's attention to the fact that the leaders of the Einsatzkommandos are ordered to get in touch with the chief of the nearest State Police office or the Commander of the Security Police and the SD.

The commander can be compared on a small scale with the office of the Chief of the Security Police and the SD; he too had several subdepartments. III was SD, IV was State Police, V was Criminal Police; so that even the title of commander does not show which department issued it.

I should like to draw the attention of the Tribunal to the following sentence:

"As a matter of principle, such communications are to be passed to the RSHA IV A 1 by way of information."

From that it becomes evident that the measures were only dealt with in Amt IV, that is the State Police, and that Amt III had nothing to do with it.

The following documents, SD-23 to SD-28 inclusive, refer to the allegation on the part of the Prosecution, according to which the SD had carried out the Bullet Decree; trial brief against the Gestapo and SD, Statement of Evidence VI C.

I shall first of all deal with Document SD-23. The document has already been presented by the Prosecution as Number 1650-PS. It concerns the teletype letter from the Gestapo, the Aussendienststelle Aachen, to all main Gestapo offices. I quote in order to prove that here, too, we are merely concerned with measures of the Secret State Police, the Gestapo.

"In this connection, I order the following:

"1. The main offices of the State Police are to take over the recaptured prisoner-of-war officers from the Stalag commandants and transfer them to Mauthausen Concentration Camp, according to the procedure customary up to now, unless circumstances make special transport necessary.

"2. The OKW has been requested to instruct the prisoner-of-war camps that for the purpose of camouflage the recaptured persons should not be delivered directly to Mauthausen but to the competent local office of the State Police."

I come to Document SD-24.

THE PRESIDENT: Why do you leave out the fact that those documents were addressed to Inspectors of the Sipo and the SD?

DR. GAWLIK: Your Lordship, the case of the Inspectors is the same as that of the Chief of the Security Police and SD and the commanders. The Inspector was over the Criminal Police, over the State Police, and over the SD, and therefore was exercising all three functions.

THE PRESIDENT: According to this he was an Inspector of the SD.

DR. GAWLIK: He was Inspector of the SD, but it does not follow that because the Inspector of the Sipo was the same person, that when carrying out that activity he was acting in the capacity of the Inspector of the Sipo. We are here concerned with several offices under one person. But the contents show that prisoners of war were only to be taken over by the main offices of the State Police and that the SD offices had nothing to do with it. It says expressly under Number 1: "The main offices of the State Police are to take over ..."

The Inspector of the Security Police and of the SD also had jurisdiction over these police offices. He had control of these measures of the State Police in his capacity as Inspector of the Security Police. The fact that he also simultaneously was Inspector of the

SD does not mean that these things were to be carried out also by the SD offices.

THE PRESIDENT: Please continue, Dr. Gawlik.

DR. GAWLIK: I come to Document SD-24. It has already been presented under 1165-PS, and in this connection I beg to draw the attention of the Tribunal to the fact that this is signed by Müller, who, as is known to the Tribunal, was the chief of Amt IV. This again shows that the Gestapo alone were competent.

Document SD-25 is a circular decree from the Chief of the Security Police and the SD, dated 20 October 1942, which deals with the treatment of escaped Soviet prisoners of war, and again I beg to draw the attention of the Tribunal to the file reference, which is IV.

I will now quote:

"I request that the main offices of the State Police instruct all the police offices of the area, in the sense of Article 3 of the decree of the High Command of the Armed Forces of 5 May 1942, even if such has already been done."

May I say to Your Lordship in this connection that if this had belonged to the tasks of the SD offices then the SD offices would also have had to be informed.

THE PRESIDENT: Dr. Gawlik, I don't think it is doing any good at all to argue upon each document. You must make your final speech at some time; and unless there is anything really very important in particular documents which you want to draw our attention to, so that we can really consider it before you make your final speech, you had much better leave the argument upon the documents until you get to your final speech. This is simply wasting our time without having any useful purpose at all.

DR. GAWLIK: Your Lordship, I have only...

THE PRESIDENT: Well, up to the present you have commented upon each document as far as I can see, SD-22, SD-23, SD-24, SD-25, each one of them; and you are going through the book like that. Why don't you offer them all in evidence in bulk; and then if you want to draw our attention to any particular document for some particular purpose, as I say, because you think it is important and we should consider it before you come to make your final speech, do so. But don't spend time in just explaining what each document is. We have to hear all the other organizations before we come to hear your speech.

DR. GAWLIK: I only did it because I gathered from the question that there was some confusion with regard to the positions of the Chief of the Security Police and the SD and that of the commanders and of the inspectors.

THE PRESIDENT: I only put a question to you because you were going through each document in turn and I couldn't understand what the documents were about.

DR. GAWLIK: Documents SD-27 and SD-28 also deal with the allegation on the part of the Prosecution regarding the "Bullet" decree. May I perhaps quote from Document Number SD-28:

"Insofar as escaped Soviet prisoners of war are brought back to the camp according to this order, they are in every case to be turned over to the nearest office of the Gestapo."

The following documents, SD-29 to SD-42, deal with the accusation raised against the SD by the Prosecution, according to which the SD is to be held responsible for the setting up of concentration camps and determining their purpose, and for the transfer of politically and racially undesirable persons to concentration and extermination camps for the purpose of forced labor and mass extermination, Page 43 of the English trial brief. These documents show that the SD did not in any way participate in these measures; and, if I may, I should like to read one sentence of Document SD-29:

"In the future, restrictions of personal liberty"—I leave out what follows—"may be ordered only by the Secret State Police Office, to apply to the entire state territory, and by the Oberregierungspräsidenten, by the Police Commissioner in Berlin, and by the State Police branch offices, to apply to their respective jurisdiction."

From Document SD-31 I quote:

"Protective custody can be ordered for any person as a coercive measure of the Secret State Police in order to combat any activities hostile to the State and the people. . . . Only the Secret State Police is entitled to decree protective custody."

Document SD-37 deals with the allegation by the Prosecution according to which the SD also administered concentration camps. I shall, therefore, quote one sentence from the document:

"The camp commandant is in charge of the administration of a concentration camp and of all economic industries of the SS within its sphere of organization."

The administration of camps is also shown in Document SD-38.

THE PRESIDENT: I can't see any point in drawing our attention to that document at the present time.

DR. GAWLIK: Because in the trial brief the accusation has been raised against the SD that it also administered concentration camps.

THE PRESIDENT: But this document doesn't show that they did not.

DR. GAWLIK: Document SD-37 is a decree from the Chief of the SS Economic and Administration Main Office. That was a completely different office, which had nothing to do with the RSHA.

THE PRESIDENT: It seems to me to be quite vague as to who the camp commandants of concentration camps are. As I say, it doesn't seem to me to be a document which it is necessary to refer to at this stage.

DR. GAWLIK: I then refer to Document Number SD-39. There it says:

"The transfer of the Inspectorate of the Concentration Camps to the Economic and Administration Main Office has been carried out with the full agreement of all the main offices concerned."

From this it becomes apparent that, first of all, concentration camps were under the jurisdiction of the Inspectorate of the Concentration Camps, and that this was then transferred to the SS Economic and Administration Main Office. However, the SD belonged to the RSHA. The fact that concentration camps were under the jurisdiction of the Inspectorate of Concentration Camps also becomes apparent from the previous Document SD-38.

I beg to refer you to Document Number SD-40, in which it is explicitly stated...

THE PRESIDENT: You are not taking the slightest notice of what I said to you. You are going through every document, or practically every document—not every document. You began this by saying that 29 to 42 dealt with concentration camps. Then you went to 37; then you went to 38; then you went to 39. They really don't help the Tribunal at all. You have told us that 29 to 42 referred to transfer to concentration camps. Well, that is quite enough. Unless there is a document which is really important, which we should study before we hear you make your speech, the summary that 29 to 42 deal with transfer to concentration camps is quite enough.

DR. GAWLIK: I thought that I could assist the Tribunal by drawing their attention to the fact that concentration camps came under the SS Economic and Administration Main Office, not the RSHA. Only for that reason did I discuss these further documents.

Documents SD-43 to 49 deal with the accusation that the SD had participated in the deportation of citizens of the occupied territories for the purpose of forced labor, and that it had the task of supervising this forced labor.

SD-43 shows the jurisdiction of the State Police.

I quote from these documents only the following. From Document SD-43, under Figure 2:

"The tasks arising from the employment of Soviet Russians are to be comprised in a section attached to the State Police Main Offices. This section will be in charge of a criminal police official, who in turn will be under the constant personal supervision of the Chief of the State Police Main Offices."

I now quote one sentence from Appendix 1 to Document SD-43:

"The recruitment of labor from the former Soviet Russian territory will be carried out by recruitment commissions from the Reich Ministry of Labor."

And:

"The recruitment commissions of the Reich Labor Ministry will set up reception camps."

Document SD-50 deals with the Commando Order. I beg to draw the Tribunal's attention to the words "are to be handed over to the Security Police."

Documents SD-51 to 53 deal with the allegation on the part of the Prosecution that the SD had the task of protecting civilians if they had lynched airmen belonging to the United Nations.

Document SD-54 is already in evidence under USA-504 and 668-PS. It deals with the carrying out of the "Nacht und Nebel" Decree.

Documents SD-55 up to 57 deal with the assertion on the part of the Prosecution that the SD, in summary proceedings, had arrested citizens of occupied territories and sentenced them before the courts.

I beg to draw the attention of the Tribunal to Document SD-55, which is also L-316, and from that I shall quote one sentence:

"These foreign nationals are in the future to be turned over to the Police."

I quote one regulation, one sentence, from Document SD-56: "Criminal actions by Jews will be punished by the Police."

Documents SD-58, 58a to c, deal with the assertion on the part of the Prosecution that the SD had participated in the confiscation by force and partitioning of public and private property.

I shall quote one sentence from Document SD-58:

"The confiscation will be declared by the Main Offices of the State Police for the benefit of the Greater German Reich."

SD-59 and SD-60 deal with the third-degree methods during interrogations. In this connection I beg to draw the Tribunal's attention to filing reference Numeral IV, which deals with the jurisdiction of Amt IV, Secret State Police.

In Document SD-60 the existing regulations applicable to the Security Police in the Government General are expressly specified.

Documents SD-60a up to 64 deal with the charge against the SD according to which crimes against humanity were committed. SD-60a to 63 deal with the persecution of Jews. In connection with Document SD-62 I beg to draw the attention of the Tribunal again to IV B and also to the signature "Müller, Chief of the Secret State Police."

Document SD-64 refers to the charge against the SD in reference to the persecution of the Churches (Statement of Evidence VII B, Page 57). Documents SD-65 to 69 set forth the legal regulations on the strength of which during the war a large portion of members of the SD Amt III and VI were called up for compulsory and emergency service; I should like to draw the attention of the Tribunal to the following sentence in Document SD-65:

"As employers of labor"—I omit a few words—"the SD sections can request the labor offices to place at their disposal replacement and supplementary manpower in accordance with the principles of allotment and use of the population during war."

SD-69 contains the punishment decreed for those who did not comply with such regulations.

I now come to Document SD-70, regarding which I have been unable to agree with the Prosecution. I ask, therefore, that first a decision be made as to whether or not I may introduce this document.

THE PRESIDENT: I have only got one document book...

DR. GAWLIK: It is in the appendix, Your Lordship. May I send up the original, Your Lordship?

THE PRESIDENT: Yes. Will you tell the Tribunal what it is about?

DR. GAWLIK: With this document I wish first of all to prove that the SD did not belong to the Police and did not belong to the SS. Furthermore, I wish to establish that the SD in the Reich and the organization of the Security Police and the SD outside the Reich were separate organizations, and I want to establish the tasks of Amt III. I beg to draw the Tribunal's attention to the fact that in Section IV the SD is mentioned under German Intelligence Service.

THE PRESIDENT: This is a book produced by the Allied Command, isn't it? Supreme Headquarters, Allied Expeditionary Forces, and you are offering that, is that it?

DR. GAWLIK: The General Secretary...

THE PRESIDENT: Has there been any formal application for this document?

DR. GAWLIK: Oh yes. The document is contained in the appendix to the document book. But I have not been able to reach an agreement with the Prosecution regarding this book.

THE PRESIDENT: We will hear the Prosecution about it.

LT. COMDR. HARRIS: May it please the Tribunal, we have no strong objection to this document. It is simply one of several which we discussed and we did not agree upon it. Our objection is primarily to its value in so far as evidence is concerned. It is an intelligence book and therefore what is said in that book relates exclusively to matters of intelligence. It is dated April 1945. That is the date of its publication and quite obviously, as of that date, the information could not be available such as is now available to the Tribunal in a competent form.

DR. GAWLIK: Your Lordship . . .

THE PRESIDENT: The Tribunal will admit the book for what it is worth.

DR. GAWLIK: First of all, I beg to draw the Tribunal's attention to the fact that in this book the organization of the State and the Party is subdivided into four parts and the Intelligence Service is given a section of its own—Numeral IV. Numeral I is the State and Party; Numeral II is Para-Military Units; Numeral III is the German Police, and Numeral IV is the German Intelligence Service; the organization of Ämter III and VI.

I then beg to draw the attention of the Tribunal to the fact that in the case of the SS it states that the SS consists of (1) Waffen-SS, (2) the General SS, and (3) the Germanic SS. The SD is not listed there. And I further beg to draw the Tribunal's attention to the fact that the Intelligence Service mentioned under Numeral IV is subdivided into SD Inland III, the organization of the Security Police and the SD outside of the Reich, and thirdly into Ämter VI and VII.

And then I beg to draw the attention of the Tribunal particularly to the following statement regarding the activities of Amt III. There it says:

"The information supplied by intelligence agents is digested into situation reports and"—and it goes on to say that—"these reports are extraordinarily frank and sincere"—I translated that myself—"and contain a complete and unvarnished picture of the attitude and frame of mind in Germany."

I now pass on to my last document. That is a letter from an assistant teacher (Studienassessor) Wolferts, and I submitted the

letter because I had only just received it and I could not get an affidavit. The letter refers to Document 142. That is the well-known document from Kochem, where the SD is supposed to have supervised the voting, and this letter mentions the evangelical clergyman, Alferich Wolferts, who voted "no," the vote being attached to the report. The daughter's letter shows that no measures were taken either by the Gestapo or the SD against the father, who has since died. I have now finished.

Your Lordship, should I read to the Tribunal a list of the documents or should I submit a written statement as to where the documents are to be found? Most of the documents have already been submitted.

THE PRESIDENT: I think we have got that. Haven't we got it at the beginning of your document book? We have an index.

DR. GAWLIK: Yes.

THE PRESIDENT: You mean to make a separate document of it?

DR. GAWLIK: I only have part of the documents, some of them are documents of the Prosecution, of course.

THE PRESIDENT: If you think it would serve a useful purpose, by all means submit your index under a separate number and deposit it with the Tribunal.

DR. GAWLIK: Very well.

THE PRESIDENT: Dr. Kubuschok, when you were dealing with the witnesses, did we deal with the Reich Cabinet next? Are you prepared to go on with your documents?

DR. EGON KUBUSCHOK (Counsel for the Reich Cabinet): Altogether I have four affidavits. They have been submitted to the Commission. They are being translated. However, the translations are not yet ready. I shall submit them at a later stage, and I shall confine myself today to reading into the record a few very important passages from these affidavits.

The first affidavit, which is Number 1, was given by State Secretary Dr. Otto Meissner, who later became Minister. I shall read the following passages from this affidavit:

First of all, Meissner deals with the work of the Cabinet, particularly during the first period after Hitler had formed his Government; and he states in this connection:

"It"—that is the Reich Government—"worked according to previous custom; that is to say, draft laws were decided upon at meetings of the Cabinet, during which procedure objections could be raised. Right from the beginning the supreme and

uncontested leader of that Government was Hitler, who likewise based his actions, formally speaking, on the Reich Constitution, according to which the guiding principles of policy should be decided by the Reich Chancellor. These guiding principles did not differ from those which he publicly proclaimed in the many speeches which he made during that period."

A little further on he says:

"All the important political decisions, such as the annexation of Austria, the march into the Sudetenland, the signing of the pact with Italy, the march into Bohemia and Moravia, and the attack against Poland and the neutral countries, took place without previous resolutions being passed by the Cabinet, and even without the members of the Government being informed of them beforehand. Except where they had been informed by Hitler personally, they learned of these events just like every other citizen through the radio and the press. The members of the Cabinet were thus forced out of any political activity, against their will and without any guilt on their part, and they were limited to the management of their department. They were merely leading civil servants in their department. Therefore these ministers could not know that Hitler had any intention to begin a war or that he intended to misuse his power to commit acts of violence and make attacks in violation of international law."

The affidavit further deals with the law of 3 July after the end of the Röhm Putsch. Finally, the affidavit goes on to state as follows:

"The fact that the members of the Reich Cabinet, in spite of the increasing brutality of the course pursued, remained in their offices, was, according to my own observation—apart from the fact that the Führer as a matter of principle would not accept resignations and particularly in wartime considered them as acts which undermined the country's defense—due to the fact that they, at least the nonradical ministers, believed that if they resigned, their posts would only be filled by more radical and unexperienced men. Thus they would not only have abandoned the intrinsic interests of their departments, but also the personal interests of their employees."

Affidavit Number 2 originates with the former Reich Minister Darré; and I quote:

"Basic questions of foreign policy were not, as far as I remember, discussed in the Cabinet. Never during any Cabinet meetings were there any utterances or even hints from which it could be inferred that an aggressive war was contemplated."

In another part of the affidavit he says:

"I emphasize that no aggressive plans against Poland were known to me, and that to this end no tasks were given to me in my capacity as Minister of Agriculture."

Darré then goes on to describe his differences with Hitler, and he states:

"During a discussion with Hitler about this subject, which took place before the actual passing of the law—there had been arguments about a law which was to be introduced in the occupied territories—there occurred a very serious clash, in the course of which I resigned. Hitler thereupon replied that I was under martial law, and that I would leave my post when it suited him, Hitler, and not when it suited me."

How Darré was finally eliminated from his position is shown in the last part of the affidavit. Hitler had given orders to Darré... I quote:

"I was to give illness as an excuse to the outside world, and it was desired that the public should get the impression that I was temporarily resigning my office for reasons of health. I refused to pretend that I was ill, and I was told to leave Berlin. Since then I have lived in a remote log-house in the Schorfheide. Nominally, I remained a minister up to the collapse of the German Reich, although I asked Lammers repeatedly to relieve me of the office, and Lammers reported to Hitler on this point."

The third affidavit comes from the former Reich Minister, Count Schwerin-Krosigk. Schwerin-Krosigk describes in one part of the affidavit a meeting with the former Reich Chancellor Brüning in 1932. I quote:

"I was to this extent in agreement with Brüning, who a few weeks before his resignation had told me at Badenweiler, where we were both taking a cure, that the time had now come to place some responsibility on the National Socialists. One could not continue to govern by means of the emergency laws published by the Reich President, and the strongest party could not permanently be left in the opposition. The only effective way of combating the unbridled agitation of the National Socialists was to force them to accept responsibility."

In another part of the affidavit, Schwerin-Krosigk points out that he saw Hitler for the first time in his life on the 30 January 1933. I quote:

"My reason for joining Hitler's Cabinet was that I, together with the other non-radical ministers, wanted to form a

counter-balance in the Cabinet to the totalitarian claims for power put up by the Party."

The affidavit deals at great length with the initial period of this Government. I quote only one sentence:

"Moreover, the course that was followed at that time appeared to be a moderate one and objections raised by the non-radical ministers did, in fact, lead to less drastic measures, and in some cases certain legal rulings which had been proposed by him were even withdrawn."

Regarding the amalgamation of the office of the Reich Chancellor and that of the Reich President, the affidavit states among other things:

"Hitler's demand to unite both offices in his person and thus complete the last step in forming a totalitarian regime could not be opposed by the non-radical ministers, because it was perfectly clear even at that time that such power in the hands of Hitler was completely in accordance with the will of the German people."

The affidavit goes on to say with reference to this same question:

"I should like to remark in this connection that Hitler himself made his demand for uniting both these positions acceptable to the Cabinet by stating that he did not consider that to be the final solution, but made it quite clear that these two offices might again be separated later on."

In a summary the affidavit says:

"The Reich Cabinet as such had no political tasks as far as giving orders or leadership was concerned. It did not even serve as adviser to Hitler, but a circle of persons chosen by him personally served in this capacity."

At the end of the affidavit Schwerin-Krösigk states:

"Upon retrospective reflection I must maintain that Hitler deceived his ministers no less than he deceived the German people and, what is more, the world. The statements he used to make to us as his ministers regarding his intentions were no different basically from those he made publicly. We could not suspect that he had other quite different intentions, so great was the persuasive power of his words."

This applies in particular to his will for peace, stressed by him so often.

"If I am told today that as early as November 1937 Hitler was thinking of war as a means of achieving his foreign policy aims, then this is diametrically opposed to what he, at the beginning of 1939, had expressly communicated to me through State Secretary Reinhardt, namely, that 'I need no longer

worry about armament expenditure since we had now before us a long period of peace, and therefore a reduction of these expenses would follow.' ”

Finally, under Number 4, I submit an affidavit from the former Ministerial Director in the Ministry of Food, Rudolf Harmening. Harmening describes the instruction given by Hitler to State Secretary Backe regarding preparations for war with Russia. These contained explicit instructions from Hitler that the Minister himself, Darré, was to be kept in the dark regarding these preparations. And concerning that, I quote:

“A few months before the outbreak of the war with Russia, measures were taken in the Reich Ministry of Food, such as, for instance, the getting ready of agricultural machinery and agricultural workers for a special purpose. What this purpose was became apparent after the beginning of the Russian campaign—these things were intended for use in Russia. State Secretary Backe received the order for this directly from Hitler or Göring, over the head of the Reich Food Minister, Darré. In fact, according to the instructions, it had to be kept strictly secret from the Minister.”

Those are the affidavits which I have to submit.

Then I have submitted a document book with altogether 68 documents. I refer to this document book. In the main, the documents submitted set forth the official reasons and official points of view with reference to the draft laws of that particular period. These official reasons together with the dossiers were circulated among the individual ministers when the laws were drafted. Thus, all they learned about the reasons for the proposed laws was what was contained in these papers. The examination of these reasons will show how these laws were actually justified.

From among the remaining documents submitted by me, I should like to refer in particular to Document Number 3. This is a proclamation by the Reich Government of 1 February 1933, containing the directives for the policy of the Cabinet. Document Number 9 consists of official pronouncements of the leaders of those political parties which dissolved in 1933 on their own accord. In these statements the party leaders back the new Government policy and call upon their followers to let themselves be guided by and to give their adherence to this policy.

Finally I refer to Document Number 63, an essay by the then War Minister Von Blomberg, dealing with the problems in connection with the introduction of universal military service in Germany. The other questions which concern us in this connection, particularly the work and the organization of the Cabinet, have been dealt with in detail during the interrogations of the witnesses

Lammers and Weizsäcker, as well as of Göring and Von Neurath. I ask to take these testimonies into consideration when judging the case against the Reich Government.

That is all I have to say.

THE PRESIDENT: The Court will adjourn.

[A recess was taken.]

THE PRESIDENT: Dr. Pelckmann.

HERR HORST PELCKMANN (Counsel for the SS): Your Lordship, High Tribunal. First of all I refer to the transcript of the testimonies of the witnesses before the Commission which are, no doubt, known to the Tribunal. There are 29 witnesses.

I then begin by dealing with the documents. I have broken them down into different groups and hope that the presentation will thus take very little time. First, Documents Numbers 1, 2, 3, 5, and 84 in one group. The first three documents deal with the so-called "ideals" of the SS; they state the ideals of the fraternity. Something is said about kinship (Sippengemeinschaft) and such like, and proof is given that this was the basis of the training.

Document 5 says that the members of the General SS carried out their normal civil occupations, and that the SS Service was only supplementary.

Document 84 makes it clear once more that the General SS was a branch of the Party and in contrast to the other SS formations, which I shall present later, was represented by the NSDAP in case of complaints.

In Document Number 6, USA-441, which I submit once more, the principles of the SS are again referred to and for the individual man these were quite decent requirements: sanctity of property, the precept of thrift, *et cetera*. I must present that briefly because it is important for my final plea.

Documents 4 and 103 belong together. Document 4 shows that the SS men swore an oath which did not differ from that of the civil servants, although it did differ from that of a soldier, for strangely enough the soldier swears absolute obedience, while the SS man does not.

Document 103 deals with the fact that this oath was made in God's name, and Himmler says in reference to that: "I look upon a person who does not believe in God as being presumptuous, a megalomaniac, and stupid. Such a person is not suitable for us."

Document SS-84, which I just quoted, shows once more that the SS Verfügungstruppe (Special Units) and the SS Totenkopfverbände (Death's Head Units) did not belong to the General SS. They

did not have any civil occupation, but were state employees, and in case of complaints against these members or these formations, that is, the SS Verfügungstruppe or the Totenkopfverbände, the complaint had to be made against the Ministry of the Interior; this is very important for the concentration camp question.

Then there follow Documents 8, 9, 10, 11, and 42. The Waffen-SS was created during the war. Its members were instructed to fight decently and chivalrously and not make themselves guilty of punishable actions against the civilian population in enemy countries, and to respect the prisoners of war and the fallen.

For the members of the Waffen-SS—this is shown especially by Document 42—the basic rules of the SS apply only when the individual Waffen-SS men were at the same time members of the General SS. For example, that is true even for the so-called marriage order. This ideology is not applicable to the Waffen-SS men, so that even the voluntary Waffen-SS men were not subject to the special laws of the SS.

Documents 13, 14, 15: The SS is accused of the legal plundering of the Occupied Eastern Territories. These documents show that the laws in this respect were issued by the Delegate for the Four Year Plan, Göring, or the Minister of the Interior, Frick. The Reich Commissioner for the Consolidation of German Nationhood and the Office for Racial Germans (Volksdeutsche Mittelstelle) were entrusted with the resettlement and bringing back of Germans. This is shown by Documents 15, 16, 17, 18, 19, 20, 22, and 23. Documents 25, 26, 30, 33, 34, 40, and USA-674 I submit as evidence that the civil service law, the emergency labor regulation, the constitution for German students, the agreements between the Reichsführer SS and the Reich Youth Leader, the Reich Labor Leader, and the Reich Finance Minister, were coercive measures which made it possible for Germans to be allocated to the General SS, the Waffen-SS, SS Verfügungstruppe and the SS Totenkopf units. Even the women police staff assistants were forcibly placed in the SS Women's Auxiliary Corps.

Documents 28, 30, 31, and 32 can be lumped together. They give a number of examples of the kind of compulsory service just mentioned, or of men being drafted into the General SS, the Waffen-SS, and the SS Verfügungstruppe.

Documents 29, 36, 38, and 39 show that citizens of foreign states, in so far as they were of German descent, were not forcibly drafted into the army of their respective countries, but into the Waffen-SS. This was on the strength of state agreements.

The documents show further how whole groups were forcibly placed under SS jurisdiction without being SS members. They continued under the name of their old occupation but with the addition of "SS."

Document Number 3 treats the question of the so-called patron members, which has still not been settled by the Prosecution. These patron members were only linked with the SS from the financial standpoint. Their subscriptions flowed into the coffers of the General SS. Membership as a so-called patron member in no case meant that a person belonged to the active SS.

Documents 48, 53, 54, 57, 59, and 60 deal with the more or less pronounced pressure exerted on police officials to join the SS. The request to join was worded: "I therefore expect that the person whom this concerns... will join."

Continuous inquiries followed as to whether the person had joined. Even members of the Order Police, the Ordnungspolizei, were more or less forced to join. Court officials, doctors, all young officers and constables were also pressed to join the SS. On the other hand, Documents 52 to 55, and 56, show that the members of the Police who joined the SS in this way did not perform any SS service. They were not obliged to attend SS training either. The only sign that they were members of the SS was that when they were promoted they were also promoted in the SS.

Finally, in Documents 65, 66, 67, and 68, I have to deal with purely external SS designations in police units. The battalions and regiments, as well as fire-fighting police units, that is, units of the fire service, all received the designation SS as an external sign of recognition, as it says in the decrees. As an example, I refer in this document to the Second Gendarmerie Battalion which became the Second SS Gendarmerie Battalion; or the Police Regiment "Alpenland," which became the SS Police Regiment, and so forth.

The documents show further that, in spite of all this, these SS police regiments remained with the Ordnungspolizei, that they received their equipment from the Ordnungspolizei, and everything else was attended to by the Ordnungspolizei. The individual policeman of these regiments did not become a member of the General SS or a member of the Waffen-SS, even though his unit had this SS designation.

Finally, the following documents deal with the question: to what extent did the members of the SS know of and desire the crimes with which the Prosecution charges them?

Documents 70, 71, 73, 75, 76, and 79 are lumped together. Hitler was constantly making speeches in which he simulated a firm will for peace. The Reich Government also stated that they wanted to preserve peace at all costs. The paper *Das Schwarze Korps*, believing these statements, wrote that the SS did not like war, a statement made in January 1937; and it goes on to explain this antipathy to war.

Documents 77 and 78 show that in this connection even outsiders like the Austrian bishops and the British Government were deceived in 1938. The German-British Peace Declaration of 30 September 1938 is well known. It expresses the will of both peoples never again to wage war against each other.

In Document 80, containing some official statements on the nature and character of the SA and the SS, it is shown that neither the SA nor the SS was armed, neither were they given any training with arms or otherwise trained for military purposes. I am asserting this only for the case of the SS.

The supplement to Document 81 says that on 16 April 1934 the German Government offered to prove to the British Government that the SS and the SA had no arms and were not trained for any military purposes. This was not only maintained outwardly; it was actually the case within the SS. This is shown by Document SS-82, which is the secret Führer Decree of 17 August 1938, stating that the SS as a political organization of the NSDAP is not a military organization, and that it needs no training and is unarmed. It says further in this decree that the members of the General SS, being unarmed, in case of war, in accordance with the provisions of the National Defense Law, are at the disposal of the Wehrmacht, not of the Waffen-SS.

Document SS-92 is a small example of how the masses were deceived about peace aims. According to this—it is a law of the Reich Cabinet—any participation in the Spanish Civil War in any form whatever is subject to punishment by imprisonment, although at the time thousands were fighting in Spain on Hitler's orders.

Documents 87, 88, 90, and 99 show the following:

Through the various laws against subversive activities and defeatism, and the prohibition to listen in to the foreign radio, any spreading of the truth—and I take as a single example the spreading of rumors on concentration camps—became in fact impossible. This policy was rigorously applied during the war. That is proved by Document SS-98. It is the well-known speech of Himmler in Posen in 1943, Document 1919-PS. I refer only to one sentence of Himmler which says that whoever is disloyal, be it even in thought, will be dismissed from the SS; also that care will be taken that he will disappear from among the living.

On the Jewish question there are Documents 93 and 95. In February 1934 the Reich Minister of the Interior, Dr. Frick, declared before the Diplomatic Corps that the only intention was to reduce the activity of the Germans of Jewish faith in proportion to other Germans. It was expressly denied that these citizens would be forced to emigrate.

The other document, Number SS-95, proves that even in the year 1942, when the mass destruction of Jews was under way, a law

provided for the creation of a settlement in Theresienstadt for Jewish citizens. This, consciously or unconsciously, served to deceive the public about this extermination, and it deceived the SS members too.

The events of 30 June 1934 are dealt with in Documents 83, 100, 74, 105, and 106. The public did not learn the truth. Hitler was thanked for dealing with the situation in telegrams sent by Reich President Von Hindenburg to Hitler and Göring. These telegrams were published in all papers. In his speech of 13 July 1934, Hitler described in great detail the preparations Röhm had made to overthrow the Government, how he had been in contact with foreign countries, and how an SS Führer, who was mentioned by name, had prepared an attack on his life. The situation was presented as so urgent that only immediate action, without judicial proceedings, could do any good. Moreover, this speech gave assurance that illegal excesses committed during this action would be punished by law.

Document 104 provides a sketch to supplement the testimony of the witness Von Eberstein. It clarifies the actual position of the Higher SS and Police Leader.

Then I have another document, SS-107, which unfortunately I was able to hand to the Prosecution only this morning, as I have only just found it in the collection of decrees. I ask that it be accepted. It is a decree of the Reichsführer SS of 27 August 1942. This decree expressly states that the main office of the Reich Commissioner for the Consolidation of German Nationhood (Volksdeutsche Mittelstelle) is not an SS Main Office, but a State organization. This question is important for the responsibility of the SS in the so-called Germanization program. This document has not yet been translated. I shall endeavor to have translations made as quickly as possible.

That is my presentation of documents, Your Lordship.

Now I come to the affidavits. For the purpose of examination before the Commission and especially for the examination of the five witnesses before the Tribunal, I was forced to call only witnesses who, because of their high positions, could give the Court a comprehensive survey of specific questions. Through the affidavits the Defense had to endeavor to present as large a number as possible of statements on the whole evidence of the Indictment, in order to give the Court an idea of how much the bulk of the population knew and how they behaved. I have attempted to do so by means of separate affidavits on certain points, and by summarizing a large number of statements on certain groups of questions and subjects.

I submit first 114 individual affidavits. They are SS Affidavits 1 to 60, 63, 64, 68, and 69, and 71 to 118. Affidavit Number 70, given by two SS members, contains the list of the affidavits of the

internees of one camp, Camp Number 73. It refers to almost all of the points of the Indictment against the SS.

Then I submit the digest of 136, 213 individual affidavits and collective affidavits. To these I have given the numbers 110 to 122.

Finally, the digest of a questionnaire which was sent to all camps, that is, a statistical report under Number 123.

I regret that I cannot give the Tribunal today the texts of these affidavits, especially of the individual affidavits, in English. As far as I know, translations into French are available for all affidavits, and I shall attempt to submit the English translations as soon as possible. I am now submitting the French translations.

I then submit affidavits, by Dr. Morgen, SS-65 to 67.

I personally consider Affidavits SS-64, 68, 69, and 70 extremely important. I have...

THE PRESIDENT: Which are the ones you said were very important?

HERR PELCKMANN: 64, 68, 69, and 70.

THE PRESIDENT: Yes. Go on.

HERR PELCKMANN: I have especially asked for their translation. I have not submitted any summaries of them to the Commission, as they must be presented in their entirety. Number 70 is as important for the question of legal hearing of the bulk of the SS men as the presentation of the digest of the 136,000 affidavits. In order to shorten my presentation I have arranged the individual affidavits in groups, and I hope that by giving the numbers I have made it possible for the Tribunal to obtain a general view of the various groups.

Group 1 contains the affidavits denying that the SS was a single group bound by oath in which no distinction can be made as to composition or time. This is asserted by the trial brief, on Page 9 and 10 in the German version. Moreover that is asserted in the transcript of 19 December (Volume IV, Page 175/176).

SS Affidavit 116, Petri, proves that the purpose of the Führer Order of 17 August 1938, USA-443, was not to form an organic connection between the General SS, Totenkopf Units, and Verfügungstruppen but, on the contrary, to separate these various branches of the SS.

Now I sum up a group of affidavits, 13, 52, 49, 48, 42, 56, 55, 45, 54, 46, 97, 98, 53, 50, 51, and 38. I might remark, Your Lordship, that a translation in English of these affidavits, and also of Number 52, has already been made and is being distributed. I beg your pardon, it is only in French, Your Lordship. With these affidavits I wish to prove the following: Certain groups are charged in the general indictment of the SS. They cannot be brought under

the concept of a common conspiracy if only for the reason that they had only a very temporary relationship to the SS, or none at all. They are the patron members of the SS, the Bauernführer (farmers' leaders), the so-called Ehrenführer (honorary leaders), the SS Frontarbeiter, the so-called SS-Eisenbahnbaubrigaden (railroad construction brigades), the Postschutz (postal protection), the National Political Education Institutions. Furthermore, the Führer des Reichskriegerbundes (leaders of the Reich Soldiers League)—that is something similar to the Stahlhelm—the SS-Sportgemeinschaften (sport associations), the riders' groups which were transferred to the SS—known as SS Reiterstürme, which had exactly the same characteristics and history as the SA Reiterstürme—and finally the students who were taken into the SS on a compulsory basis.

The following two affidavits, 118 and 101, deal with the Lebensborn organization. They prove that the tasks of this organization were to support families with many children and to care for mothers and children, including illegitimate children and unmarried mothers, but they did not afford the opportunity for the illegal begetting of children and the taking away of children for the use of the State, as the Prosecution has asserted.

Affidavit SS-47 is a valuable supplement to the testimony of the witness Liebrich, an SS doctor, before the Commission. It proves that doctors were taken into the SS exclusively on the basis of their professional ability. Leading doctors and leading authorities were taken into the SS to raise its prestige. It is asserted that the activity of the SS doctors of the General SS was also recognized by foreign countries, and examples of international authorities were given.

SS Affidavits Numbers 95 and 96 prove that the SS Women Auxiliaries were neither members of the SS nor sponsors. These girls carried out the same work as the Women Signal and Staff Auxiliaries in the Wehrmacht and must not be confused with the female supervisors in the concentration camps for female prisoners.

There follows a large group of affidavits on the question of Germanization, a lengthy and very involved accusation by the Prosecution. They are Affidavits Numbers 2, 112, 114, 113, 110, 115, 44, 71, 73, 75, 77, 79, 11, 43, 72, 74, 76, 78, and 80. May I add at this point that in putting such a large group together, care has been taken to see that these individual affidavits are not cumulative. The affidavits supplement each other and thus give a complete picture of the points of the Indictment and their defense. These affidavits prove that the Volksdeutsche Mittelstelle and the so-called Staff Main Office of the Reich Commissioner for the Consolidation of German Nationhood—I repeat for the interpreters: Volksdeutsche Mittelstelle and Stabshauptamt des Reichskommissars für die Festigung des Deutschen Volkstums—were not SS agencies, but State authorities. That is the formal side of the defense.

The material side is found in another part of these documents just quoted.

The SS was not entrusted with evacuation measures, Germanization measures, and the settlement of Germans in the occupied territories. Affidavit SS-89 proves that the Chief of the Prisoner-of-War Department, even after Himmler's appointment, was purely a Wehrmacht office.

When Himmler was appointed Chief of the Prisoner-of-War Department, nothing was changed in the organization of the Prisoner-of-War Department. The SS did not influence in any way the treatment of prisoners of war.

I will now deal separately with the documents in the next, the second group, and sum them up. They deal with the assertion of the Prosecution that there had been organizational unity between the SS and the Police. This unification is supposed to have taken place under the so-called "Higher SS and Police Leaders." That assertion of the Prosecution is on Pages 12 and 16 of the German trial brief. It is in the transcript of 19 and 20 December. The following affidavits will refute this statement: 86, 87, 88, and 10.

I will ask the Tribunal to pay special attention to the explanation in Affidavit 87. These affidavits prove that the Higher SS and Police Leaders within the Reich had no authority to give orders to the Order Police and to the Security Police. On the contrary, those police branches received their orders from their respective main offices, and they were given directly and not through the Higher SS and Police Leader.

The presentation given by Dr. Best in Document 1852-PS does not give the true facts and is wishful thinking.

The affidavits taken together in the third group contain material to refute the assertion of the Prosecution that the SS was trained in the doctrine of the "Master Race" and in racial hatred, and that it prepared for war mentally and physically. This assertion also appears in the trial brief on Page 6, and in the transcript of 19 and 20 December.

They are Affidavits Numbers 57, 58, 59, 60, and 83, and they prove that the SS was not trained in racial hatred and certainly not for racial extermination, also that the SS was not trained for war either mentally or physically.

The affidavits in the fourth group deal with the charge that the Waffen-SS was an integral part of the whole SS. That is found in the transcript of 19 and 20 December 1945. Moreover, that service in the Waffen-SS was, with a few exceptions at the end of the war, mainly voluntary. Thirdly, that the Waffen-SS, because of their ideological training, had fought in an inhuman manner and contrary to international law. Affidavit 84 shows that the Waffen-SS

as a unit had no concept of Himmler's ideology, and above all that the Waffen-SS heard hardly anything about the other sectors under Himmler's power, and that they were not directed by Himmler in a military sense, but only in regard to personnel questions, clothing, and equipment.

The next four affidavits will be taken together: 36, 37, 39, and 40. These prove that a considerable part of the Waffen-SS and also special groups such as the Customs Border Protection, the SS Motor Transport Squadron, and the Auxiliary Army Post were taken into the SS on a compulsory basis.

The following affidavits, Numbers 1, 31, 32, 33, 34, and 81, prove that the Waffen-SS were repeatedly instructed in the observance of the customs of war. The customs of war were in fact observed and infringements were severely punished.

Affidavits 82 and 83 deal with the SS Police Regiments in the same way as the documents quoted previously. They prove that these SS Police Regiments were purely regiments of the Order Police without connection with the SS. The police divisions, as distinguished from the police regiments, were never under the SS up to April 1942. Only after that were they forcibly ordered into the Waffen-SS.

The "Dirlewanger" Brigade has been mentioned repeatedly. Affidavit 35 deals with this. This affidavit says:

"This brigade was not an SS unit, but a unit set up on the direct orders of Himmler and composed of all kinds of convicted persons on probation."

The next group are Affidavits 3 and 4. They prove that the assertion of the Prosecution that the SS had participated in suppressing the SA on 30 June 1934 is false. The General SS in Frankfurt and Berlin, for example, was only told to stand by. No arrests or shootings took place. I may say here in this connection that a large quantity of evidence from all over Germany is given in Affidavit 70. It is a cross-section from a whole camp, a whole internment camp, which will be presented in the digest.

The next group deals with another point of the Indictment; participation of the SS in the Jewish pogrom of 9 November 1938. This comprises Affidavits 7, 6, 8, 9, 104, and 105. They prove that the SS in Nuremberg, Offenburg, Hamburg, Berlin, and Ulm did not participate in pogroms, but were only used for protection on 10 November.

I consider Affidavit Number 5 of special importance in connection with the question as to whether an order from higher up was given to the SS to participate in these pogroms. It is by a certain Schallermeier. I have heard that it is available in English

and I would be grateful if the Tribunal would permit me to read it. I shall...

THE PRESIDENT: Has it been digested in the transcript before the Commissioners?

HERR PELCKMANN: It was digested in the transcript before the Commission, Your Lordship. I do not want to read the whole document, your Lordship, but may I read just a small portion of it which is especially important?

"About 3 a.m. on 10 November"—this is Schallermeier speaking—"the Reichsführer SS dictated to me in my room a statement which read as follows:

"On 9 November I was at the Führer's when about 2330 hours Gruppenführer Wolff came to me and informed me about the order issued by the Gau Propaganda Office in Munich."—I repeat, Gau Propaganda Office.—"I asked the Führer what orders he had to give me. The Führer replied that the SS should keep out of this action. The State Police Offices were to take care of Jewish property and see that the Jews themselves were protected. The General SS should remain at home and were only to be called out for protective measures if necessary. I immediately passed on this Führer order to Gruppenführer Heydrich for the State Police Offices and to the Oberabschnittsführer for the General SS. When I asked the Führer, I had the impression that he knew nothing about what was happening. The order emanates from Reich Propaganda Headquarters and I presume that Goebbels, in his lust for power and foolhardiness, which has struck me for some time, has sponsored this action at a time when the situation as regards foreign policy was at its worst."

May I correct myself; if I said this was Schallermeier, that was a mistake. This quotation was dictated by Himmler; Himmler dictated this paragraph.

And the author of the affidavit goes on to say: "I myself had to type what I had taken down from dictation." Afterward this statement of Himmler was locked up in the safe and made secure.

Some very good material for judging the participation, or rather the non-participation of the SS in these events of 9 November is again afforded the Tribunal by Affidavit Number 70, a digest from a camp.

The next group includes the following affidavits: 14, 15, 16, 19, 20, 21, 23, and 25. It deals with conditions in the concentration camps.

These affidavits are to prove that the treatment in concentration camps, as described by those witnesses, was, generally speaking, satisfactory.

Ill-treatment of prisoners was severely punished. Evidence of this is given in the numerous examples in Affidavit Number 70 which I have already mentioned, and in the digest of many affidavits, the collective Affidavit 119-122.

Relevant to the question of authority in the concentration camps and the part which this played within the whole SS organization are Affidavits 99 and 100. They prove that the gains to concentration camps out of the employment of prisoners were not turned over to the SS, in particular not to the Waffen-SS, but were entered in the budget of the German Reich.

The next group includes affidavits regarding experiments on living human beings. I consider them valuable only insofar as they provide an answer to the question: What did the bulk of the SS men know of these experiments?

Affidavit 17 is to prove that in Dachau prisoners voluntarily submitted to freezing experiments after they had been medically examined and given food to make them fit. Affidavit 107 also deals with these experiments.

The following group of affidavits, 18, 22, 27, and 28 deal with the question of secrecy regarding crimes, especially crimes in concentration camps, and are to refute the assertion of the Prosecution that the whole German population knew of the atrocities in concentration camps, and therefore the SS men also knew about them, especially the SS men outside the concentration camps (Afternoon session of 28 January 1946, Volume VI, Page 252/253). These four affidavits prove that from all persons who in any way came into contact with concentration camps statements of secrecy were demanded, further that the concentration camp guards could have no insight into the actual conditions of protective custody camps and that even within the administrations of the camps one section was not informed about the activity of the other section.

On the same question of how much the members of the SS knew, I consider Affidavit Number 24 to be very important.

In answer to a direct question by a Waffen-SS Führer who reported to him, Himmler said in April 1944 that everything was in order in the concentration camps, and that the treatment of the prisoners was satisfactory.

Himmler made this same statement to the whole officers' corps of the 17th SS Division.

Affidavit 117 proves that the utmost secrecy prevailed in the Führer's headquarters, and the degree of secrecy was such that

nothing was known about crimes in concentration camps, the extermination of Jews and the activity of the Einsatzkommandos.

I again put three affidavits together, 63, 93, and 94. They also show that the utmost secrecy was observed within Himmler's sphere of command and especially concerning the inspection of concentration camps.

The notorious speech of Himmler's at Posen in October 1943 is known to the Tribunal. It was made to Obergruppenführer of the SS. The Schneider affidavit, Number 29, says the following:

"Schneider was warned by Himmler personally to keep absolutely silent about the Posen speech if he valued his life."

Affidavit 41 shows that the SS Economic and Administrative Main Office was competent for concentration camp administration through Amtsgruppe D. This affidavit emphasized the extraordinary secrecy which prevailed within this administrative organization.

Affidavit 12 reports that the Adjutant of the Chief of the SS Personnel Main Office made inquiries of the RSHA, and also of the WVHA Amtsgruppe D. That was in 1943. This Chief of the SS Personnel Main Office inquired whether rumors about the murder of Jews were true. The offices mentioned answered to the effect that those rumors were untrue, and that they were definitely enemy propaganda.

THE PRESIDENT: We shall break off now, Doctor, please. Will you be much longer in your summaries of these affidavits?

HERR PELCKMANN: No, Your Lordship, these affidavits will not take much longer, but a résumé of the group affidavits, which I must give so that the Tribunal will know what these group affidavits deal with, will take a little longer.

[The Tribunal adjourned until 21 August 1946 at 1000 hours.]

TWO HUNDRED AND EIGHTH DAY

Wednesday, 21 August 1946

Morning Session

THE PRESIDENT: One moment, Dr. Pelckmann; although perhaps you can help me.

In view of a letter which has been addressed to the Tribunal, signed by most of counsel for the organizations but not, I think, by Dr. Servatius, dated 15 August 1946, the Tribunal would be glad to know from a counsel for the organizations how long they anticipate those who remain to present their documents and affidavits think they will take in doing so, and in what order they propose to make their speeches; also whether they are ready or will be ready when the time comes to make these speeches, because the Tribunal is very anxious and is not prepared to postpone the presentation of these speeches.

Therefore, the Tribunal thinks it is proper at this time to ascertain, as far as possible, whether the speeches will be ready in due time.

I see that Dr. Kubuschok is not here. Dr. Pelckmann is here and perhaps he can tell us as far as he is concerned, and Dr. Servatius.

HERR PELCKMANN: Perhaps I will need 2 more hours today. I believe my colleague, Dr. Laternser, will need one day for his speech, as he has already said. How long the SA will take, I do not know. As to how long we shall take with the pleas, I can only repeat what was said in the letter, because we were, of course, very busy with the taking of testimony, the interrogation of witnesses, and the presentation of documents and affidavits until just a few days ago. But I believe that on Monday we could all begin with our pleas. As far as I know, my colleague, Dr. Servatius—I do not know whether he is here—might be able to begin his plea now.

We announced in the letter that we could hand in our pleas at the end of the week as desired; if we allow 3 days for the translation and mimeographing, possibly one or the other of us could hand in the manuscript on Friday and we could begin on Monday; or Dr. Servatius might even begin at the end of the week. I personally, if I may say so, would not be ready before Monday.

THE PRESIDENT: You will be ready by Monday?

HERR PELCKMANN: Not before Monday.

THE PRESIDENT: I think I ought to point out to the counsel for the organizations that the letter was addressed to the Tribunal on 15 August, which is 6 days ago, so that they have had 6 days since then in which to get their speeches ready. I have also pointed out to each one in turn of the counsel for the organizations that it is quite unnecessary, and it is wasting the time of the Tribunal, to take so much time in commenting upon their affidavits and other documents; and the time would have been very much better spent in preparing their speeches. But I gather from what you say—and perhaps Dr. Servatius will be able to tell the Tribunal whether he agrees with it, and Dr. Laternser, too—that the counsel for the organizations will in all probability be ready to go on with their speeches on Monday and not to request any delay after that. Dr. Servatius, I understand, is ready to go on at once.

HERR PELCKMANN: Your Lordship, perhaps I may say one more thing. That the documents and affidavits are being commented on at somewhat greater length than seems necessary to the Court is due—if I recall correctly—to the following specification of the Court. When the time of the speeches was set at 3 hours, it was said at the same time that the attorneys would have an opportunity to make comments during their presentation of affidavits and the documents, so that they would have the full time of 3 hours for their speeches and so forth at their disposal. We concluded from that that we would have an opportunity to comment on the evidence now during the presentation of documents and affidavits.

THE PRESIDENT: Yes, but counsel for the organizations must realize that all these affidavits are summarized in writing before us; and therefore simply to repeat the summary which we have in writing, of course, does not really help us at all.

You have mentioned in the absence of Dr. Laternser, who I see is now present, that Dr. Laternser, you think, would be likely to take one day on these documents.

HERR PELCKMANN: Yes, he told me last night that he would probably need a day.

THE PRESIDENT: Let me hear what he is going to say. Dr. Laternser, in your absence, what I was saying was that the Tribunal had had this letter of 15 August, which was written 6 days ago, and that the Tribunal would like to know how long counsel for the organizations anticipate they will take over their documents and whether they would be ready to go on with their speeches immediately thereafter. In answer to that, Dr. Pelckmann told me that he would take two more hours and that he heard from you that you would be likely to take one day.

I think the Tribunal would be very disinclined, very much disinclined, to listen to one whole day upon the documents.

DR. LATERNSEER: Mr. President, I believe that I will certainly need a day. Please consider the following: The American Prosecution used 2 days to present their evidence. The Russian Prosecution used many days for their evidence against the General Staff. Now, having faced considerable difficulties in procuring evidence within the framework assigned to me, I do not believe I am asking for too much when I say I need a day, which is a fraction of the time which the Prosecution used to present the evidence against the General Staff.

THE PRESIDENT: Dr. Laternser, you are leaving out of consideration altogether the fact that we have set up these Commissions and the fact that you have been before these Commissions not only for one day but for many days.

DR. LATERNSEER: Mr. President, I presented the affidavits to the Commission, but this was more a matter of form. The purpose of my presentation of evidence is to bring it into a certain order, so that the Court may see to what points of the Indictment the individual affidavits are to apply.

MR. DODD: Mr. President, I'd like to point out to the Tribunal that Dr. Laternser spent between 9 and 10 days before the Commission on the General Staff; and, of course, he called witnesses here in the courtroom as well; two, I believe, or three—I've forgotten the number.

DR. LATERNSEER: Mr. President, that was not quite correct. I used several days to examine witnesses, but not to present documents; and I must be in a position to present this written evidence to the Court in a certain order. Otherwise it cannot be effective.

THE PRESIDENT: You say you are not in a position to present it in a certain order. Well, nobody wishes you to present the affidavits in the order in which they are numbered on the document; but you can group them, presumably, unless they all deal with different subjects. I rather gather that you have a very great number of affidavits; and I feel quite certain that a great many of them deal with the same topic; and, therefore, in a very short time—probably in the course of an hour—anybody could go through that list of affidavits and could see which affidavits relate to the same subject and could, therefore, group them. It is perfectly simple; and the Tribunal will not under any circumstances be prepared to have their time taken up for longer than half a day in the presentation of documents by your organization or by any other organization.

DR. LATERNSEER: Mr. President, may I say something else on this point?

THE PRESIDENT: Dr. Laternser.

DR. LATERNSEER: I ask the Court to consider that the Russian Prosecution used several days to bring the most serious charges against the military leadership; and I ask that I may have approximately the same opportunity to answer these charges...

THE PRESIDENT: Dr. Laternser, Mr. Dodd has just pointed out that you have been before the Commission for 9 or 10 days; and you have already spent 2 days here. We have the very able and laborious work which has been performed by these Commissioners all before us in writing. I have before me at this moment a document. I don't know whether it is in consecutive numbers—not quite consecutive numbers—but at any rate it goes up to the number of 3,172 affidavits which have been summarized. I say not consecutive numbers, but at any rate a bundle this thick of affidavits, which have been summarized in writing by these Commissioners.

You counsel for the organizations have had the opportunity of reading the report which has been made by the principal Commissioner on these affidavits, and have, as I understand, not commented adversely upon any remark in that report. All these matters are before the Tribunal; and in my opinion the Tribunal have granted to the organizations the fullest possible and most adequate opportunity of being heard before the Tribunal; and the Tribunal think that they have heard enough on this subject; and they adhere to the decision which I have announced.

All right, Dr. Pelckmann.

HERR PELCKMANN: May it please the Tribunal, I shall now give a short presentation of the last group of individual affidavits.

First, I present Affidavit Number 108.

MR. DODD: Mr. President, I am sorry to interrupt, but we are a little bit confused. Sir David and I both feel that there may be some misunderstanding about the position of Dr. Pelckmann. We are rather of the opinion, from listening to him, that he means that he will be ready only to submit his speech for translation on Monday, and we wondered if the Tribunal did not understand him to say that he would be ready to make his speech on Monday, and there would be a spread there of 3 days.

THE PRESIDENT: Certainly, the way I understood you, Dr. Pelckmann, was that you would be prepared to make your speech on Monday; not that it would necessarily come on Monday because, of course, Dr. Servatius' speech will come before yours.

Presumably, unless you make other arrangements amongst yourselves, the speeches will be made in the order in which the documents and the witnesses have been presented. Doubtless you can make arrangements among yourselves—which the Tribunal will only be too glad to assent to—if one is ready and the other is not, but they will expect that there will be no delay.

HERR PELCKMANN: I believe, Your Lordship, that that will be all right. As stated in the letter, we will present the manuscripts for translation and mimeographing by the end of the week. If, for example, I turn it in on Friday afternoon, I believe I can speak on Monday afternoon or Tuesday morning.

THE PRESIDENT: Wait a minute. That is all very well, but the Translating Division are human, and I don't see any reason why they should work on Sundays. I may be wrong, but I think I remember that you have assistants who are helping you and who presumably have been helping you ever since the 15th of August, on which day this document was presented. As I pointed out already, that is 6 days ago. Some parts of the speech ought to be ready now and ought to be in the hands of the Translating Division.

I see by the list that has just been handed to me that you have four assistants, or that Dr. Babel has four assistants and four secretaries, and that you have one associate counsel and a secretary. I don't understand why the speech, or some parts of it, should not have been handed to the Translating Division already, and the same with the other counsel appearing on behalf of the organizations.

HERR PELCKMANN: But we are still in the presentation of evidence, Mr. President. So far it has not been possible for me to prepare a complete plea before the end of the presentation of evidence, even after all my practical experience. But may I make a suggestion, Mr. President? I can turn in the manuscript of my plea for the Translating Division on Friday afternoon, and I can probably hand in a considerable part of it before that time.

THE PRESIDENT: All I am prepared to say is this, that I will not, on behalf of the Tribunal, order the Translating Division to work any more than the officer in command of that division thinks proper; and the Tribunal expects that the speeches will go on without any delay. Is that clear?

HERR PELCKMANN: I was just dealing with SS Affidavit Number 108. From this it can be seen that the SS had nothing to do with the drive for the seizure of manpower.

Affidavits Numbers 102 and 103 prove that the so-called "Voluntary Self-Protection," abbreviated "FS"—which the Prosecution considers a Fifth Column—in Slovakia and the Sudetenland had no connection with the SS and was never armed.

Affidavits Numbers 106 and 111 deal with the nature of the organizational book of the NSDAP and with that of the NS Year-Book. The Prosecution quotes from these books to prove official opinions of the Party. These affidavits, however, state that the organizational book and the NS Year-Book were not official publications and that they are therefore no proof for organizational questions.

SS Affidavit Number 109 deals with the charge of the Prosecution that SS men were protected by the regime when they committed crimes. It proves that when SS members committed punishable actions, before the establishment of the SS courts in 1939, that the SS officers saw to it that no difficulties were put in the way of the regular course of justice inasmuch as these actions became known.

Finally, there is a last group, Affidavits Numbers 90, 30, 91, and 92.

Affidavit Number 30 is available only in the French translation. It is an answer to the assertion of the Prosecution that the whole SS organization and its members knew, or must have known, that the SS was a criminal organization.

The affidavits state, to mention an example, that there were particularly good relations between the Foreign Diplomatic Corps and the SS, so that the SS members who heard about that could not assume that this organization was criminal.

Now I wish to deal briefly with the affidavits which I mentioned at the beginning, and of which no digest is available.

THE PRESIDENT: What did you mean by saying that there was a group, which I took down as being 90, 31 or 30, or possibly both of them, and 92? By the document which is before me, Affidavits Numbers 90, 91, and 92 have been withdrawn. Is that a mistake?

HERR PELCKMANN: I had made application in the Commission to have them admitted, and the Prosecution did not want to have them admitted. As far as I can recall, no decision was reached by the Commission and it was postponed. However, I heard 2 days ago that Colonel Neave, who was presiding in the Commission at that time, said that they had definitely not been admitted. That is new to me. If this should be the case, then I would ask for a decision of the Tribunal whether these affidavits can be admitted. This decision need not be given at once.

THE PRESIDENT: You just cited them as a group. Have they got any relations to Number 30? Number 30, you say, relates to the relationship between the SS and the Foreign Diplomatic Corps. Do 90 and 92 relate to that?

HERR PELCKMANN: Yes, 30 was approved and is available in the French translation. The English translation . . .

THE PRESIDENT: We can take it then, and we will consider the application. We can take it that 90 and 92 deal with the same subject, is that right?

HERR PELCKMANN: Yes.

THE PRESIDENT: That's quite sufficient. I don't want any more.

HERR PELCKMANN: Now I shall deal again with Affidavits 68, 64, and 69. I must refute the assertion of the Prosecution that ill-treatment, individual killings, and mass exterminations in the concentration camps can be charged against the SS as a whole because, as the Prosecution asserts, they were known to most of the SS men. The very important and elucidating records of the trials of the Allied Military Courts against members of the concentration camp administrations and against guards—for example, the trials at Belsen, Mauthausen, Dachau, Neuengamme, Celle, and Rastatt—I was not able to obtain. A systematic examination of the witnesses and a part of the affidavits from the camps made it possible for me to ascertain facts sufficient to refute the assertion of the Prosecution.

On 29 January, the President said that witnesses and evidence from the Defense were especially expected to be forthcoming on the point concerning concentration camps. The President said on the same day, in answer to a question by the French Prosecutor Dubost as to whether the Court was convinced that the same terrible conditions prevailed in all camps which two witnesses had testified to: "If you want to prove that, Mr. Dubost, it is necessary to call a witness from each of the hundreds of camps." I refer to the transcript. Therefore, for purposes of defense, I have a number of affidavits from guards, members of the administrations, and inmates of camps, and also from visitors to the concentration camps. I have submitted them as counter-evidence. Now, I refer only to an affidavit which seems very important to me, Number 68.

THE PRESIDENT: Now, why do you not tell us which the affidavits are, that is what we want you to do. You are telling us now and referring to some statement I made in January, that you have got affidavits made from each camp. Well, what are the affidavits? It is quite easy to tell us what the groups are, is it not?

HERR PELCKMANN: These groups, Mr. President, I mentioned yesterday. I only wanted . . .

THE PRESIDENT: If you mentioned it yesterday, why do you go back to them today?

HERR PELCKMANN: In order to stress the importance of the Affidavit Number 68 which I am about to explain. It is an affidavit of a commandant of a concentration camp. I can understand that in view of the prevailing attitude the general feeling of the Court

will be one of distrust toward this commandant. But nevertheless, I ask that this very detailed affidavit be read. It deals with organizational questions which are significant in respect to the question: Who was responsible for crimes and ill-treatment of inmates in concentration camps, and who could have had knowledge of them.

For example, this affidavit explains the position of the Economic and Administrative Main Office, Amtsgruppe D. I ask you to pay attention to the fact that this office must not be confused with the Reich Security Main Office. Confusion has already occurred in summing up the testimony of witnesses before the Court. I should like to explain how important it is to re-examine the question of organization of the concentration camp system with the aid of this Document Number 68. But the other parts of this affidavit are also very important.

The other important affidavits are Numbers 64 and 69. They are also testimonies of SS judges, who just like the witness Morgen had participated in the investigations against concentration camp criminals. From the witness Morgen himself there are the Affidavits Numbers 65, 66, and 67.

THE PRESIDENT: Why does he make two affidavits on one day?

HERR PELCKMANN: I did not understand Your Lordship.

THE PRESIDENT: I said, why does he make two affidavits on one day? Why not make one affidavit?

HERR PELCKMANN: During these days work piled up with examinations before the Commission and interrogations of witnesses. The witness Morgen arrived quite at the end. I had to see to it that the affidavits were presented as quickly as possible. For that reason...

THE PRESIDENT: Very well. Go on.

HERR PELCKMANN: It is purely a technical reason, Your Lordship. These concentration camp investigations were, in my opinion, of great importance and very elucidating for the Court in judging the concentration camp system in general and determining the responsibility of the rest of the SS. Therefore, I ask that the affidavits of these two judges be added and closely examined. I will deal with them in my speech.

Finally, I ask the Tribunal to note the whole of Affidavit Number 70, which has been translated completely and which comprises many pages. There is neither a French nor an English translation here at hand. This affidavit gives a cross-section from a camp with 2,800 SS inmates, and these inmates include members of the various offices, members of most of the Standarten of the General SS from all parts of Germany, and members of about 30 divisions, Oberkommandos, and replacement units of the Waffen-SS. In addition,

this affidavit is a good cross-section of the members at various times which, according to the Court's decision of 14 January, should be a decisive factor. The highest ranks are not represented there; it is the so-called "little man" who is represented.

From a similar point of view, and because this evidence of affidavits affects the great mass of the SS, I ask the Tribunal for a proper consideration and evaluation of the 136,000 affidavits of which I have made a digest. For the evaluation of the credibility of these affidavits, the fact is important that they were taken down at a very early date without juridical or any other explanations. The SS members commented only on one or several points which interested them most. The fact that certain points are not mentioned in these affidavits is understandable because the ordinary SS man naturally had only a limited view and was not able to judge on many subjects. As a result they could not write anything on these points.

Justice Jackson stated that the numerous affidavits of SS members were only evidence of their interest in their personal fate. But this digest is to refute that. The individual's range of view is generally limited, and since he cannot testify to more than he knows, these affidavits through the sum of the individual viewpoints assume a great value which is important for me as counsel for the mass of the SS, not for their highest leaders. They give a clear picture of the impressions made on the masses by the teachings, the statements, and the speeches of the leaders, and what actions resulted therefrom.

Only this picture, only this cross-section can show to what extent one can speak of collective criminality in the SS, if it is at all possible to say so juridically. These statements are also important for the question of conspiracy.

I may point out that this digest has not yet been translated. This digest consists of various groups. First, may I briefly touch upon Group I. It deals with the motives of volunteering for the SS, distinction being made between joining the General SS and volunteering for the Waffen-SS before 1933 and after 1933. Of 12,749 affidavits, 12,671 say that the motives were idealism and patriotism alone for joining before 1933. 78 affidavits give various other motives such as transfer from other units, for example sometimes rural riding clubs were transferred into the SS cavalry, and so forth. The fact that the motive for joining after the seizure of power is commented on only by 804 men proves that people did not join out of pure idealism and on a really voluntary basis to the same extent as before 30 January 1933.

As for joining the Waffen-SS there are only a few affidavits. Of 488 men, 406 say that the Waffen-SS was a select and young troop.

Others say that they had to fulfil their military duties in any case and that they preferred the Waffen-SS. Many indicate that the Waffen-SS considered itself a fourth branch of the Wehrmacht. Many others indicate that they were racial Germans, and as I proved yesterday with the aid of documents, racial Germans could perform their military service only in the Waffen-SS. Some enlisted in the Waffen-SS because they wanted to be in the police service after the war.

I have made a digest of Group II as to the question of legal compulsion for joining the General SS and drafting into the Waffen-SS. 67 affidavits say that the assimilation into the Police brought them to a service rank in the General SS.

The rest of the other affidavits are made by students and university teachers, or members of the postal guard, the Reich Food Estate, civil servants, Reich War Victims Care, and teachers. Also honorary leaders are in this group.

Concerning the drafting into the Waffen-SS, there are 4,042 statements. 1,806 racial Germans and 1,826 transferred from other parts of the Wehrmacht or from the Police, that is, compulsorily ordered to join the Waffen-SS.

The question of membership in the General SS among Waffen-SS members is of interest. According to these statistics there were 246 Waffen-SS members who were drafted into the Waffen-SS by the Wehrbezirkskommando, the district command of the normal Wehrmacht. Only one-fifth of them belonged to the General SS.

Of further significance is the following: As early as 1939 Wehrbezirkskommandos were drafting men for the Waffen-SS. The witness Brill has also spoken on this subject. And Wehrbezirkskommandos drafted men to guard concentration camps by drafting them into the Waffen-SS.

Further, members of the Reich Labor Service were taken over compulsorily into the Waffen-SS. The concentration camp guards were supplied by the Labor Office; through so-called emergency drafting the Labor Office obtained the men for concentration camp guards, and there they were taken over forcibly into the Waffen-SS. Some minor points are the compulsory transfer of postal officials for the aid of the German Reich Post service at the front and for the SS Army Post.

Group III includes in its first subsection all the affidavits dealing with the knowledge which the SS members had of the intentions of their leaders.

THE PRESIDENT: Dr. Pelckmann, are you still dealing with Group I?

HERR PELCKMANN: No, Your Lordship, I am on Group III. Group II...

THE PRESIDENT: Where did Group II begin?

HERR PELCKMANN: Group II began with the legal compulsion to join the General SS...

THE PRESIDENT: You did not say so. As far as the translation came through to me, I have taken down all the numbers you have given, and I thought they were all in Group I.

HERR PELCKMANN: I beg your pardon. I thought I said it. Perhaps it did not get through.

THE PRESIDENT: Now you have got to Group III, have you?

HERR PELCKMANN: Yes. It deals with the training which the SS members received. 55,303 SS members state that in this training they had no indication of criminal aims. It was training for character, for decency, for comradeship, and exemplary conduct of life. It is noteworthy that none of the SS men in connection with the training mentions Hitler's book *Mein Kampf*. Statistics will prove that the mass of SS men did not read this book at all.

289 affidavits deal with the evaluation of the racial doctrine. 233 do not consider it conducive to racial hatred, to the desire to destroy other races, or to create a master race. They see therein only a demand for a separation of the races from one another. 57 affidavits see in the doctrine the purpose of selecting the best among the people. Various affidavits say that the racial doctrine included respect for other peoples. The problem of colonization and Germanization is not mentioned in any affidavit as a so-called training problem.

Many affidavits deal with the question of whether the General SS were trained as political soldiers. 20,010 affidavits are available on this subject. 15,461 ascribe no military character to the General SS. They give, for example, the following reasons:

They never had any military training in the General SS. The ranks of the General SS were not recognized in the Wehrmacht. There were no arms or so-called tactical exercises; tactical discussions were forbidden. Shooting was done only with small-bore rifles. There were not enough rifles.

1,053 affidavits confirm the testimony of various witnesses here that during the war service in the General SS no longer occurred at all, or only in exceptional cases; at the end of the war there was none whatsoever.

On the question of psychological preparation for war, 3,304 affidavits say that their authors did not think of war and did not

believe in war. At the Junker schools, various affidavits say, rejection of war was taught, since it created a so-called negative counter-selection. And in the Verfügungstruppe, the so-called field service, a more military service, was taken up only when general military service was introduced.

127 affidavits confirm that the General SS did not demand any special obedience—that is, no oath which according to its form would obligate the individual to more than in the Wehrmacht or in the civil service.

2,674 affidavits report on the training of SS men. In 3,138 affidavits it is asserted that orders against humanity were not known to them and were certainly not given.

The second subsection of Group III is intended to provide an answer to the question of what the members recognized as the actual aim of the organization. It is a problem of ascertaining whether there was a contradiction between the theoretical training and the real actions of the leaders. 688 affidavits deal with the question of whether the power in Germany was to be achieved through suppression of political opponents. On the question of whether the SS members recognized the destruction of Jewry as an aim of the leaders, 1,593 out of 1,637 affidavits which mention this problem state that the Jewish problem was not to be solved by killing or the so-called "final solution," and that they had no knowledge of these intentions of the leaders. They point out that the SS members were forbidden to undertake individual acts against Jews. As evidence, numerous members refer to the fact that many death or other severe sentences were passed because of crimes against Jewish persons or Jewish property. Another question was whether the SS members believed that the actual aim of the leaders was to dominate Europe through war. 12,596 affidavits say that neither statements of the SS leaders nor statements of Hitler made plain that the conquest of Europe was an aim of the SS.

Group IV, the next, seems to me quite important. It includes affidavits on the question of the participation of the SS members in the crimes asserted in the Indictment.

The first question deals with participation in the concentration camp system. 2,866 affidavits have been made out on this subject. They are mostly from guards, a few from former concentration camp inmates and a few from kitchen and workshop personnel. They deal with the treatment of the inmates and with the conduct of the guards. They only show, of course, how the guards saw the concentration camp conditions and the life of the inmates from their point of view. They give a cross-section through almost all concentration camps and labor camps. They give a unified picture of the impossibility of obtaining insight into the true conditions, even for

people working near the camps. They also give a unified picture of the degree of ignorance of conditions in the camps and the reason for this, namely, the order for extreme secrecy. 2,385 say that instructions were constantly given about the conduct of the guards; examples of punishment are given for disobedience of these rules, especially for ill-treatment. Significant is the statement in many affidavits that relations between the guards and the command personnel were not only indifferent but even tense.

Prisoners themselves, whose affidavits are presented, state that a great part of the responsibility for the conditions belongs to the internee Kapos, who were often criminals. The question of the participation of SS members in so-called mass exterminations in extermination camps, which must be distinguished from the concentration camps, is not mentioned at all in the affidavits. We have heard from various witnesses that these camps had a routine of their own and only a few SS men or men in SS uniforms were stationed there.

Now I come to another point. A cross-section through all the well-known divisions of the Waffen-SS is given by 8,242 affidavits and on the question of illegal treatment of prisoners of war, 4,306 testify to constant instruction on correct conduct before each action. Numerous affidavits give examples of particularly good treatment of prisoners of war.

13,613 affidavits deal with the question of treatment of the civilian population in the occupied territories contrary to international law. There were no orders to this effect; constant instruction about correct conduct was given. The majority of SS members can report only good relations with the civilian population in the occupied territories. There is no mention in any affidavit of the participation of the SS in resettlement or in deportation for slave labor. A few statements say that labor commitment was no concern of the SS. Only a very few affidavits touch biological experiments. They come from men who had something to do with concentration camps. These few say that they had heard that the prisoners volunteered for experiments. 1,271 affidavits deal with the so-called Röhm Putsch. The General SS did not participate in these events; parts of them had been told to stand by, but they were not armed and not employed. For 9 November 1938 4,407 affidavits give a cross-section of various units, Oberabschnitte, Abschnitte, and Standarten of the SS, in almost all cities of Germany and all districts. It is said with special emphasis that the SS did not participate in these excesses.

THE PRESIDENT: Dr. Pelckmann, I suppose what you are doing is reading out your summary of these 136,000 affidavits; is that right?

HERR PELCKMANN: Yes.

THE PRESIDENT: Verbatim?

HERR PELCKMANN: Your Lordship?

THE PRESIDENT: I asked you whether you were reading it out verbatim.

HERR PELCKMANN: As soon as the translation . . .

THE PRESIDENT: That is not an answer to my question. I asked you whether you were reading it out verbatim.

HERR PELCKMANN: No, I am only giving a résumé, Your Lordship.

THE PRESIDENT: Well, I think we had better adjourn now.

[A recess was taken.]

HERR PELCKMANN: Your Lordship, I regret very much that the translation of the summary is not at hand. It would, of course, greatly facilitate the understanding and the grouping of this material.

Group V deals with statements concerning the general ignorance of the bulk of SS members. 96,257 affidavits are at our disposal. They tell us that the majority of the members of the SS knew nothing about the crimes attributed to them before the capitulation. They say that in general, but they make particular reference as well, when they deal with the various forms of crimes concerned. One fact is especially significant in this connection and is particularly emphasized. At the time when these crimes assumed a larger scale, that is, during the war, the main body of the SS was fighting at the front; for that reason alone it could not receive any knowledge of incidents of that sort, for the horizon of the man at the front is extremely limited, as experience teaches.

Next comes Group VI. It deals with the assertion made by the Prosecution that the SS was a unity. The first question reads whether the branch organizations formed an actual unit. 5,700 affidavits deal with this question. One half shows that a conscious effort toward unification for purposes of carrying through a conspiracy was totally lacking. The other half refers to the fact that the Waffen-SS was not basically recruited from the General SS. Therefore, it emphasizes the separation between the General SS and the Waffen-SS. The second question inquires whether the members of the various branch organizations knew of the activities carried out by the other branches. The significance of the question could not be recognized by the members of the SS without a previous explanation, and therefore few of the affidavits deal with this question. Those few affidavits that we have concerning that activity of the

various main offices of the SS confirm that they were set up separately and that a union was formed only in the person of Himmler himself.

Several affidavits refer to the fact that, for instance, the personnel of the concentration camps were made up of the most varied groups and components. Many affidavits emphasize that the state of secrecy which had been ordered through the Führer Decree Number One, which has been quoted frequently, and also certain special directives, prohibited close co-operation among the various branches of the SS. In some other affidavits it is said that the General SS, on one hand, and the Police and the SD on the other hand, were not a unit.

Very informative are the affidavits which deal with the components of the Leibstandarte 1934. Less than 10 percent of the members of this Leibstandarte were at the same time members of the General SS. A large number of these affidavits state that during the war, practically speaking, the General SS did not exist. 342 affidavits deal with numerous affiliated groups or branches of the SS. These, in truth, only engaged in activities of a definite specialized character; they were not concerned with carrying through the alleged SS activities and had only a loose connection with the General SS. Among these groups we find the SS mounted units, the Reiterstürme, which devoted themselves to sporting activities, and the motor units; also the SS female helpers, who like the Wehrmacht female helpers were only used during the war in intelligence and information service. Others were the SS sport organizations, the Lebensborn, the medical units for first aid, front units of the German Reichspost, signals units, and so forth.

Affidavits in Group VII deal with the question of the SS attitude toward the Church. 3,174 affidavits are on hand in this respect which, on the basis of their positive statements, conclude that according to their conviction, a persecution of the Church was not intended by the SS leadership.

Under VIII there are 127 affidavits grouped together which testify to the fact that many offices under Himmler had no connection with the SS and, further, that between Himmler and the SS an estrangement had arisen, especially in the course of the war.

Under IX, 435 affidavits are summarized. They deal with the behavior of our enemies during the war and after the capitulation. These affidavits, based on the experiences of the SS men, contain statements about actions contrary to international law which the enemy perpetrated in combat. Names of places are given, as are theaters of war, nationality of the enemy, and the kind of excesses that occurred. The enumeration is intended to show that excesses of this kind can hardly be prevented during war and that for that

reason one cannot conclude that an underlying system existed. They serve the purpose of showing that the German troops, especially the Waffen-SS, when confronted with isolated cases of violations of international law, which some of the affidavits say were punished, cannot be charged with having acted according to a system.

The last group is X. It contains 57 affidavits which reproduce the actual personal impressions of foreigners about the SS. From the recognition accorded by these foreigners, which was known within the SS, the individual SS man concluded that the general behavior of the SS could not be criminal and that the activity was not objected to by the world as a whole. Various personalities are mentioned on the grounds of certain incidents; the opinions of prominent Americans, Englishmen, and Russians are given, such as Daladier, Chamberlain, Lord Rothermere, Chaim Weizmann, and others.

Finally, I should like to submit, though without going into a detailed explanation of it, a statistical record drawn up on the basis of a circular.

With that, My Lord, I have concluded the submission of affidavits and documents.

THE PRESIDENT: Are you next, Dr. Laternser?

DR. LATERNSER: First of all, I should like to submit the list of these 14 witnesses whose testimony I expect to use, as well as the transcripts dealing with their interrogations.

Moreover, I have a complete list of the affidavits submitted to the Commissions, and I have submitted this list. It is contained in one volume, which has been placed before the High Tribunal in an English translation. It is the list which has been referred to this morning by the President. I made a systematic compilation of the subject matter and have supplied this list with an index. The numbers of the affidavits are given, as are the names of the deponents and a brief description of the contents of the affidavits. In this way, the rather comprehensive and, in my opinion, especially valuable evidence is easily understandable.

The basis for the judgment of the circle of persons accused is the organization and structure of the highest Wehrmacht leadership. For this purpose I should like to submit Document General Staff Number 2, which you will find on Pages 12 and 13 of the first volume of the document book. From the diagram on Page 13 we can see the actual method of subordination as it appertained to the highest Wehrmacht leadership. I need this document as counter-evidence because the draft of the Wehrmacht leadership submitted by the Prosecution—Exhibits USA-531 and 532—is not correct in various points and has again and again led to misunderstandings.

Concerning those mainly responsible for the conduct of the war, I should like to submit Document General Staff Number 3. This contains a rather large diagram.

The diagram on Page 13 shows the structure, and by this I should like to show in what manner the responsibility for the conduct of the war was shared between the military leaders and the other organs. From this diagram we see, first of all, that a clear distinction must be made between the military leadership of this war and the ideological political conduct of the war which was undertaken by Hitler and his various agencies. You will find the markings in blue for the military leaders, and in red for the sphere of the ideological and political leadership.

The diagram shows also the chains of command and, thus, of responsibility between military and political leaders. The tasks which the military leaders had are marked in blue, and those which were entrusted to others are marked in red. This diagram shows further what tasks, even though they were in the spheres of the military leaders, were carried out within the responsibility of other agencies and offices in the operational territories which were under military jurisdiction. Thus we see an undermining of the authority of the military leaders even in the operational zones. A distribution of authority according to areas, and therewith a sharing of responsibility, is also shown in this diagram. Only the clearly defined operational areas were under the jurisdiction of the military leaders, and only for the time the operations were in progress. In all other fields the executive power was purely and solely in the hands of the political leadership, and these functions are indicated in red.

Just one more remark in connection with this diagram: the areas outlined in black and dealing with the responsibility of the Wehrmacht commanders do not involve the circle of people accused, for these military commanders do not come within the scope of the Indictment.

The authenticity of the diagram is affirmed and sworn to by General Winter of the Wehrmachtsführungsstab—the Armed Forces Operation Staff.

Having given the structure of the Wehrmacht leadership as a foundation, I shall turn to the circle of accused persons and its composition. The Prosecution has...

THE PRESIDENT: Dr. Laternser, the Tribunal would like to know whether there are three colors indicated in this diagram; namely, blue for the armed forces, red for the political forces, and an indiscriminate color, a mixture of red and blue and black, for an indeterminate body which is half political and half military.

DR. LATERNSER: Yes, Mr. President, that is quite true. The third color is supposed to be black, and these areas indicated in black

show the areas of the Wehrmacht and military commanders-in-chief. They are not men who had their commands at the front, but rather commanders-in-chief who had a certain territorial power, and I added that this kind of commander-in-chief, such as is indicated in black, does not fall under the circle of persons accused.

THE PRESIDENT: Do you mean that in what you call black are included the static military commands, non-operational? You don't mean there is anything political in the black?

DR. LATERNSEER: No. But, Mr. President, those who had this power of command cannot be included among the people who are accused under the Indictment.

The Prosecution has set up a list of the circle of persons accused in Exhibit Number USA-778. This may be found on Pages 15-22 of my document book. This list comprises 129 persons. I should like to submit Document General Staff Number 4, in which three tables are shown. These tables are set up in accordance with Exhibit USA-778.

First of all, turn to Chart 1, please. It is on Page 24 of the document book. From this chart we can see, first of all, that on 1 March 1933 only one of the leaders indicted was in a high position.

Point 2. On 1 March 1938, there were only seven.

Point 3. On 1 September 1939, that is, at the outbreak of the war, there were 22.

Point 4. This is an important point, as may be seen from Column 8. In November of 1944, the top figure of 52 was reached.

Point 5. Only 9 generals and admirals were in one of the indicted positions throughout the entire war.

Chart 2 is found on Page 25. It is a graphic presentation dealing with the duration of membership of the accused generals in the alleged group. You can see from Columns 2 to 5 that a long membership was something exceptional. You can see from Column 9 that the top figure of 21 held a position falling under the Indictment for only 2-2½ years; whereas a total of 61 people belonged to the alleged group only for a period of less than one year. This figure of 61 results from the additions of Columns 12 to 18.

Chart 3, found on Page 26 of the document book, shows, especially through Columns 4 and 5, that out of 129 generals and admirals, 100 served for less than 2 years in high positions, that is to say, the large majority of the military leaders involved.

I now submit Document General Staff Number 6. It is found on Pages 27 to 33 of my Document Book 1. This document comprises a list of names of the various leaders involved. From this list we can see just how many of the military leaders, at the time when important events took place, held positions which fall under the Indictment.

Then, from Pages 27 and 29, you will see:

(1) On 1 March 1933, that is at the time of the assumption of power, one general.

(2) On 5 February 1938, which is the key date in the Indictment against the military personnel, only six generals, and (3), on 1 September 1939, 23 generals in the list (USA-778) drawn up by the Prosecution were in positions falling under this Indictment. Above all it is remarkable that on 1 November 1944, when we were mainly concerned with the defense of our boundaries, the highest membership in this group was reached—49 generals in all.

With Document General Staff Number 7, a copy of which is found on Pages 34 to 40 of Document Book 1, I should like to give you a different perspective of the people involved. List 2 on Pages 36 to 40 shows the membership in the alleged "group" during certain periods. From the first column we can see that before June 1941 33 generals had been in positions which the Indictment covers. Only 21 of that group are still alive. Up to the events of Stalingrad in February 1943, that is, in the period where offensive operations were still being carried out, 27 other generals were in such positions as are covered by the Indictment. From February 1943, until the end of the war, which was the period of strategic defense...

THE PRESIDENT: You said something about only a certain number of them being alive. That is not shown by the chart, is it?

DR. LATERNSEER: Mr. President, that will be seen from another chart to which I will refer later. I was just saying that in the last period, from February 1943 until the end of the war, an additional 69 military leaders were in positions coming under the Indictment. With this document I should like to prove, first of all, that out of the 129 officers indicted, only 33, that is 25 percent, participated in the preparation of war, and were the only ones who could have done so.

Point 2, 69 generals, which is more than 50 percent of the group involved, cannot have participated in plans of aggression.

Point 3, 40 generals, which is 30 percent, found themselves in positions which are now under indictment only when it was a question of defending the fatherland's boundaries.

From Number 5 on Page 35 you will be able to see that out of 129 generals 80 had formerly been members of the General Staff, whereas 49 of them had not belonged to it.

I shall now turn to Document General Staff Number 8, which may be found on Pages 41 to 48 of my Document Book Number 1. By this document I should like to bring proofs of a varied nature:

(1) From the first three columns of List 3, which are found on Pages 43 to 48, you will be able to see the number of dead, the

number of those who are indicted individually or have been indicted, and the number of those officers who were only charged with the command of an army, and therefore did not definitely hold a position which falls under the Indictment. The sum total of these three columns is 56, as can be seen from Page 41, and in this way the number of 129 officers involved is reduced, and thereby also the practical consequences of a sentence, which could only affect 73 people at the most.

(2) The last two columns of my list give the number of those officers who before the end of the war had lost their positions either through an order, or death, or because they were captured. Seventy admirals and generals make up this number out of the total figure of 129. And in this connection...

THE PRESIDENT: I do not think it very much matters but the last column which contains the reason does not seem to accord with the evidence which has been given to us up to date. Perhaps it is a mistranslation. I do not know. General Field Marshal Von Brauchitsch and the reason given in the last column. It seems that the reason has been given to us...

DR. LATERNSEER: Mr. President, I propose to go on to explain these two columns and to tell the High Tribunal who in this list fell into disgrace. My intention was to give this explanation to the High Tribunal. I wanted to call the attention of the High Tribunal to the fact that it can be seen from the last two columns that 36 generals, because of serious differences of opinion with Hitler, or because of active resistance against Hitler, were removed from their positions. As can be seen from the explanatory affidavit attached to the list, those who fell into disgrace did so because of serious differences of opinion between themselves and Hitler.

THE PRESIDENT: All I wish to say is that no such suggestion was made to Field Marshal Von Brauchitsch when he was in the witness box.

DR. LATERNSEER: Mr. President, I do believe that I can remember that he talked about serious differences of opinion between himself and Hitler.

THE PRESIDENT: It is an English word and it seems to be highly inappropriate. Go on.

DR. LATERNSEER: In this figure of 36 generals who were removed from their positions because of differences of opinion is included, as may be seen from the list, General Hoepfner, who was sentenced to death for having participated in the affair of 20 July 1944; he was the same general who, according to the view of the editor of Document L-180, had collaborated closely...

THE PRESIDENT: Dr. Laternser, I see that the same word is applied to the Defendant Raeder, and my observation equally applies to him.

DR. LATERNSEER: Mr. President, may I please deal with this matter briefly once more after the recess?

THE PRESIDENT: Certainly, Dr. Laternser. You can go on now.

DR. LATERNSEER: I have just referred to the fact that this list mentions General Hoepfner who, because of his participation on 20 July, had been sentenced to death. That may be seen from the last two columns, and I wanted to call the attention of the High Tribunal in this connection to the fact that this is the same general who, in the opinion of the author of Document L-180, allegedly had very close collaboration with Einsatzgruppe A.

Now I should like to submit Document General Staff Number 9, which will be found on Pages 49 to 54 of Document Book Number 1. I shall merely point out that this list contains the names of those 31 officers who served less than 6 months in positions which are included in the Indictment. Most of these officers, as will also be seen from this list, had not been appointed commanders-in-chief (Oberbefehlshaber) but had been entrusted with matters of administration.

Now I shall turn to Document General Staff Number 10 to which I particularly wish to call the attention of the High Tribunal. It will be found on Pages 55 to 61 of Document Book Number 1. From this document the High Tribunal will be in a position to see which ranks were held by the officers indicted at the times that exceptional events took place, for instance, at the outbreak of the war. This compilation, therefore, permits drawing certain definite conclusions as to how far these officers had a decisive influence on the events.

As can be computed from the first column of List 5 on Pages 58 to 61 (the total will be found on Page 55 under Figure 1), on 1 September 1939—that is, at the beginning of the war—of a total of 107 generals and admirals now living, 47 still ranked as staff officers. They were majors, or lieutenant colonels, or colonels. 48 were generals of a lower rank. And of the entire 107 involved in the Indictment, only seven held top ranks. Five were full generals, and there were two Field Marshals. For five of those still alive we do not have any definite information.

I shall merely call your attention to the other summaries dealing with earlier events, as computed on Pages 56 and 57. The following should be remarked concerning the composition of these alleged groups. Holders of the position of permanent deputy of the Armed Forces Operation Staff, on the basis of Affidavit Number 6 of

General Halder, Exhibit USA-533, are also accused by the Prosecution. With reference to the tasks and the significance of the position, I should like to call your attention to the cross-examination of Halder before the Commission. According to this, the holders of this position did not concern themselves decisively with strategic questions. Their position did not in any way correspond with the positions which are included in the Indictment.

Thus I conclude my evidence dealing with the group as indicted. The Prosecution is of the opinion that the circle of people as indicted consisted of an organized group. The affidavits submitted by the Prosecution to prove this point, Number 1, by General Halder, Exhibit USA-531, and Number 2, by Field Marshal Von Brauchitsch, Exhibit USA-532, do not have the meaning indicated to us by the Prosecution. In this connection, I should like to refer first of all to the cross-examination of General Halder, which I conducted before the Commission, and I should like to ask the High Tribunal to permit me to read one passage from this transcript so that this point will be complete in the record.

"By Dr. Laternser:

"Question: 'In your Affidavit Number 1 you have used the word "group" four times. Did this expression "group" emanate from you?'

"Answer: 'No; it was contained in the text, which has been changed several times, in which I left this word as it was.'

"Question: 'Had you previously used this expression "group" in a similar connection, for instance, in characterizing the military as a "group"?''

"Answer: 'No.'

"Question: 'What sense did you give this word "group" at the moment when you signed the statement?'

"Answer: 'I did not hesitate to use this word. "Group" is used in the sense of "number".'

"Question: 'You therefore mean several generals? Or did you mean a certain circle of people who had been grouped for a certain purpose?'

"Answer: 'A number of generals who perhaps might be characterized as leading generals.'

"Question: 'Subsequently the Prosecution is now interpreting this expression "group" as if an organization of military leaders existed. Was there an organization, or an organized group of that sort?'

"Answer: 'No.'"

Field Marshal Von Brauchitsch was examined by me before this High Tribunal with regard to Affidavit Number 2. Concerning the

allegation that the front commanders-in-chief were actually the consulting body for the High Command, the Prosecution has quoted Exhibit USA-537, Affidavit Number 5, by General Blaskowitz. I should like to refer to Affidavit General Staff Number 55 which has been translated, in which General Blaskowitz, on my request, gives an interpretation of the affidavit. According to this affidavit, the Oberbefehlshaber, the commanders-in-chief, were not a consultant body, but they were individual consultants in their own sphere, as is true in every army. The interpretation which the Prosecution gives to Affidavit Number 5 is, accordingly, not correct.

Further I should like to refer to Affidavits Numbers 1-55, which also prove that the highest military authorities did not form an organization-like "group." I should like you to turn your special attention to Affidavits 1-4 which have been translated, but which I do not wish to quote.

That the Navy and the Air Force did not form a "group" with the Army generals may be seen from Affidavits Numbers 3145, 12 and 3097 of Admiral Schniewind and of the Generals Stumpf and Keller. Particularly from Affidavit Number 3145 by Admiral Schniewind can the High Tribunal infer all that which is important with reference to the commanders-in-chief of the Navy and their judgment.

I should also like to refer to the testimony of all the generals who were heard before the Commission, who all denied the existence of a "group."

Of special importance seems to me the testimony of General Von Buttlar, who testified as to how nominations to these positions covered by the Indictment were effected.

Mr. President, thus I conclude my evidence on the question of whether a "group" actually existed or not.

Now I shall turn briefly to my proof dealing with the common attitude of the generals involved.

Their general attitude as described in the opening speech by Mr. Justice Jackson is based on rather doubtful premises. Document Number 1947 was referred to by Mr. Justice Jackson in this connection. This Document Number 1947-PS, which is of basic significance to his statement, is a letter allegedly written by General Von Fritsch on 11 December 1938 to a Baroness von Schutzbar-Milchling, in which he is said to have declared that three battles would have to be won: The first, against the workers; the second, against the Catholic Church; and the third, against the Jews.

Despite several demands I received neither the original nor a photostat copy of this document. I was told that I would have access to it if and when it could be found.

I should like to refer in my refutation to the affidavit deposed by Baroness von Schutzbar-Milchling, who in her affidavit states that the alleged letter by General Von Fritsch was never received by her.

If this key document, 1947-PS, cannot be submitted until the end of this proceeding—I should like to emphasize it has not been submitted until now but used all the same—then—and I make a special application for this—that part of the opening speech by Mr. Justice Jackson which refers to this document, which after all has not been submitted, should be struck from the record.

THE PRESIDENT: If the document has not been proved the Tribunal will pay no attention to it. If it is not in evidence then it is quite unnecessary to produce the document denying its existence. We will take no notice of it.

What I understand you to be saying is that Mr. Justice Jackson referred to a letter. That letter has not been offered in evidence. If it has not been offered in evidence then the Tribunal takes no notice of anything Mr. Justice Jackson said about it in his speech and it is unnecessary for you to produce an affidavit denying the existence of the letter. Is that clear?

DR. LATERNSEER: Yes, but, Mr. President, it has been used. Mr. Justice Jackson...

THE PRESIDENT: Well, you have pointed out to us now that it ought not to have been used because it is not in evidence. We wish to be strict in these matters and only to allow factual documents to be referred to which had been offered in evidence.

DR. LATERNSEER: Concerning the mistrust which Hitler brought to the military leadership, that is a matter which has been stated and proven several times in this proceeding.

I should like to refer the Tribunal to Affidavit Number 200, deposed by General Engel, an officer who for quite some time was in the closest proximity to Hitler and could observe the latter's growing mistrust. I will not read from that affidavit.

In this connection I should also like to refer to Affidavit Number 3182, deposed by General Warlimont, who reproduced significant statements made by Hitler, and in order to be brief I shall merely refer to the same.

Regarding the attitude taken by the military leaders toward the Party and its methods, I should like to refer as an example only to Affidavit Number 175, which has been translated. The officer who at that time was competent, Major General Seegers, describes the battle waged by the military against the removal of Jewish officers. I should further like to refer to the contents of Affidavits

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Number 160 to 177, from which many particulars dealing with the unpolitical attitude taken by the military leadership may be gleaned.

Dealing with the question of rearmament, I should like to refer to Affidavit Number 126, in which General Berlin testifies that the General Staff eliminated from its armament program for 1933/34 the construction of ultra-heavy artillery with the explicit statement that Germany did not propose to wage aggressive wars.

I should like to refer further to Affidavit Number 127 deposed by Major General Hesselbarth, from which it may be seen that at the beginning of the war the equipment and weapons for the units called up in case of mobilization were insufficient. As far as the rest of the interesting contents of this document is concerned, I shall merely refer your attention to it.

Dealing with rearmament in the Luftwaffe, the Prosecution submitted Document Number L-43, Exhibit Number GB-29, from which, allegedly, the rearmament intentions of the Luftwaffe are to be seen.

I should like to refer to the contents of Affidavit Number 101 of the then Chief of the General Staff, General Stumpf, who expressly testifies that this was a private organizational study undertaken by General Kammhuber.

Continuing, I refer to the contents of Affidavits Numbers 102 to 152. Through details of the most varied kinds we can see that the military leadership, at any event, did not seriously take into consideration aggressive wars when carrying through the rearmament program.

I should further like to refer to the contents of Affidavits Numbers 181 to 205, from which we can see, as is corroborated by many details, that foreign officers participated in certain training courses and exercises; that maneuvers were only of a defensive nature, and that the Military Academy which existed for the training of General Staff officers mainly had courses in defense tactics.

As far as the deliberate participation of the military leaders in wars of aggression is concerned, the Prosecution has been trying to prove that the military leaders at an early date had been advised and informed of Hitler's plans, and in this connection they produced the Hossbach Minutes of 5 November 1937 (Document 386-PS, Exhibit USA-25).

I should like to refer to the affidavit of the author of this record, General Hossbach, dealing with the background and the origin of this document. General Hossbach in his Affidavit Number 210, which he sent to me, expressly states that he did not take notes at the conference and that he only wrote down these minutes several days later. This document has been translated.

THE PRESIDENT: Does he say in this affidavit whether he was shown a copy of the notes or whether he had any comments to make on them?

DR. LATERNSEER: Mr. President, I must state quite frankly that in view of the great bulk of material I cannot give you this information at the moment. In any event I would have asked for a recess now. I shall check on these matters and I shall be able to tell the Tribunal afterward. In addition, I should like to condense the material a bit, which I am sure will have beneficial effects-later on.

THE PRESIDENT: Very well.

[A recess was taken until 1400 hours.]

Afternoon Session

DR. SERVATIUS: Mr. President, may I say something briefly about the order in which the final speeches for the organizations will be delivered? I am submitting a list drawn up after brief consultation with my colleagues. According to this, counsel for the Political Leaders and the Gestapo could speak beginning Thursday or Friday. Beginning Monday, the SS and SD; Tuesday, the General Staff and the Reich Cabinet; and Wednesday, the SA. In the second column I have indicated by what date these documents can be turned in for translation; and in the last column I have given the time when the speeches could presumably be delivered. If there is no session on Saturday, Friday could be filled with the Political Leaders and the Gestapo. That is what I wanted to say.

THE PRESIDENT: You mean Friday this week could be taken up with the Political Leaders?

DR. SERVATIUS: Yes, and then the Gestapo. If there is no session on Saturday, the SS could begin on Monday so that there would be no interruption. The difficulty lies in whether the Translation Division can keep up with this pace.

THE PRESIDENT: I suppose that the difficulty in the Translation Division is partly due to their having nothing to translate.

DR. LATERNSEER: Mr. President, the Court desired information on whether the Hossbach document was made available for information. As is shown in the document itself, Hossbach told Hitler of the existence of this document and gave it to him twice to read; but Hitler refused to initial it. General Hossbach does not recall whether he presented the record to Generaloberst Von Fritsch; but he certainly did show it to Generaloberst Beck. He also says that this record was not signed by the participants in the conference.

THE PRESIDENT: It was initialed by Blomberg, I see he says.

DR. LATERNSEER: Yes, initialed but not signed. May I continue, Mr. President?

THE PRESIDENT: Certainly, certainly.

DR. LATERNSEER: Affidavits 213 A, B, and C show that the most important agencies were not informed of this conference of 5 November 1937. Numerous officers offered evidence that the equipment and training of the Wehrmacht made the idea of a war of aggression impossible; that is shown in Affidavits 223 to 225, 220 and 277. Generaloberst Adam, in Affidavit 211, discusses the entirely opposite views on the situation as held by the Wehrmacht on the one hand, and Hitler on the other. Field Marshal

Von Weichs, in Affidavit 215, rebuts the opinions of Field Marshal Von Blomberg in his affidavit Number 3, Exhibit USA-536. Field Marshal Sperrle reports in Affidavits 237 and 237-a that he and Reichenau did not know the purpose of their visit to the Berghof during the Schuschnigg conference in February 1938. Only later did Hitler comment on this event, then rather drastically, however.

The surprise orders to march into Austria caused the troops to improvise measures, as is shown by Affidavits 238 to 244. The same is true of the occupation of the rest of Czechoslovakia; on this subject I refer to Affidavits 246, 252, and 254.

General Warlimont, in Affidavit 217, describes how, up to the day of the attack on Poland, a peaceful outcome of the tension had been expected. The same is shown by Affidavits 227, 246, and 255 to 257. Hitler's statements confirming this view of the generals are discussed in Affidavits 219, 211, 212, and particularly 277. The surprise which the final order to march against Poland caused is shown in Affidavits 228 to 231, as well as 255, 256, and 257.

In July 1939, Admiral Raeder had told the Navy that the Political Leaders had definitely assured him that during the next few years there would be no hostilities. That is shown in Affidavit 3115 by Rear Admiral Kratzenberg. At the beginning of the war the German battleship *Gneisenau* had written orders that no hostilities were to be expected; at that time it was on a training cruise near the Canary Islands, without ammunition supplies. That is shown from the statement of Admiral Förste, Number 3114.

According to Admiral Backenköhler, in Affidavit 3116, preparations for production had been so inadequate that in August of 1940 there was still a lack of torpedoes for the small number of U-boats available at that time.

Only a few officers learned of the preparations for the Norwegian campaign. That is shown by Affidavit 259. Affidavits Number 263, 264, 266, 267, and 269 quote statements by Hitler that he did not want to risk facing a war on two fronts. Unfortunately, owing to lack of time I cannot quote the detailed material exhaustively.

In regard to the Russian campaign too, I must limit myself to brief references. According to the reports available, which were given to the generals at the time, it was represented as a preventive war. This is shown from Affidavits 270-a to 270-n, as well as 271, 272, 274, and 275.

I refer further to Document General Staff Number 14, Pages 83 to 96 in my Document Book 1. The reference is sufficient.

I now turn to the evidence on individual points, which I shall present in the following order.

1. Connections with Einsatzgruppen.
2. Commissar Order.
3. Partisan warfare.
4. Treatment of prisoners.
5. Destructions.
6. Treatment of civilian population.
7. Jurisdiction in the East.
8. Commando Order.
9. Deportation of laborers.
10. Crimes against rules of warfare and against humanity.

First the Einsatzgruppen.

The Prosecution contends that the Einsatzgruppen were in every respect subordinate to the commander-in-chief, and has referred to:

1. The testimony of Ohlendorf.
2. The testimony of Schellenberg.
3. Document L-180.
4. Affidavit 16, by General Röttiger, and finally,
5. Affidavit 18, by SS Führer Rode.

I shall now show to the Court that these proofs of the Prosecution are not conclusive. Above and beyond that I shall offer counter-proof that the alleged connections did not exist, so that the crimes committed by the Einsatzgruppen cannot be charged against the persons whom I represent.

First, concerning the testimony of Ohlendorf, I refer to Affidavits Number 703 and 703-a by General Wöhler, which have been translated, and which refute the testimony of Ohlendorf on the points of the charge. I should like to call the attention of the Court particularly to the fact that General Wöhler at that time was Chief of Staff of the 11th Army, with whom the witness Ohlendorf alleges that he negotiated in the implicating manner which he describes. The affidavits of General Wöhler completely refute the testimony of Ohlendorf.

Secondly, Affidavit Number 12 of the witness Schellenberg, submitted by the Prosecution as Exhibit USA-557, is based—I should like to call the attention of the Court to this fact—mainly on assumptions. I cross-examined the witness Schellenberg at some length before the Commission; the record of this cross-examination appears in the Commission transcript, and I should like to ask expressly that the Tribunal refer to it, because it shows that the witness was not in a position to give facts as a basis for his assumptions.

Schellenberg asserts that an agreement between General Wagner and SS Führer Heydrich existed, whereby the Einsatzgruppen in the operational area were completely subordinated to the commanders-in-chief.

As evidence to the contrary, I submit Affidavit 704 by Judge General Mantel, who spoke with General Wagner, who lost his life in connection with the 20th of July 1944, about this point specifically, and received the clear reply that the Einsatzgruppen were not under any military command but only under that of the Reichsführer SS.

In this connection I refer to Document 447-PS, submitted by the Prosecution, on Pages 99 and 100 of my Document Book 1. In Figure 2 to 2-b thereof it is shown clearly that the Reichsführer SS—that is, Himmler—received special assignments in the operational area of the Army, and that within these assignments he was acting independently and on his own responsibility. That is shown on Pages 99 and 100 of my Document Book 1, in a document which the Prosecution itself submitted.

The witness Schellenberg, in Affidavit Number 12, mentions the close co-operation between Armored Group IV, under Generaloberst Hoepfner, and the Einsatzgruppen. I should like to call the special attention of the Tribunal to the way in which the testimony on this point came about. During his examination by the Prosecution, the report of Einsatzgruppe A was handed to the witness. From the report itself the witness Schellenberg obtained knowledge of this alleged close co-operation, and he then used this knowledge in his affidavit. I should, therefore, like to quote a part of the cross-examination before the Commission. "Question: . . ."

THE PRESIDENT: Dr. Laternser, what you are now doing is argument, is it not? We don't want to hear argument at this stage. I mean, you are referring us now to the case of the Prosecution, and you are arguing upon the affidavits which you are producing that they are satisfactory answers to the Prosecution. Well, that is not necessary now.

DR. LATERNER: I believe, Mr. President, I was misunderstood. I am contrasting assertions of the Prosecution and evidence of the Defense. To enable the Tribunal to see why I am presenting this evidence, I must show the evidence in its relationship to the charge of the Prosecution.

THE PRESIDENT: You have done that already, and you have done it, if I may say so, very satisfactorily. You have given us ten different categories of these individual points, and you are now drawing our attention to your evidence which deals with the Einsatzgruppen. Well, that is all we need; we don't need to have references, or argument, at any rate, upon the Prosecution's evidence with reference to Einsatzgruppen. If you would continue to give us the references to your affidavits which deal with the Einsatzgruppen, that will be sufficient for us.

DR. LATERNSEER: Mr. President, I regret to have to say one more thing. I can conduct my defense either by invalidating the Prosecution's evidence, or by producing evidence to the contrary. In this case I want to show the Tribunal that the affidavit of the witness Schellenberg—which was presented by the Prosecution, and in which the witness speaks of the particularly close co-operation between the Einsatzgruppe and Hoepfner—that this affidavit does not contain the knowledge of Schellenberg, but that it...

THE PRESIDENT: I quite understand that. I have got down here that Ohlendorf and Schellenberg are the witnesses for the Prosecution who say that the High Command was concerned with and actually commanded the Einsatzgruppen. That is a fact you are contesting, and you are referring us to the evidence which you say contests it. You don't want to give us the Prosecution's evidence. You have told us what it is: Ohlendorf and Schellenberg, and L-180.

Will you continue?

DR. LATERNSEER: May I quote a brief passage from the testimony of Schellenberg?

THE PRESIDENT: No.

DR. LATERNSEER: But that is evidence, Mr. President, which I brought out before the Commission, and from which I now want to read a short quotation.

THE PRESIDENT: But, you see, that comes as argument; it isn't a mere comment. We want to confine it to a mere comment so that you may explain your evidence. Once you begin to comment upon the evidence of the Prosecution, in the opinion of the Tribunal it becomes argument.

Well, if you are short you may refer to this passage; it is suggested that it is your evidence.

DR. LATERNSEER: It is very brief.

"Question: 'Had you no misgivings in using immediately in your testimony, to which you have sworn, documents which had only just been given to you?'"

"Answer: 'Dr. Laternser, what do you mean by "using"?"

"Question: 'You made this report the subject of your testimony.'"

"Answer: 'Since I was under oath, I of course had to comment on it.'"

With this quotation I merely want to prove that the knowledge of the witness Schellenberg on this point was not his own knowledge. The witness, in his Affidavit Number 12, then says that he became convinced that in the Wagner-Heydrich conference the

future activity of the Einsatzgruppen, also the planned mass-exterminations, were presumably discussed and decided upon. With regard to this point I want to refer to the result of the cross-examination. It is quite clearly shown there that the witness Schellenberg's assumption that General Wagner and Heydrich in this discussion in 1941 had spoken of planned mass-exterminations was formed only in the year 1945.

The witness Schellenberg then says that in June 1941 he attended an intelligence (Ic) conference which lasted several days, but that he was present only at one of these conference sessions. He says in his affidavit that presumably in the following sessions the proposed mass-exterminations were made known to the intelligence officers, and he adds the further assumption that the commanders-in-chief were informed of the planned mass-exterminations through these presumably informed intelligence officers. I will now prove to the Court that both these assumptions which Schellenberg expressed in testifying for the Prosecution are contrary to the truth.

I present to the Court Affidavits Number 701 and 701-a, which are available in translation. In Affidavit 701 a participant at this intelligence conference, General Von Gersdorff, says that planned mass-exterminations were not mentioned and the same fact is affirmed in General Kleikamp's statement, which is also given under oath. In cross-examination I showed one of these affidavits to Schellenberg and I questioned him as follows. This is one of the few quotations which I should like to make because of its importance.

THE PRESIDENT: What is that you wanted to refer to? Cross-examination before the Court?

DR. LATERNSEER: Yes.

THE PRESIDENT: Before the Tribunal or what?

DR. LATERNSEER: Before the Commission, Mr. President. Very well, I shall dispense with reading it, Mr. President. I only refer the Court to the evidence taken before the Commission, which has a special bearing on this point.

The affidavit of General Röttiger, Exhibit USA-560, can no longer, in view of the cross-examination before the Commission, be used by the Prosecution in the sense in which it was desired to use it. I shall not quote from it, although I would very much like to do so.

In regard to the testimony of SS Führer Rode, Affidavit Number 18, Exhibit USA-563, whom I unfortunately could not cross-examine, I point out that the witness himself begins with the words "As far as I know, the Einsatzgruppen were completely subordinate. . . ." As counter-evidence I have 52 affidavits on this point, which I have numbered 701 to 752. Affidavits 704, 705, 707, and 710

to 752 make it completely clear that there was never any subordination of the Einsatzgruppen.

Affidavit 706, in addition, shows that Field Marshal Von Kleist, as commander of an army group, on a mere rumor that Jews were being murdered, immediately intervened, summoned the Higher SS and Police Leader and told him that he would not permit excesses against the Jews. This SS Führer assured him that no excesses against the Jews were taking place, and that he had no orders to that effect.

I refer the Court also to Affidavit Number 709 which shows that General Freiherr Geyr von Schweppenburg immediately expelled from the operational area the leader of an Einsatzkommando who came to him and said that he (the Einsatzkommando chief) had been entrusted with the settling of political matters.

I refer now to Affidavit 712-a by General Von Knobelsdorff. This general ordered the arrest of an SD Führer who wanted to have 50 to 60 persons shot because according to statements of confidential agents they were anti-German and intended to carry out acts of sabotage against the German troops. In this connection one piece of evidence seems of special importance, namely, Affidavit 1637, by General Kittel. According to this affidavit, the mayor of Marinka, a racial German, was condemned to death by a court-martial and shot for crimes committed against a Jewess. How could the sentence on this man be explained if on the other hand the military leaders had ordered or tolerated the murder of many thousands of Jews?

Finally, I refer to the testimony of all witnesses before the Commission who testified that the Einsatzgruppen were not subordinate to the Wehrmacht.

Now, the Commissar Order. On this subject the Prosecution submitted Affidavit 24, Exhibit USA-565, by Colonel Von Bonin, according to which this order was valid for all units of the Eastern Army. But the same affidavit shows that the commanding general of the 47th Panzer Corps, General Lemelsen . . .

THE PRESIDENT: Dr. Laternser, you are commenting upon evidence of the Prosecution. You are commenting upon Exhibit USA-565. At least, so I understand it.

DR. LATERNSE: Mr. President, I believe I was misunderstood. I was only referring to a part of this document to which the Prosecution did not refer.

THE PRESIDENT: Well, the affidavit is in evidence, I suppose, and it is evidence for the Prosecution, and you are commenting upon it and that is not what we want you to do. We want you to present your evidence. Go on, please.

DR. LATERNSEER: I have more affidavits refuting the charge of the Prosecution with regard to the Commissar Order. On this point I turned over a total of 82 affidavits to the Commission: they are numbered 301 to 376. I would actually prefer to go into this point in more detail, but in order to save time, I shall not do so, but shall merely refer to special points to which I have to draw the Tribunal's attention.

The testimony of General Warlimont in Affidavit 301-a shows the resistance against the order already at the time when it was being drawn up in the OKW and OKH, and the unsuccessful attempt to prevent its issue altogether. The Chief of the General Staff of the Army, Generaloberst Zeitzler, immediately protested to Hitler against this order, and it was thanks to his energetic protests that the order was rescinded. That is shown by Document 302-b. I ask that I may be allowed to quote one paragraph from this important document; it is 301-b.

THE PRESIDENT: 302-b, I thought. Which is it?

DR. LATERNSEER: I believe there is a mistake. In the list which you have, Mr. President, this document has been numbered 301-b.

THE PRESIDENT: I see.

DR. LATERNSEER: I quote:

"After I took up my duties as Chief of the Army General Staff, I had a very serious and outspoken private conversation with Adolf Hitler about this order, and we viewed it from all sides. At the time Adolf Hitler was, as I remember, very much impressed by this discussion; that struck me, because otherwise he never changed his opinion in such matters once it had been formed, and cut short any person who referred to such matters. For that reason I returned to this question several times, and I believe I succeeded in altering his opinion."

Of the remaining affidavits I should like to refer particularly to Affidavit 315. This shows that General Hoepfner, the Commander-in-Chief of Panzer Group 4, acted in the same way in which the other commanders-in-chief acted, that is, he did not carry out the order.

Then I refer to Affidavit 324-a, b, and c. With these documents I refute the Russian accusation on Page 1 of Document USSR-62. General Nehring expressly confirms in this affidavit that the order was not carried out in the area under his command. This testimony is corroborated by Affidavit Number 336.

THE PRESIDENT: Go on, Dr. Laternser.

DR. LATERNSEER: The testimony of Major General Pape, in Affidavit 333, refutes with regard to the sphere of this division—it is

the division which Field Marshal Model commanded at that time—the Russian charge in USSR-62, which is based on the testimony of the soldier Trest. At the time when Field Marshal Model, who then of course held a lower rank, commanded this division the order was never carried out.

The testimony of Admiral Schmundt in Affidavit Number 349 shows that the order was also opposed in the Navy, where it actually had only secondary importance. That the troops of Germany's allies did not treat Russian commissars contrary to international law either, is proved by the testimony of Lieutenant Colonel Fellmer with reference to the 13th Romanian Division and the sphere of the Italian expeditionary corps. He did not receive the order for transmittal, and he did not transmit it.

I ask that the Tribunal study with especial care the summary of the list of affidavits on the Commissar Order, because it shows that the order was not carried out. I would certainly have been in a position to present further evidence on this point if I had had more time at my disposal.

THE PRESIDENT: You have already referred to 75, I think that perhaps is sufficient. I say you have already referred to 75 affidavits.

DR. LATERNSEER: On partisan warfare: The Prosecution contends that, in the East in particular, this warfare was conducted in violation of international law. As evidence for these assertions, the Prosecution has referred to Affidavit Number 15 by General Röttiger, Exhibit USA-559, to Affidavit Number 20 by General Heussinger, Exhibit USA-564, to Affidavit Number 17, Exhibit USA-562, and to the testimony of the witness Von dem Bach-Zelewski. I cross-examined the witnesses Heussinger and Röttiger before the Commission, and I ask the Tribunal to take notice of these transcripts. General Röttiger, in his Affidavit Number 15, Exhibit USA-559, had raised an especially severe charge.

I ask the Court's permission to quote a few passages of the examination before the Commission concerning this point. General Röttiger had asserted that there existed orders of the High Command of the Army saying that the most severe measures were to be taken: furthermore, he asserted that the number of prisoners taken by the enemy...

THE PRESIDENT: Dr. Laternser, we have got to consider, not these individual details, but we have got to consider the criminal character of the organization charged. First of all, whether it is an organization within the meaning of the Charter, and secondly, whether it is a criminal organization. Here you wanted to draw our attention to individual details about partisan warfare in your cross-examination of the witness before the Commission. As I have

pointed out, we have nearly 3,000 affidavits on your behalf to consider. If you would only give us the numbers of the affidavits which you say relate to a particular topic, then we shall know what relates to that topic and we shall be able to consider it.

DR. LATERNSEER: But the Prosecution presented these details and they constitute a very grave charge; I want to prove the contrary . . .

THE PRESIDENT: Yes, they did, and I have a reference to them. They were presented in the USA Affidavits 559 to 564, and I am perfectly well aware that you have cross-examined the witness. What I want to know is what affidavits you want to draw our attention to in reply to the case of the Prosecution on partisan warfare.

DR. LATERNSEER: I draw the attention of the Court to the Commission transcript. The result of the cross-examination is that the affidavit of General Röttiger presented by the Prosecution was completely refuted. As counter-evidence I refer to Affidavits 901 to 1043, and with regard to the suppression of the Warsaw uprising, to Affidavits 1501 to 1507. In detail, Statements 901 to 905 contain general statements on partisan warfare and on the suppression of partisan attacks in all theaters of war. Especially significant is Affidavit 903, by Field Marshal Von Weichs. Affidavits 906 to 931 give examples of the fighting methods of the partisans, while Affidavits 906 to 920 describe particularly dreadful atrocities committed by partisan bands. Affidavits 921 to 924 prove the partisans' actions in violation of international law, with regard to clothing, weapons, and other details. Affidavits 925 to 931 describe the extent of sabotage against railroads. That in spite of this the Germans fought according to the rules of international law, is proved by Affidavits 932 to 970. They show that the partisans were treated like prisoners of war.

Affidavits 972 to 1032 show that there was no talk at the front about orders or intentions of the Supreme Command to use partisan warfare for the purpose of exterminating Jews or Slavs.

Affidavits Number 1033 to 1040, and 1050, deal with the charge against the commander-in-chief of the 18th Army, that on 30 October 1942 he ordered that without discrimination all partisans were to be shot. In this connection I refer to the affidavit of Generaloberst Lindemann himself, who was the commander-in-chief of the 18th Army. This shows that such an order was never given. He describes the entry in the war diary of the Wehrmacht Operational Staff, Document Number 1786-PS, as incorrect. This affidavit is available in translation.

Affidavit Number 1041 by General Von Mellenthin is a description of a large-scale operation against partisans. In spite of an application of Army Group North to the OKH that the Army should

be entrusted with this operation, the undertaking was carried out under Himmler's direction by General of Police Von dem Bach-Zelewski. This affidavit serves to refute the testimony of Von dem Bach-Zelewski, in which he describes himself as nothing more than an agency for the collection of reports. To prove that this assertion of the witness Von dem Bach-Zelewski is incorrect, I further refer to the testimony of the witness Heussinger before the Commission.

Concerning the suppression of the Polish uprising in Warsaw, Affidavits 1501 to 1507, particularly the statement of General Guderian, 1501, state:

(1) that General of Police Von dem Bach-Zelewski was entrusted with the task of suppressing the uprising;

(2) that he was appointed to this task by Reichsführer SS Himmler and was directly subordinate to him;

(3) that he received his orders from him, that is, neither from the OKH, nor from Army Group Center, nor from the 9th Army;

(4) that the majority of the troops employed in Warsaw consisted of SS and police troops, including the SS Brigade Kaminski;

(5) that the particular atrocities against the population in Warsaw were committed by the SS Brigade Kaminski which consisted of Eastern nationals, and that this brigade was withdrawn from the battlefield to prevent further harm, and that its leaders were punished;

(6) that the 9th Army took exemplary care of the population escaping from Warsaw.

I will not quote any more details of this Affidavit 1501.

As further proof that army agencies had nothing to do with the battle in Warsaw, I present the testimony of General Von Vormann, Affidavit 1504.

Document USSR-128, on Pages 161 and 162 of my Document Book 2, also shows that the Wehrmacht agencies had nothing to do with the destruction of Warsaw which was apparently intended in 1944.

I should like to make one reference to partisan warfare in Italy. The Prosecution presented two orders of the commander there, Field Marshal Kesselring, and considers them to be violations of international law. I refer to the testimony of Field Marshal Kesselring before the Commission. In this examination the witness emphasized that he had to take these temporary measures to suppress the uprising and that through taking them he succeeded in becoming master of the situation. This testimony of Field Marshal Kesselring is confirmed by Affidavit 3004 by General Röttiger.

Treatment of prisoners: The Prosecution charges the military leaders with planning, tolerating, or committing crimes against prisoners of war in all theaters of war. The Russian Prosecution, in particular, enumerates specific atrocities, which I do not wish to mention in detail. Insofar as they affect the circle of persons whom I represent, I shall refute these accusations by affidavits.

I refer first to Affidavit Number 1101 by Field Marshal Von Kùchler, which deals with the principles of the treatment of prisoners of war. Lieutenant Colonel Schaefer testifies in Affidavit 1102 that in November 1941 in Orsha he participated in a discussion between the Chief of the General Staff, Generaloberst Halder, and the chiefs of the three army groups on the Eastern Front, at which the feeding of prisoners was also discussed. The Army Groups Center and South, which had just taken many prisoners, asked for permission to use army supplies to supplement the food allowances of the prisoners, and if necessary, even to reduce the rations of the German troops for this purpose. In this connection, I further refer to the Affidavits 1103, 1104, 1104-a, 1105-a to c, and 1106 to 1109, inclusive. A particularly important affidavit is Affidavit Number 3146 by General Gercke. General Gercke was, from August 1939 to the end of the war, Chief of Transport in the OKH. He states that the transports of Soviet prisoners of war were treated exactly like the transports of other prisoners of war. The prisoners were transported together in closed freight cars, and orders deviating from this procedure were never issued. Open flat cars, as contended by the Prosecution, were used only very seldom and only on transports over short stretches, because there was a great scarcity of this type of car. In no case were transports in the winter sent intentionally in open cars in order to let the prisoners freeze to death. That is shown by Affidavit 3146.

Now I come to the refutation of individual points of the Russian charges concerning the treatment of prisoners. On 13 February 1946 it was stated that corpses of Red Army men were found on the island of Chortiza on the Dnieper (Volume VII, Page 347).

THE PRESIDENT: Dr. Laternser, the Tribunal has already said that it intends only to listen to you for half a day, and unless you shorten or unless you have in mind the shortening of your address, it doesn't look as if you will be able to do it. If you can't do it, then we will have to take your documents as they are without any further reference. It seems to me that with reference to prisoners of war, all you have got to do is tell us what are the numbers of the affidavits which deal with it and say "I particularly refer to such and such an order or such and such an affidavit," and then we shall know that you attach particular importance to those affidavits, but to deal with it in detail like this is simply wasting

our time. Anyhow, what I mean is that at the end of half a day your address on these topics will cease.

DR. LATERNSEER: But, Mr. President, I must have an opportunity of answering the accusations of the Prosecution.

THE PRESIDENT: You are having that opportunity at the present moment and you have had since twelve o'clock.

DR. LATERNSEER: On 13 February 1946 it was asserted that on the island of Chortiza on the Dnieper, corpses of Red Army men were found who had been tortured, whose hands had been cut off, whose eyes had been put out, and whose stomachs had been cut open (Volume VII, Page 347). This is refuted by Affidavit Number 1115 of Field Marshal Von Kleist, who was commander-in-chief of the troops there. No German troops were used on this island, but the Hungarian Light Corps was fighting there. That is shown by Affidavit 1115.

In the Northern sector of the Eastern Front, according to the transcript of 13 February 1946, prisoners are said to have been driven before the attacking German troops who used them as shields (Volume VII, Page 348). This is clearly refuted by the testimony of the former commander-in-chief of the 18th Army, Generaloberst Lindemann, Affidavit 1116-a. This testimony is reinforced on the same point by the affidavit of Colonel Nolte, Number 3159.

The Russian Document USSR-151 and the speech of the Prosecution of 13 February 1946 contain the examination of General Von Österreich, who made especially serious charges with regard to the treatment of prisoners (Volume VII, Pages 363-365). As counter-evidence I present Affidavit Number 1117 which proves that Von Österreich reproduced the conference in May 1941 quite wrongly. In particular the affidavit refutes the assertion that orders were given to fire on fleeing prisoners or to poison prisoners incapable of working.

According to the transcript of 13 February 1946, numerous prisoners in the prison of Sevastopol are said to have been killed by intentionally bad treatment (Volume VII, Page 383). This assertion is clearly disproved by the testimony of the Army Medical Officer of the 11th Army at that time, Generalstabsarzt Grosse, in his Affidavit 1118. According to the transcript of 13 February 1946, three trainloads of prisoners of war are said to have been taken from Kertch to Sevastopol and burned or drowned at sea there on 4 September or December 1943 (Volume VII, Page 383). This assertion is disproved by the testimony of Generals Deichmann and Röttiger in Affidavits 3140 and 3007; both generals were in the Crimea at that time. The Russian Prosecution tried, on 13 February 1946, to portray the violent fighting in the quarries near Kertch as bestiality on the part of the Germans (Volume VII, Page 388). Gas is said to

have been used, and according to the testimony of a woman who apparently made an exact count, 900 prisoners were maltreated or shot. The clear testimony of the commanding general in that area, General Mattenklott, contradicts this; the reference is Affidavit 1121.

Document USSR-62 and the Prosecution speech of 13 February 1946, according to which on the orders of Field Marshal Model and General Nehring no prisoners were to be taken, are refuted by Affidavits 1222-a to f, that is, by six affidavits on this particular point (Volume VII, Page 392). Maltreatment of prisoners in Norwegian camps is also alleged in the Prosecution speech of 14 February 1946 (Volume VII, Page 433). Generaloberst Von Falkenhorst, in Affidavit 1123, proves that these prisoners were not under the military but under the SS.

Affidavits 1150 to 1160 testify that wounded prisoners were everywhere treated like our own wounded. From the many theaters of war there is testimony that the enemy himself acknowledged that the treatment was good. On this point I submit Statements 1161 and 1162, the latter containing an acknowledgment by the American General Storm. Number 1165 testifies to a letter of thanks from the nephew of the King of England, and Number 1166 contains several letters from RAF officers to the commandant of the Air Force prisoner of war camp at Oberursel thanking him for his chivalrous attitude. Affidavit 1168 shows that in October 1942 the commander of the 14th Division, General Heim, in an order to the German troops at Stalingrad stated that Russian prisoners were to be provided with food and that for this purpose food supplies for the German troops were to be further reduced, although they were already very small. Further examples of the chivalrous treatment of captured enemy soldiers are given in Statement 1170, and in that of General Student, Number 1171. When infantile paralysis broke out among British prisoners on Crete, General Student sent a transport plane to Berlin for the necessary serum, in spite of the difficult position of the German troops, who were dependent on supplies from the air. Oberstabsarzt Dr. Schäfer, in Affidavit 1172, says that the Mountain Rescue Service in the Alps saved approximately 350 enemy flyers from death.

Document 1174 testifies to outstanding personal chivalry on the part of Colonel Count Klinkowström, and I would like to refer to it.

THE PRESIDENT: Surely, Dr. Laternser, you can give us the reference to the numbers of the affidavits which state that prisoners were treated properly. Why waste time about it by telling us what each affidavit says. You only have to tell us that these affidavits refer to good treatment by individuals.

DR. LATERNSER: Mr. President, if I only give numbers and do not refer at least partially to the contents, none of this material

will have any weight, because these affidavits have not been translated. Of all the affidavits approximately 40 have been translated. If I cannot go into at least some of the contents, then the Tribunal will not be able to take these affidavits into consideration at all.

THE PRESIDENT: We have got the summary before us in writing. What you are practically doing in every case is to repeat the summary which we have already before us in writing; for instance, 1174: Decent treatment of English prisoners. There is another one from some of the British officers showing who the British officer is and saying what he said about the treatment. Well, I have made it quite clear to you, I hope, that you will not be allowed to go on beyond a half day; and now the Tribunal will adjourn.

[A recess was taken.]

THE PRESIDENT: The Tribunal will not sit on Saturday next.

DR. LATERNSEER: The Russian Prosecution, on 13 February 1946 made charges concerning the robbing of corpses (Volume VII, Pages 347 and 354). Evidence to the contrary is provided by Affidavits 1176 to 1178.

The Russian Prosecution asserts that Soviet prisoners of war were forced to serve in the German Wehrmacht. In this connection, I refer to Affidavits 1179 to 1203, which show that in one year alone the number of volunteers was 500,000 men.

On the subject of the treatment of prisoners in the home area, I refer to Affidavits 1208 to 1213.

On the subject of special measures for the prevention of excesses, I refer to Affidavits 1214 to 1216.

Destruction and plundering: I have subdivided my material into five sections:

1. Alleged destruction and desecration of churches,
2. Destructions during the advance in the East,
3. Alleged destruction and plundering of cultural monuments and cultural sites,
4. Destructions during the retreat,
5. Plundering.

Affidavits 1301 to 1353 refute the assertion of the Prosecution concerning the destruction and desecration of numerous churches. Most of the churches had already been destroyed or had already been desecrated by being turned into warehouses, workshops, or in certain instances into atheist museums. Affidavits 1301 to 1323 give evidence of this. During the retreat, churches were especially

protected: Affidavit 1324. Affidavits 1325 to 1348 prove that in fact the churches were restored to their religious purpose.

Special protection of churches: in the French campaign, the prevention of a major fire in the Cathedral at Rouen by order of a high military commander is shown by Affidavits 1349 to 1353.

With reference to Section 2, Affidavits 1354 to 1401 deal with destructions during the advance. Affidavits 1354 to 1362 prove the organized work of Soviet commandos who were charged with destructions before the German advance. Affidavits 1363 to 1398 show the tremendous destruction carried out by the Russians in the Donets Basin, and in the industrial areas of Stalino, Maikop, Artenisk, Dniepropetrovsk, Krivoy-Rog, Orel, Orchom-Kisegrad, Zaporozhe, Smolensk, Vitebsk, Rovno, Riga, and Kharkov.

In Vitebsk, according to Affidavit 1319, actual firebrand commandos were set into action with gasoline cans. All this refutes the assertions of the Prosecution in the transcripts of 18 February 1946 (Volume VII, Page 534), 21 February 1946 (Volume VII, Page 90), and 22 February 1946 (Volume VII, Page 124).

The dam at Zaporozhe was destroyed by the Russians themselves. This is proved by Affidavits 1371 to 1384.

The chief reason for destruction in France is explained by Affidavit 1400.

Destructions in Greece were not carried out by the German troops but by the retreating enemy troops, and this is proved by Affidavit 1401.

Affidavits 1402 to 1552 deal with Section 3, destruction and plundering of cultural monuments, and clearly refute a number of assertions.

Affidavit 1402 was deposed by Field Marshal Von Kuchler and states that art treasures were taken from areas at the front to the rear and stored in a secure museum in Pleskov. In a ceremony there, they were handed over to the Metropolitan of the city.

Leningrad: Destruction was determined by military necessity. Affidavits 1403 to 1405 are proof thereof and refute the testimony of the witnesses Orbeli and Lomakin. Affidavits 1406 to 1411 refer to the places in the vicinity of Leningrad, most of which were destroyed by Russian fire.

The famous estate of Tolstoi in Yasnaya Polyana was spared by the Germans upon express orders of Generaloberst Guderian, as shown by Affidavits 1412 to 1418. One of these affidavits deposes that in the Russian victory film of the spring of 1942 the Tolstoi estate was shown undamaged after recapture. The Tschaikovsky Museum in Klin was not plundered by the Germans. Proof: Affidavits 1419 to 1422. Affidavits 1423 to 1427 prove that the observatory in Bulkowo was never in German hands and therefore

was not plundered by the German Wehrmacht. The observatory at Siemais in the Crimea was not plundered by German troops. According to Affidavit 1428 the instruments were removed by the Russians in their retreat before the German troops marched in.

Destructions in Novgorod (Affidavits 1429 to 1438) were never ordered. St. Peter's Church and the famous Schwarzhäupter House in Riga were not destroyed by the Germans but by fire by the Russians themselves.

Riga, Reval, and Novgorod suffered heavily through Russian bombing attacks. The church treasures of Novgorod were not plundered by German troops. The Russians in 1941 loaded these treasures on a ship which sank in the Wolchow and remained lying there. Proof of this: Affidavits 1429 to 1438.

The monument "1000 Years of Russia" was treated by the Germans correctly and with great care. Proof of this: Affidavits 1439 and 1440.

An order to set 500 villages in the neighborhood of Pleskov on fire was never given. Proof: Affidavits 1441 to 1443.

Generaloberst Mackensen did not rob the museum in Rostov of valuable paintings. Proof: Affidavit 3021.

Destruction in Kiev: Kiev came into German hands relatively undamaged. Affidavits 1444 to 1451 prove that the destruction was caused primarily by time bombs. The German troops did everything to fight the fire and remove the mines, and in that way the Lenin Museum was saved. Hoses to fight the fire were brought in from Germany by airplane. Proof of this: Affidavits 1444 to 1451.

Plundering in Tula never took place. German troops were never in Tula, but only reached the edge of the city; see Affidavit 1452.

Affidavits 1453 to 1483 refer to plundering and destruction during the retreat. Affidavit 1483 by General Wöhler gives proof of the fact that at the last minute the wish of a high Russian Church prelate in Poltava, that church valuables be safeguarded, was fulfilled.

Affidavits 1484 to 1500 and 1551 to 1591 prove that plundering of any kind was strictly prohibited and was severely punished, even if an object of small value was involved.

Affidavit 3024 by General Eberbach is especially important and proves that the order given by Hitler in the summer of 1944, that everything was to be destroyed in the retreat from France, was not carried out by the commander-in-chief of the 7th Army in agreement with Field Marshal Model.

For the Italian theater of war, there is the testimony of witnesses Kesselring and Weizsäcker, and in addition, Affidavits 3008, 3025, and 3026, which show that:

- (1) cities of cultural value were evacuated in good time;
- (2) art treasures from Monte Cassino, Ravenna, Bologna, and Rimini were protected and removed to safety;
- (3) the destruction of industrial installations, which had been ordered, was not carried out, and through the personal intervention of a German general the port of Genoa was saved from being blown up. This is shown in Affidavits 3008, 3025, and 3026.

I should like to refer to Documents USSR-115, USSR-168, and General Staff Number 19 contained in my document book. The Wehrmacht communiqué of 18 May 1940 shows that Louvain was taken after hard fighting. This explains the damage to the university at Louvain, which the witness Van der Essen believed he could attribute to arbitrary acts.

Treatment of the civilian population: The Russian Prosecution has asserted, on 8 February 1946, that the directives for the "Barbarossa" order called for the physical destruction of people under suspicion (Volume VII, Page 172). In order to refute this, I refer to Affidavits 1601, 1601-a, and 1601-b, which show that frequently the death penalty was imposed for excesses, especially in cases of rape.

1601-c offers evidence of three death sentences for crimes committed against a Russian family.

It is asserted, on 14 February 1946, that the German Wehrmacht, on 1 July 1941, carried out a mass killing in Lvov (Volume VII, Page 454). I refer to Affidavits 1602, 1603, and 1604 which show that when the German troops marched in, many rows of partly mutilated corpses were found, and were viewed by several generals.

On 2 July the 49th Mountaineer Corps took steps against the maltreatment of Jews by the local Ukrainians. According to the Prosecution speech of 15 February 1946 135,000 corpses were said to be found in the area of Smolensk (Volume VII, Pages 465-466). Evidence to the contrary: Affidavits 3006 and 1607, showing that especially good relations existed with the population there. Among other things, the famed Cathedral at Smolensk was restored and reopened. During the retreat large masses of the population followed the German troops against the wish of the commanders. That is proved by Affidavit 1608.

According to the assertions made on 15 February 1946, 245 children were poisoned with coffee and cake at Kertch (Volume VII, Page 493). Evidence to the contrary: Number 1609, an affidavit

by General Konrad, which also shows that relations with the population of the Crimea were especially good. I refer particularly to Affidavits 1611 and 1612 in this connection.

According to the assertion of the Prosecution on 15 February 1946, a cruel alarm order was issued by the commander of Feodosia and instructions published by the 260th Infantry Division (Volume VII, Page 499). Evidence: Affidavit 1612-a, which shows that a 260th Infantry Division was never stationed in the Crimea. Supplementary proof: 1614.

In the Prosecution's case of 15 February 1946 reprisals in Kiev in 1941 are mentioned (Volume VII, Page 503). I refer on this point to an affidavit by General Von Obstfelder, Number 1615.

According to Affidavit 1616, also deposed by General Von Obstfelder, German troops gave substantial aid to an insane asylum which presented a dreadful picture of negligence, as the inmates had been left to look after themselves.

With regard to the alleged murder of 33,000 Jews in Kiev, I refer to Affidavit Number 1665 deposed by General Heim. He knows of no order to that effect.

In the autumn of 1943, 195,000 persons are alleged to have been killed in mass executions and in gas vans in Kiev. For counter-evidence I refer to Affidavits 1116-a, 1116-b, and 1116-c, which show that the Wehrmacht never possessed any gas vans.

According to the record of 15 February 1946, the military command in Stalingrad sowed death everywhere (Volume VII, Page 504). The state of affairs in Stalingrad is described in Affidavit 1617.

The accusation is made on 18 February 1946 that the German Wehrmacht drowned 144,000 Russians in the sea (Volume VII, Pages 545-546). At another point, 144,000 citizens are again mentioned as having been taken out to sea on ferries and then drowned. I refer to Affidavits 1609, 3007, 3140, 1625, and 1625-a, which show, among other things, that the shipping space was so inadequate that not even the supplies of the German troops could be entirely handled by way of the water and that the air transport service had to help out.

It is asserted on 26 February 1946, quite generally, that the Wehrmacht participated in the persecution of the Jews (Volume VIII, Page 294). I refer to Affidavit 1629, deposed by Field Marshal Von Kuehler, who describes at great length the absolute refusal of the Wehrmacht to take part in such things, and its endeavors to take measures against excesses.

Affidavits 1630 and 1632 are of significance in this connection; they testify especially to the medical help provided, against the wish of certain quarters, during a typhus epidemic among the Jews. To show that no orders were issued for the killing of

Jews or other members of the population of the occupied territories, and also that troops did not take part therein, I refer to Affidavits 3051, 3057, 3083, 3084, 3097, 3099, 3111, 3142, 3150, and 3172.

Some documents of the Soviet Prosecution, including USSR-291, Pages 1 to 3, allege that atrocities were committed in the area of Vyasma and Rizhevskia, and also in the area of Rzhev.

Affidavit 1633 by General Praun deals with the accusation made against General Weiss that he ordered people in Rzhev to be hanged. Two women were sentenced to death at that time and were hanged publicly. Reason: The murder of 15 children and the sale of the flesh of these children on the market. For that reason two women were hanged publicly at Rzhev.

USSR-2, Page 7, speaks of slavery in Stalino. Evidence to the contrary: Affidavit 1637, by General Kittel.

USSR-91, Pages 1 and 8, mentions atrocities near Leningrad and Pskov; refutation by Affidavit 1640, deposed by Field Marshal Von Kuchler. The alleged shooting of 50,000 inhabitants of the city of Narva is refuted by the statements of the same officer, in Affidavits 1646 and 1647.

Numerous measures to aid the city of Pleskov are described in Affidavit 1645.

USSR-39 deals with Estonia; refutation of this document by Field Marshal Von Leeb, Affidavit 1641.

The attitude taken by the commanders-in-chief with respect to the Reichenau order is shown in Affidavits 1662, 1663, and 1665. Particularly the last affidavit, 1665, states the reasons for this decree of Field Marshal Von Reichenau. One of the reasons was the murder of two German officers.

With regard to Italy, the correct behavior of the troops is described in Affidavits 1666, and 1667 to 1670. Among these is an affidavit by the Prince of Hesse, who also mentions the view of the last Italian king.

The same correct behavior is described with regard to Yugoslavia in Affidavits 1671 and 1672.

Especially good co-operation was recognized as the rule in Norway and Denmark; evidence of this is contained in Affidavits Number 1673 and 1674. Numerous examples of the endeavors of the Wehrmacht to win the co-operation of the Belgian and French populations, above all through the strictest control of troop discipline, are shown in Affidavits 1675 to 1679.

Generaloberst Blaskowitz testifies in Affidavit 1680, and two other generals in Affidavits 1681 and 1682, that the Wehrmacht took severe measures against excesses by the troops in Poland. Against

plundering many drastic steps were taken. Proof: Affidavits 1683 and 1685.

It is known that a saying was common in all occupied countries: "German soldier with eagle on chest—very good." And the fact that this was so is due to the military leadership.

With respect to the administration of military justice I should first of all like to call the attention of the High Tribunal to the diagram contained in my document book as General Staff Number 12, on Pages 72 to 74. This diagram, Page 74, shows that the commander-in-chief of an army may at times be judicial administrator only for a small part of the army area under his command.

For the attitude of the military leaders toward the judicial system, I refer to Affidavits 501, 502-a, and 503. In addition, three of the highest judges of the former German Wehrmacht were examined, and their statements are contained in Affidavits 504, 505, and 506. It is the testimony of Judge General (Generaloberstabsrichter) Lehmann and Judge General Von Hammerstein. They describe what severe punishments were inflicted for crimes against the population of the East, and how Wehrmacht justice finally made its will prevail over Hitler's will.

The Commando Order: the Prosecution submitted Documents 498-PS, Exhibit USA-501, and 503-PS, Exhibit USA-542, and I should like to point out that both of these documents were signed by Hitler.

Affidavit Number 600 describes in detail that this Commando Order must be traced back to the sole initiative of Hitler, and that he did not consult his commanders-in-chief at the front before issuing it. Affidavit 600, therefore, refutes the assertion of the Prosecution that the military leaders had a part in the publication of this order. With regard to the execution of this Commando Order, the Prosecution has pointed out three cases which occurred in Norway. Unfortunately, I was not able to obtain any material on these cases.

In the Italian theater of war, according to the statement of the Prosecution, three British Commando units were captured on 2 November 1942 and turned over to the SD for special treatment: Document 509-PS, Exhibit USA-547. The Prosecution submitted this Document 509-PS as proof that these units were actually handed over, as is set down in this report to the OKW. This is an obvious conclusion but, as I shall prove, it is not correct. I refer to the testimony of General Westphal, given before the Commission, in which he expressly states under oath that these three British Commando units—the witness stated the exact place of their landing—were not turned over to the SD, but were sent to a prisoner-of-war camp, and that the report to the OKW to which the Prosecution

refers, 509-PS, was a wrong report which did not correspond to the facts. In these three cases, therefore, the Commando Order was not applied. Thus General Westphal's statement made under oath before the Commission refutes Document 509-PS.

I was not able to clarify the case of Dostler, because the records of the court martial were not put at my disposal, despite my request. Nevertheless, I should like to point out that a supplementary order by Field Marshal Kesselring was issued, and that he reserved the right to determine just what constituted a Commando operation. General Dostler does not belong to the group of persons accused.

On the basis of Document L-51, Exhibit USA-521, it is alleged that in accordance with the order directing the application of the Commando Order to foreign military commissions also, several persons were shot. I refer to the contents of Document L-51, USA-521, which clearly shows that the Wehrmacht had nothing to do with this matter.

I further refer to Document C-178, which shows that the General Staff of the Army and the General Staff of the Air Force protested against the Commando Order. I also refer to Affidavit 610 regarding the application or nonapplication of the Commando Order for the theater of war in the West, and Supplementary Affidavits 611 and 622. Affidavit 617 shows that this order was not applied in the Netherlands. Affidavit 601 shows that the order was not applied in Africa; this is confirmed by Affidavits 603-c and 603-d. Affidavits 614 and 621 show that the order was not applied in the Italian theater of war, and of particular importance in this connection is Affidavit 619, in which proof is given that Field Marshal Kesselring reserved the right to determine what constituted a Commando operation.

I further refer to Affidavits 3147 and 3148, which show that the Commander-in-Chief, Southeast, ordered that British Commando units landing on the Aegean islands were not to be considered as Commandos, but as German prisoners of war.

General Böhme affirms in Affidavit 3174...

THE PRESIDENT: Dr. Laternser, you have been over half a day now. The Tribunal would like to know what it is further that you have to refer to.

DR. LATERNSER: I am now near the end of my evidence on the Commando Order, and I shall then refer very briefly to the deportation of workers—that will take two minutes—and to crimes against humanity and war crimes. I estimate that I shall need another twenty minutes altogether.

THE PRESIDENT: Dr. Laternser, the Tribunal has already—at least I have already pointed out to you over and over again that

all you are doing in substance is to read out what is already before us in writing, with certain references in addition to the Prosecution's evidence. In nearly every case we have before us in writing exactly what you say about these affidavits.

There is no use nodding your head at me. I have checked it, and that, in the opinion of the Tribunal, is quite unnecessary. You can go on and you must refer us to the affidavits which you say relate to these topics, which you have properly announced as topics upon which you were going to produce documents. That is to say, deportation, rules of war and humanity, and you may refer to the numbers of the affidavits which deal with that and refer us also to the numbers, particularly of the documents which have been translated, and then we shall know where to find the documents which are important. Now will you go on, please?

DR. LATERNSEER: My last reference was to Affidavit 3174, which states that for the 20th Mountain Army the Commando Order was changed by General Böhme with the approval of the OKW.

Affidavit 625 proves that the Commando Order was not carried out in the Italian naval theater of operations.

For the Eastern theater of war, Affidavits 608 and 616, as well as 624, show that the order was not carried through.

THE PRESIDENT: In order to show that I was entirely accurate in what I said to you, what we have before us is 608, General Wilke, "Rejection of the order by all commands in the East. No instance of shooting known." Go on.

DR. LATERNSEER: With respect to the participation or the alleged participation of the military leaders in the deportation of workers, I refer to Affidavits Number 2001 to 2019. That is all with reference to this point.

THE PRESIDENT: Dr. Laternser, have any of them been translated?

DR. LATERNSEER: No. Mr. President, that is exactly the misgiving I have. If the affidavits had been translated...

THE PRESIDENT: Dr. Laternser, 2001, the substance of the affidavit is in the summary; the same in 2002, 2003, 2004, 2004-a, and right on down to 2019. The substance of the affidavit is in the summary before us. It doesn't help us in the least to have it repeated by you.

DR. LATERNSEER: Regarding the attitude of the military leaders toward the rules of war and toward human laws, I refer to Affidavits Number 505 to 514. Furthermore, in this connection I refer to the following documents in my document book: 440-PS, Pages 105 and 106 of the document book; 2329-PS, Pages 105 to 112; C-119,

Pages 116 to 119, and the announcements on Pages 120 to 141 which were valid in all theaters of war.

Affidavit 531 is submitted to refute the accusation that the German military leaders tried to bring about an incident between Hungary and Russia by having German air planes with Soviet insignia attack Hungarian territory. The High Tribunal will remember this assertion, which is refuted in Affidavit 531 by the intelligence officer serving with the Commander-in-Chief of the Luftwaffe at that time.

To refute the assertion that military orders were issued for the murder of enemy air crews who were shot down, I refer to Affidavits 652 to 659. 651 particularly shows that the Wehrmacht protected the airmen who were shot down—protected them against the excited population. The fact that lynching was condemned and rejected is evident from Affidavits 518, 519, and 520-a. Two of these affidavits refer to the Chiefs of the General Staff of the Air Force, General Koller and General Kreipe. In particular, Affidavit 520-a shows that General Kreipe officially took measures to punish civilians who used violence against aviators.

Number 521 is an affidavit deposed by Lieutenant General Galland, who testifies that German fighter squadrons never received orders to carry on the fight against crew members who had parachuted from their planes. Affidavit 522 . . .

THE PRESIDENT: Dr. Laternser, how do you think it helps the Tribunal for you to have made the statement which you have just made, when we have before us Affidavit Number 521, "General Galland, 7 July 1946: no order was ever given for the combating of shot-down air crews." Now, do you really think that you have added anything to that?

DR. LATERNSER: Mr. President, I intended to go into more detail on this point, but in consideration of the Tribunal's wishes I curtailed my remarks. This is the only reason. I shall conclude in a moment.

I refer now to Affidavits Number 522 and 523, which also show rescue measures for enemy fliers.

In conclusion, I should like to refer to Affidavits Number 3103 and 3106. In both of them, it is proved that the battleships *Scharnhorst* and *Gneisenau* rescued the survivors of the British auxiliary cruiser *Rawalpindi*, even though that ship had sent out a radio call for help and fast British naval forces could have arrived and would have been in a position to cut off the return route of the German ships to the Bight of Heligoland.

Affidavit 3106, deposed by Rear Admiral Peters, describes similar rescue measures of the battleships *Scharnhorst* and *Gneisenau* in the

spring of 1941, and also an incident in 1943 when a German U-boat was sent to Spitzbergen specially for the purpose of rescuing persons shipwrecked in that area.

That concludes the submission of my documentary evidence.

I should like to introduce the documents which have been translated, Numbers 1 to 4, 933, 935, 939, 1501, 508a, 508b, 513, and 514b. And finally, I should like to refer to my Document General Staff Number 1 dealing with the speech of Generaloberst Beck on the occasion of the 125th anniversary of the foundation of the Military Academy, because this speech shows the attitude of the military leaders.

THE PRESIDENT: Dr. Böhm.

HERR BÖHM: Mr. President, may it please the Tribunal, I should like, first of all, to submit an index showing that Document Books SA 1A, 1B, 2, 3, 4, and 5 are being submitted; I shall do that as soon as the originals are here. Then the index includes the transcripts of the Commission sessions, which refer to evidence on this subject before the Commission, affidavits for the General SA, namely, 21 affidavits which have been translated, and an additional 68 affidavits which were also deposed and were dealt with by the Commission, and 17,089 affidavits which have been summarized. Then affidavits for the SA which refer to members of the SA who came from the Stahlhelm, and the corresponding transcripts of the Commission's sessions. Also documents dealing with the mounted SA units, namely 72 affidavits, of which Numbers 1, 13, 21, 24, 29, 30, 64, 68, 70, 72, and 75 have been translated. Then an index which lists the individual affidavits deposed for the General SA, for the Stahlhelm, and for the SA Mounted Corps. I should like to submit this index.

THE PRESIDENT: Have you submitted it?

HERR BÖHM: I shall submit this material, Mr. President, as soon as I receive it, and I shall then call the attention of the High Tribunal to it. It will not take more than a few minutes.

As the first part of my evidence I shall submit documents showing the legal measures taken by the National Socialist State to force the young generation to join the affiliated organizations of the Party. Document General SA-144 shows how members of the Evangelical youth organizations were individually forced into the Hitler Youth. A simple calculation shows that when these young people reached the age of 18, they were taken over by the Party and by the organizations affiliated with the Party, such as the SA.

In order to lay hold on youth, the Reich Government issued at the same time a decree concerning the creation of student associations in the universities of the Reich; on the basis of this decree the

student associations received certain powers. That may be seen in Document SA-147. This document refers to Bavaria, but it applied to the whole of Germany; that is proved by Document SA-148, the so-called Prussian Students Rights Decree, the purpose of which clearly was the training of the students for their place in the national community and their training for military fitness.

This decree was the basis for the directive concerning the creation of an SA Department for Universities—Document SA-156. This order, which in this form applied to all universities in the Reich, compelled all students who were physically fit to serve in the SA. It is important to note that the students could not join up with the SA University Department, but had to join up with the local SA companies (Stürme). The SA University Department was later dissolved, but since the students had to join the local SA companies, they remained in the SA.

The obligation to serve in the SA was emphasized in every newspaper, as is shown by Document 150. This is an excerpt from the monthly periodical of the C.V., the Catholic German Youth associations.

These obligations however were not sufficient in the National Socialist State, and in the year 1936, all students in their first, second, and third semesters were taken over by the NS Students League, and, as Document SA-151 shows, the National Socialist Students League was given the task of seeing to it that all students belonged in addition to one of the affiliated organizations of the Party; as a result of this, great numbers of German students were again incorporated into the SA.

In Document SA-159, we see the results of noncompliance with the directives of the SA University Department. It shows that study without membership in the SA or a similar formation was impossible.

Document SA-164 shows that the first step of legal coercion was taken in Prussia. The document clearly shows that the Prussian Ministry of Science, Art, and Education ordered that service in the SA and the Labor Service was a condition for being admitted to the second teachers' examination.

Document SA-165 gives evidence that in the year 1935 the Gazette of the Bavarian State Ministry of Education and Culture stated, on Page 56, that one of the conditions for study as a teacher was activity and service in an organization such as the SA.

It is obvious that legal coercion was most marked in its effect on those who were economically weak. I want to prove this by submitting Document SA-167, in which service in the Labor Service and in the affiliated organizations is demanded.

Document SA-170 shows that not even schoolboys, of the sixth class and upward in the high schools, were exempt from this compulsion to be active in the NSDAP or its formations.

In the first part of my evidence I dealt with legal coercion in high schools and universities. I now come to the second part, the legal compulsion applied to recruits to the civil service.

Document SA-162 shows that the law for the restoration of the professional civil service had turned out to be a much-feared discriminating law directed against the civil service.

Document 173, a commentary dealing with the German Civil Service Law of 1937, says on Page 66:

“Of the young German official it must be required, if his physical condition permits, that he be a member of the SA or the SS.”

The development which was started by the law for the restoration of the professional civil service ended with the regulation concerning preliminary training for the career of a German civil servant. In Paragraph 2 of this directive—Document SA-176—it is stated:

“Applicants must belong or have belonged to the Party or one of its formations.”

In this connection I should like to refer to Document SA-175; and as an exception I should like to deal at greater length with this document and quote from it:

“At last each applicant for an official position can be required to belong to the Party or one of its formations. For the civil servant should not only belong to the SA or to the SS, but should have been in the Hitler Youth as well, since, through the law of 1 December 1936, the Führer has set for all German youth the goal that, in addition to being trained in the home and at school, physical, spiritual, and moral training in the spirit of National Socialism should be given in the Hitler Youth for service to the nation and to the national community.”

I should like to quote another passage briefly:

“Thus the material content of the decree had its origin in the individual particles and was built up organically. This kind of refashioning of the law is in accord with the basic principles of the National Socialist State. Its method is not that of the Weimar Constitution State which first issued pleasant-sounding laws but was then unable to carry them out because the prerequisites were lacking, apart from the fact that the governmental agencies were too weak to carry them out; but the Government of the Third Reich first creates the actual

conditions necessary for the carrying out of a governmental measure, and then issues the corresponding law."

The period from 1933 to 1939 was an epoch in which one law after the other appeared and one directive after the other was issued. I have incorporated only a few of these directives in my document book. Document SA-178 shows that apprentices in the Prussian State administration were to be taken only from National Socialist formations such as the SA and SS.

As early as 1934, as Document SA-183 shows, a condition for being admitted to practical training in the advanced construction service was that the applicant be a member of a formation such as the SA.

The same applied, as is shown in Document 165, in the case of the Reich Railways.

One can say, to sum up, that the young generation, which was not old enough to vote in 1933, was forced into formations of the NSDAP through laws and directives. It cannot be regarded as an exception that the Reich Minister of Transport says in a letter, Document SA-186:

"A special case prompts me to point out once more to all civil servants entering training courses for higher posts, as well as assessors and construction assessors already belonging to the administration, that they should take an active part in the Party or in one of its formations."

This is not an exception involving the Reich Minister of Transport, but it is a typical case for all agencies of the Reich, of the states, communities, and other public institutions.

We will see later that large parts of industry and trade were also affected by this so-called political co-ordination of the younger generation.

Document SA-188 shows that the Reich Post Office, in all its employment regulations, required membership in the Party or its formations.

The same can be seen in the Reich regulations for legal training, in Document SA-191.

Document SA-194 shows that the Reich Minister of Justice was not satisfied with a formal membership, but demanded active participation in the Party or its formations, such as the SA.

That the Police also did not make any exception, is shown in Document SA-196. Membership in the NSDAP or one of its formations was a condition for entry into the police service.

Document SA-197 is a collective order, and it concludes this array of directives in 1944.

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Documents SA-200, 201, 203, 208, and 213 show that service in the SA was required of young personnel in the financial administration. It is regrettable . . .

THE PRESIDENT: What is regrettable?

HERR BÖHM: I beg your pardon!

THE PRESIDENT: Finish your sentence.

HERR BÖHM: Yes, I shall submit all the documents, Mr. President.

THE PRESIDENT: We will adjourn now.

[The Tribunal adjourned until 22 August at 1000 hours.]

TWO HUNDRED AND NINTH DAY

Thursday, 22 August 1946

Morning Session

HERR BÖHM: Mr. President, may it please the Tribunal, yesterday I submitted some of the documents which prove that many people were forced into the SA through legal compulsion. I should now like to continue my presentation of evidence in that direction.

Documents SA-200, 201, 203, 208, and 213 demand service for young personnel in the financial administration.

It is regrettable that on account of the attitude of one of the occupying powers the witness Dr. Meder could not appear here. Defense counsel for the SA was able to correspond with him until it became known that he had been selected as a witness in this Trial. In spite of all the efforts of the General Secretary of this High Tribunal we have not succeeded in bringing this witness to Nuremberg from the Russian Zone.

This witness had been called to testify that in the years 1936 to 1944, 14 Reich Finance Schools...

THE PRESIDENT [*Interposing*]: Dr. Böhm, we are hearing you now upon your documents; we are not hearing you upon the question of any difficulties there may have been in getting witnesses.

Kindly go on.

HERR BÖHM: The following are the Finance Schools which existed in the Reich: Herrsching, Ilmenau, Meersburg, Wöllershof, Berlin, Mölln, Feldkirch, Leipa, Leitmeritz, Bodenbach, Thorn, Sigmaringen, and Boppard.

Even private enterprises, to a large extent, required membership in the HJ and the SA as a condition for employment. This is proved by Documents 215 and 216.

Document SA-218 states that the directive of 3 October 1933...

THE PRESIDENT: You are going a little bit too fast; your light is flickering.

HERR BÖHM: Very well, Mr. President, I shall try to speak more slowly. Document SA-218 states that the directive of 3 October 1933 ordered that the Auxiliary Engineer Service of the Technical Emergency Service was to be transferred into the SA.

Document SA-220 deals with the question of whether expulsion from the SA was a reason for terminating an employment contract, and under certain circumstances the answer was "yes."

A commentary on this point is furnished by Document 221, and I quote:

"The obligation under the oath sworn to the Führer means that leaving the SA or any other association is absolutely impossible. Only physical unfitness or an assignment to special work elsewhere can warrant leaving the SA."

This is an excerpt from the Handbook of the SA, published by permission of the Supreme SA Command.

Document 222 also shows that expulsion from the Party or from its formations might result in loss of occupation. The fact that this was stated in a basic official directive of the Reich and Prussian Ministry of Justice explains why this attitude was adopted in practice. Therefore it is not surprising that even non-German quarters pointed out the existing coercion. As may be seen from Document SA-243, a Note of the Holy See dated 14 May 1934 reads:

"The Holy See is aware of the extent to which freedom to make decisions is restricted in Germany today through the pressure brought to bear on officials, employees, workmen, scholars, even on the formerly free professions, in fact on almost all German citizens, by economic factors and by exploiting the anxieties for a bare existence."

THE PRESIDENT: Is it 243 in your Document Book?

HERR BÖHM: 143, Mr. President.

THE PRESIDENT: Go on.

HERR BÖHM: In the third part of my presentation of evidence, I should like to deal with the aims of the SA as they appeared to members of the SA who had no special leading position; thus, in keeping with the decision of the Tribunal of 13 March 1946, Paragraph 6, Figure 3, I shall quote testimony on behalf of the SA by members of the SA themselves.

In Document 224, an excerpt of the periodical *Der SA Führer*, a magazine for the SA, the term "Wehrtüchtigkeit" is defined as follows: "Instruction in the use of arms and the mastering of the weapons of war and their use will be given to German men in the Wehrmacht by service and exercises."

Document SA-224 shows clearly that the SA did not have anything to do with the Waffenschule (Military Training School), and it did not give military training to its members. This is also proved

by Documents SA-225 and 226, again excerpts from the magazine *Der SA Führer*, published by the Supreme SA Command. I quote:

"In addition one can recognize the clear limits drawn between the tasks of the SA on the one hand, and those of the Wehrmacht on the other; these limits always have existed and always will exist. After the HJ, the SA only creates the necessary spiritual, mental, and physical preliminary conditions."

Document 226 shows that Hitler was quite clearly and definitely opposed to giving the SA a military character, the character of a defense organization, of a militia or of a Free Corps.

Document 229 shows that members of the SA could not have known of the criminal aims of the SA, as the Prosecution calls them, because already on 21 March 1925 the Rhineland Commission lifted the ban on the German Freedom Party and the National Socialist Party. How well Hitler knew how to lull the people to sleep is proved by his order of 1 July 1934, in which he gave to the Röhm Putsch a background entirely different from the real facts.

Mr. Jackson has said that members of the various formations could not be charged with joining the organizations, but were charged with remaining in the organizations, once they knew—as they did—of the conditions in the concentration camps. In this connection I should like to submit Document 250, in which one of the most prominent members of the Catholic Church in Munich, who spent many years in a concentration camp, deals with the question of whether the injustices which took place in the Third Reich were easily apparent. The document quite clearly shows that the answer was "no." I quote:

"For eight years I collected everything available concerning National Socialist laws, decrees, police measures, information about injustices, acts of violence, infamy, crimes, blasphemies, persecution of the Church, murder, *et cetera*. Hundreds of pages of the book *The Persecution of the Catholic Church*, published in 1940, which I have already mentioned, come from my collection. It will carry all the more weight if I testify that as far as atrocities in concentration camps and crimes in the occupied territories were concerned, I could discover and report practically nothing."

How, then, could the things which have now come to light be discovered by an ordinary person who moreover would not have at his disposal the sources of information available to Prelate Neuhausler?

Now, I shall turn to the third part of the presentation of documents which deals with the assertion of the Prosecution that the SA was a terror organization. What the real facts regarding this

so-called terror were may be seen from Documents 285, 286, and 287. The pamphlet quoting from the judgment of the State Tribunal of the Republic illustrates clearly that it was the KPD (German Communist Party) which incited the people against the democratic republic; and that it was the KPD which propagated the class conflict. As is shown in Document 286, this incitement to class conflict was embodied in the so-called idea of world revolution. In this connection I also submit Document 132, which describes how civil war was advocated by the KPD in 1921. The terroristic conflicts, therefore, originated with the political Left.

Document SA-287, a judgment passed by the State Tribunal on 14 January 1925 against Link and his associates, shows that in this period of latent civil war the call to fight the Fascists, that is the NSDAP and the Reichswehr, was made again and again. The fact that the SA was established for this reason, namely, as a protection against the Leftists, is shown in Documents 311 and 314. These are excerpts from Adolf Hitler's book *Mein Kampf*.

Document SA-300, an excerpt from Gisevius's book, *Until the Bitter End*, also states that pressure from the Reds produced counter-pressure from the Brown Shirts. Although these were very like times of civil war, even an opponent such as Herr Gisevius must admit, and this is evident from Document SA-301, that the National Socialist revolution claimed comparatively few victims. In Document SA-302, Herr Gisevius admits that when excesses did occur, it was on the whole just a very small clique which perpetrated them. May I quote:

"They were the group staffs, their hired staff guards, and that gang of hooligans which can be found wherever mischief is afoot."

Documents SA-304, 305, and 306 show how seriously Hitler, as the Supreme SA Leader, was determined to prevent a civil war. For that reason he repeatedly in his many proclamations demanded discipline. In this connection I would like to present the directive of 30 March 1931 as Document SA-306. It expressly says, in Figure 2:

"Every Party member, regardless of his position in the Party, will be immediately excluded from the Party if he should venture either deliberately to violate the regulations of the emergency decrees, or to tolerate or approve such offenses."

Document SA-312 deals with the directive forbidding terrorization of Jewish citizens.

In the fifth part of my document book I have set forth the attitude of the SA with regard to the Church. Document 316 shows that in 1933 the Party and the Church had come to an agreement. The proclamation of the German Episcopate shows that the Church believed it could be confident that the prohibitions and warnings

previously issued were no longer necessary. For that reason, entire formations were again permitted to attend services.

Document SA-317 says that youth was asked to join the formations of the Party and to work in them for the future of Germany. I quote:

"For that reason, we mean to devote our entire Catholic heritage, Christian conservative ideas, and Christian progressive forces to the New Germany; to enhance her spirit and make it our own. We are, therefore, determined to work actively, with all the means and ways at our disposal, for the union of all Germans. And for the same reason, we commend to all our members a practical military training as their duty."

And then:

"It must particularly be the task of youth to work with courage for a union between our vigorous national movement and the eternal Christian values."

Document SA-320 mentions the assurance given in the 115th Session of the Bavarian Diet of 29 April 1931. It reads:

"On the contrary, our Führer, Adolf Hitler, has repeatedly stated that the Party will always be led in a way which will not bring any Roman Catholic, as a faithful member of the National Socialist Party, into conflict with his conscience."

Document SA-327, the Hitler speech of 23 March 1933, contains the same assurance:

"The National Government considers both the Christian Churches factors of the greatest importance in the life of our nation. It will respect the agreements concluded between them and the administrations of the Länder, and their rights shall not be infringed. The National Government will permit and safeguard the rightful influence of the Christian Churches in school and education. The Government is anxious to secure sincere co-operation between Church and State."

This shows that there was no reason to anticipate a struggle with the Church, particularly since, after feelings had run high, a directive issued by the Führer's Deputy on 23 January 1939, Document SA-321, stated:

"In my directives of 11 April 1937 and 1 June 1938 I decreed that the Party, its formations, and its affiliated organizations were to abstain from influencing internal Church matters in any way."

Document SA-326 shows that in the year 1931 there was no thought of exterminating the Jews, which unfortunately became a reality later.

Now I shall deal with the members of the Stahlhelm who came from the Stahlhelm into the SA. May I draw the attention of the Tribunal to the SA Document Book dealing with the Stahlhelm.

Document Number 1 is a radio address of the leader of the Stahlhelm, Franz Seldte.

THE PRESIDENT: Which book is it?

HERR BÖHM: Book 4, Mr. President.

The first document is a radio address of the leader of the Stahlhelm organization, Franz Seldte, delivered on 27 April 1933. It contains the condition for the transfer which subsequently took place, a condition based on sovereign rights. I quote:

"Having no party affiliation, I hereby declare my entry into the National Socialist German Workers' Party, because this Party is the movement which will unite the entire German people in a single unit. I therefore place myself and the Stahlhelm Association of Front-line Soldiers which I founded, as a soldierly unit complete in itself, under the command of the Führer, Adolf Hitler."

Document 2 contains a statement of the Reichsleitung of the NSDAP, signed by Rudolf Hess and dated 1 May 1933, as taken from the newspaper *Fränkischer Kurier*. This document shows that the Stahlhelm, despite its subordination to Hitler, was to remain a unit complete in itself.

Document 3 is an excerpt from a report made by the leader of the Stahlhelm on 28 April 1933. The first few paragraphs show that the deputy leader, Düsterberg, was not willing to accept the contact established by the leader, Seldte, with the National Socialists. The next paragraph describes the immediate dismissal of the deputy leader, Düsterberg, in a telegraphic order of Seldte. From the last paragraph of this document, I should like to quote the last sentence of Seldte's telegram of the same day:

"I herewith assume the sole dictatorial leadership of the Association."

Document 5 contains the open letter of one of the leaders of the Stahlhelm, dated 3 May 1933; the letter speaks of these events and states that as a result of Seldte's unconstitutional measures the opposition group Düsterberg would no longer consider him as the lawful leader of the organization.

Document 6 contains an agreement between Hitler and Seldte.

THE PRESIDENT: Dr. Böhm, if I remember right, one of your witnesses who was heard here before the Tribunal dealt with the entry of the Stahlhelm into the SA, did he not?

HERR BÖHM: Yes.

THE PRESIDENT: And was he cross-examined at all to contradict him?

HERR BÖHM: No, Mr. President.

THE PRESIDENT: Well, if that is so, then surely these documents which relate to the introduction of the Stahlhelm into the SA can be dealt with quickly as a group. You can give us the numbers of the documents. As the witness has given evidence and has not been cross-examined, it isn't necessary to refer us in detail to these documents which merely support the evidence of your own witness.

HERR BÖHM: Yes, Mr. President.

I now refer to Document Number 6 which shows that the so-called Jungstahlhelm was put under the Supreme Command of the SA. I turn to Document Number 7 which is a decisive order of Hitler, from which I should like to quote toward the end, Page 1, Paragraph 6:

"The entire Stahlhelm will be placed under the Supreme SA Command and will be reorganized according to its directives."

Then I should like to refer to Document Number 8 which shows that the Wehrstahlhelm was also taken over by the SA and especially that the members of the Wehrstahlhelm continued also to remain members of the Stahlhelm.

I also refer to Document Number 9, decreeing that the incorporation of the Stahlhelm be speeded up. Documents 10 and 12 show that the members of the Wehrstahlhelm were to be given equal rights, and a certain joint status, before their final incorporation. Then there are Documents 13, 14, 15, and 17, in connection with which I should like to refer particularly to Hitler's decree of 25 January 1934. Then Document 17 and Document 18. In the latter the complete amalgamation of the SA Reserve I, that is, the former Stahlhelm, with the SA is proclaimed.

Document 18-A states that all age classes over 45 years will be incorporated into the SA Reserve. Then I submit Document 19 and Document 21, from which I should like to quote briefly Paragraph 2:

"Members of the former Stahlhelm who have already been transferred into SA Reserve I, cannot of their own volition sever their connection with SA Reserve I for the sole purpose of joining other associations. Anyone who, because of a physical defect, cannot discharge his duties or who for other reasons wishes to leave the SA Reserve, must apply for his discharge, stating the reasons for his request. Dual membership in the SA Reserve I and in the NS Veterans' Association is permitted, provided the individual joined the former Stahlhelm before 30 January 1933."

Now I should like to refer to Document 22, which shows how in practice a member of the Stahlhelm in the Rhineland was incorporated into SA Reserve I.

Document 23 deals with the dissolution of the National Socialist German Veterans' Association in November 1939.

Document 26 contains several quotations from the Stahlhelm handbook, published by Heinrich Hildebrandt and Walter Kenner. I should like to quote one sentence on Page 17:

"The Stahlhelm has experienced war and therefore desires peace."

Then I should like to refer to Documents 29 and 30, which prove that members of the Stahlhelm attempted to leave the SA Reserve I. The documents which follow deal with the members of the Stahlhelm who did not agree with the incorporation into the SA.

THE PRESIDENT: Dr. Böhm, couldn't you tell us what the effect of all these documents is rather than read all through 30 documents? You have told us now about the Stahlhelm. Haven't you got any idea what you will come to?

HERR BÖHM: I submit these documents to show the High Tribunal that the Stahlhelm was not at all in agreement with the measures taken at the time when the organization was transferred to the SA; that members of the Stahlhelm tried to leave the SA, that they met with difficulties in such attempts, and that the ideology of the Stahlhelm was, in a large measure, quite different from that of the SA.

THE PRESIDENT: Yes, go on.

HERR BÖHM: I should like to refer now to a series of newspaper articles which are contained in Documents 32, 33, 35, 37, 39, 40, 41, 42, 44, 45, 46, 47, 48, and 49.

Document 34 is a report made by a Sturmbannführer of the SA about a conspiracy of the Stahlhelm against the SA in 1933 in Pomerania. Document 36 is a poster containing a warning and threat by Gauleiter Loeper of Magdeburg-Anhalt against the National Socialist Veterans' Association.

Document 33 states, may I quote quite briefly:

"The Stahlhelm in Brunswick has been dissolved. 1350 men were arrested and interned."

From the second paragraph in the center . . .

THE PRESIDENT: Dr. Böhm, you have given us a long list of newspaper articles. Now, what is the object of them? Is there anything which connects those together, makes them into a group?

HERR BÖHM: There is a certain connection between all of them, Mr. President, inasmuch as they are to prove that units of the

Stahlhelm were dissolved in various places, that members of the Stahlhelm were arrested, and that they encountered difficulties because most of them disagreed with their incorporation into the SA, and with the political and intellectual attitude of the SA.

THE PRESIDENT: Yes, well, I understand then that they are illustrations of the difficulties which the Stahlhelm Organization had with the SA incidents.

HERR BÖHM: Yes, quite. I should like briefly . . .

THE PRESIDENT: The contention, I suppose, is that the Steel Helmet weren't volunteers into the SA; is that it?

HERR BÖHM: Yes, Mr. President, they came into the SA on the strength of an order.

THE PRESIDENT: Very well. Then you can pass from that group, I think.

HERR BÖHM: Yes. Now I should like to turn to Document Book Number 5, which contains documents relating to the Mounted Corps. Documents 56 and 57 deal with the origin, the development, and the organization of the NS Mounted Corps. Document 56 is an excerpt from the official periodical of the Reiter Korps, *Deutsches Kaltblut*, of the year 1933. I think it is important to mention here the statement of the president of the rural riding associations, namely, that these associations were to be turned into a National Socialist Reiter Korps so that all rural riding interests would remain embodied in a special organization with its own administration without being permanently incorporated into parts of the SA.

Document 57 contains the diagram showing that the NS Reiter Korps was connected with the General SA only at the top level.

The next documents deal with the tasks, aims, and activities of the NS Reiter Korps. Documents 59, 60, and 61 are extracts from the regulations of rural riding clubs before 1933; members of these clubs were not permitted to engage in political activity within the clubs, and this rule was retained after 1933.

Documents 62, 63, 65, 66, and 67 are official orders showing the activity of the NS Reiter Korps.

Document 69 is an official brochure on the requirements for obtaining the rider's certificate. This document, too, has no military or political character at all. Document 70 lists the prerequisites for winning the German rider's emblem, and again in this connection military and political considerations have no part. The emblem was a sports badge of honor, and it was the highest aim of all members of the NS Reiter Korps to win it. I submit this rider's emblem—it is made of silver—to the High Tribunal as Document 71, and perhaps I might add that I think it is the only emblem which bears no National Socialist insignia.

The last four Documents 101, 102, 103, and 124 have been selected from a tremendous number of photographs typifying the activities of the Reiter Korps.

THE PRESIDENT: Dr. Böhm, will you please continue.

HERR BÖHM: I shall now turn to the affidavits, Mr. President, and deal with the first group of affidavits which I have submitted. I should like to refer to the General SA Affidavits Numbers 17, 74, and 81, which deal with coercion, legal coercion, regarding entry into the formations. Affidavit General SA Number 1, deposed by Dr. Menge, also deals with the problem of compulsory incorporation into the SA, in this case, the incorporation of water sports clubs into the Marine SA.

Affidavit General SA Number 60 deals with the compulsory incorporation of sports clubs as separate units of the SA.

Affidavit Number 61 deals with the impossibility of leaving the SA.

That the SA did not assist the state government in preparing for war, is stated in General SA Affidavits 38, 39, and 40, which also show that preaching a war of revenge against France resulted in expulsion from the SA, because the SA Command had forbidden all discussion of the questions of South Tyrol and Alsace-Lorraine.

Affidavit SA-38, deposed by Dr. Busse, characterizes the Chief of Staff, Lutze, as an opponent of warmongering. The Affidavit SA-1 of Dr. Menge deals with the agreement between the Wehrmacht and the SA, that in the event of a conflict between the SS and the Wehrmacht, the SA would side with the Wehrmacht, and also shows that the Chief of Staff, Lutze, strongly opposed a war against Poland during a conference with Hitler and Goebbels in the autumn of 1939.

Affidavits General SA Numbers 5 and 6 deal with the preparations of the SA for the Party Rally in 1939.

Affidavit Number 76, deposed by General Von Hörauf, deals with the negotiations of Röhm in 1931 and 1932 and the agreements he reached with English and French political circles on the following points:

- "1) Within a brief period of time Röhm will put himself at the head of the NSDAP.
- "2) The press of the NSDAP will come under British influence.
- "3) The establishment of a foreign political and military political bureau. In connection with these negotiations..."

THE PRESIDENT: Dr. Böhm, the Tribunal is finding this very difficult to follow. You have here, I suppose, about 200 affidavits, something like that. Now, wouldn't it be the best way to put them into groups, and tell us the numbers of those which relate to some

subject? Don't they relate to any particular subject, or are there 200 subjects that they relate to? Have they no possibility of being grouped together?

HERR BÖHM: Well, Mr. President, that will be hard to do, because within the individual affidavits there are always special points which have to be emphasized and which are not found in any other affidavits. However, I shall willingly shorten this procedure, and I did so when I grouped the summaries of the affidavits together; but as far as these individual affidavits are concerned, it is not really possible to find a common denominator.

THE PRESIDENT: It is a great deal more difficult for the Tribunal to follow.

HERR BÖHM: For instance, only one affidavit, namely Number 76, deposited by General Hörauf, deals with the aims of Röhm. If all the affidavits...

THE PRESIDENT: Surely, Dr. Böhm, if you are going to inflict upon us the whole of these 200 affidavits, you might at least do it in order.

HERR BÖHM: I turn then to Number 83, deposited by Adolf Freund...

THE PRESIDENT: I would think that if it is up to 83, we are not going to hear any more about it, or are we going to jump back to 1, 2, 3, and 4?

HERR BÖHM: Mr. President, these affidavits have already been grouped according to certain subjects, and I cannot therefore present them in consecutive numerical order.

THE PRESIDENT: That is all I asked you... I am afraid I must not be speaking clearly or else the translation is not coming through to you clearly. What I asked you to do was to give us the topics with which these affidavits deal, and then give us the numbers of the affidavits which deal with each topic. Now you are telling me that there are groups, and that the affidavits are grouped with reference to topics. Well, will you kindly give us the topics and the numbers of the affidavits?

HERR BÖHM: Certainly, Mr. President. I told you, Mr. President, that I was able to group the summaries of the affidavits, but that it was very difficult to follow the same procedure completely with regard to the individual affidavits. That, at any rate, was my meaning.

THE PRESIDENT: Go on.

HERR BÖHM: But I shall try to adhere to this grouping as far as possible.

I now turn to the group of affidavits which show that the SA was not a military formation. This topic is dealt with in Affidavits 25, 27, 28, and 30. That the schools set up by the Chief of Training did not have a military character is explained in Affidavits 32, 33, and 37. The sport insignia of the SA and its significance is dealt with in Affidavit Number 8. The question of whether and to what extent the "Feldherrnhalle" Division was subordinate to the Wehrmacht or to the SA is clarified by General SA Affidavit Number 18, deposed by Major General Günther Bade, the Commander of the 1st Panzer Division "Feldherrnhalle."

The next group of affidavits deals with the charge that the SA was a terrorist organization. Affidavit Number 15, deposed by General Von Hörauf, shows that it was Reich Minister Severing who approved the SA service regulations. Affidavits Numbers 19, 20, 21, 22...

THE PRESIDENT: Well, now, Dr. Böhm, I don't know whether you were in Court yesterday, but I pointed out to the counsel who was dealing with the matter then that it is utterly useless to simply read over to us the summary which we have before us. Now, you have just referred us to Affidavit Number 15 and the summary before us is this: "Franz von Hörauf, 24.6.46. Former Reich Minister Severing's failure to object to the SA service regulations." That is to say, practically the identical words which you have just repeated to us. Now, what is the good of that?

HERR BÖHM: Mr. President, I do not know the summary you have before you, I have not read it, and I have not received a translation of it. So I don't know what is contained and what is not contained in your summary.

THE PRESIDENT: You mean you haven't got this summary?

HERR BÖHM: I received a book and I repeatedly asked that I should also receive a translation of it, because since my assistants are fully occupied I myself cannot have it translated.

THE PRESIDENT: Well, if you were here yesterday, you must have heard me say over and over again to counsel who was presenting the documents that we had before us a summary and that it was useless for him to repeat the summary to us. Now, what would be useful would be, as I have already pointed out, if you would group these affidavits and tell us what topics they relate to, and also tell us which of them have been translated, and if there are any to which you particularly desire to draw our attention, which have been translated, then draw our attention to the passages in those which you wish to draw our attention to.

HERR BÖHM: The last group which I compiled is to prove that the SA was a protective organization against terror, and in this connection I mentioned Affidavits Numbers 19, 20, 21, 22, 23, and 24.

The fact that excesses in Berlin were restricted to a small circle of persons is proved by Affidavit Number 84.

THE PRESIDENT: Have any which you have just given us, which show that the SA was not a terrorist organization, been translated?

HERR BÖHM: The translations of my affidavits have not yet been returned to me, Mr. President, and I am not in a position to check which have been translated and which have not been translated.

THE PRESIDENT: But surely you must know which you have asked to be translated?

HERR BÖHM: Yes, Mr. President.

THE PRESIDENT: Somebody must have asked it.

HERR BÖHM: But I don't know whether they have actually been translated, as I did not receive any copies.

THE PRESIDENT: You can tell us which ones you wanted to have translated, couldn't you, which were being translated.

HERR BÖHM: I applied to have 21 affidavits translated; they are 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 76, 79, 82 and 89.

THE PRESIDENT: Very well. Now go on with your group, if you will. The last one you gave us was 84, which you said showed that the excesses were only very exceptional.

HERR BÖHM: On the same topic, I should like to submit Affidavit Number 87, showing the many measures taken against excesses in the West. Affidavits Numbers 84 and 57 show that the attitude of the SA toward the Jews was not hostile, as the Prosecution asserts, and Affidavits Numbers 54 and 53 show the same. Affidavits 85 and 86 deal with Document 1721 which has already been discussed here, and prove a specific case, namely, that the Gruppenführer of the Brigade "Kurpfalz-Mannheim" did not order the destruction of the synagogues. In the same connection, I should like to mention Affidavit Number 89, and finally Affidavit Number 76, which shows that after 9 November 1938, Lutze prohibited the use of the SA for purposes of the Political Leaders, insofar as he ordered that in the future the higher authorities had to approve the use of the SA at any time.

Affidavits 71 and 72 deal with the attitude of Chief of Staff Lutze himself. Affidavit Number 70 shows how people who participated in the incidents during the night from 9th to 10th November 1938 were punished. How the SA took measures of its own accord against those who had participated in the events of that night in November 1938, may be seen from Affidavit Number 4. The basic

attitude of the SA toward the Church is described in Affidavits 43, 44, and 45. The activity of physicians in the SA is evident from Affidavits Numbers 62 and 63. The facts regarding the connection of the SA with concentration camps are contained in Affidavit Number 16, deposited by Leonhard Gontermann.

Finally, to conclude this group of affidavits, I should like to submit Affidavit Number 62, deposited by Priese who is a member of the KPD and an official in the Bavarian Ministry for Political Liberation. As a political opponent who was able to obtain an over-all picture, he states that the SA cannot be called a criminal organization in the sense of Article 6 of the Charter.

THE PRESIDENT: Which number was that?

HERR BÖHM: That was Number 62, no, I beg your pardon, there seems to be a typing error—82.

Mr. President, I come now to the collective affidavits. They are summarized on about 21 pages, but I need not discuss them now, if I could have this document translated. The document is of importance because it is a summary of more than 17,000 statements, which would in my opinion . . .

THE PRESIDENT: 17,000 what?

HERR BÖHM: 17,000 affidavits.

THE PRESIDENT: Yes.

HERR BÖHM: I have summarized the whole contents of these affidavits in 21 pages and I believe that it might be of value to have the document translated. It would then not be necessary to deal with the summary now.

THE PRESIDENT: Yes, Dr. Böhm, it may be translated, but it should not be translated till after your speech has been translated.

HERR BÖHM: Very well. Then I submit this summary of affidavits to the Tribunal as General SA Number 90.

Now, I should like to discuss the affidavits submitted for members of the Stahlhelm and the SA Reiter Korps. The forced transfer of the so-called Junior Stahlhelm into the SA is dealt with in Affidavits 1, 2, 3, 5, 9, 10, 13, 18, 37, and 42. Of all the affidavits submitted in this connection, the following have been translated: Numbers 1, 2, 3, 4, and 9.

The forced incorporation of the Stahlhelm into the SA Reserve is the subject of Affidavits Numbers 1, 2, 3, 5, 19, 30, 33, 38, 7, 9, 10, 12, 16, 39, 40, 41, 42, and 43. The compulsory amalgamation of the SA Reserve with the SA is shown in Affidavits Numbers 1, 2, 5, 7, 12, 40, 41, and 42. Affidavits Numbers 1, 2, 4, 15, 17, 18, 9,

10, 11, 12, 34, 40, 41, and 42 show that the resistance of the Stahlhelm against incorporation was overcome by coercion or deceit.

Affidavits 1, 5, 6, 7, 9, 14, 16, 17, 37, 38, 41, and 42 show that, when the members of the Stahlhelm were taken over by the SA, they formed an independent unit within the SA in keeping with the assurances given to them. Affidavits 1, 2, 4, 5, 7, 10, 11, 12, 13, 15, 18, 37, 39, 40, 41, and 44 further prove that even when the promise of corporative independence had been broken, the members of the Stahlhelm continued to represent a separate ideological block within the SA. The fact that the members of the Stahlhelm who were taken over into the SA condemned the war, may be seen from Affidavits 1, 2, 5, 9, and 40.

The political tolerance and democratic views of the members of the Stahlhelm are confirmed by Affidavits 4, 5, 9, 13, 16, 37, 39, and 44. That the Stahlhelm did not advocate religious persecution is shown in Affidavits 1, 2, 9, and 18, and Affidavits 1, 2, 4, and 38 show that the Stahlhelm members who were transferred to the SA condemned racial persecution.

In view of the arrest and persecution of the members of the Stahlhelm who had not gone into the SA or who had left the SA again, those of the Stahlhelm members who had been taken over felt compelled to remain in the SA, and that is to be proved by Affidavits 1, 2, 3, 4, 37, and 39. That members of the Stahlhelm who had been taken over into the SA had reason to believe that upon leaving the SA they would encounter difficulties in earning a living, can be seen from Affidavits 1, 2, 3, 5, 6, 7, 16, 18, 34, 37, 38, 39, and 40. Affidavits 1 and 41 show that the Stahlhelm members who were transferred to the SA were kept in the SA by legal decrees and orders. That the members of the Stahlhelm who were taken into the SA Reserve remained reservists in practice, even if they were later formally assigned to active SA formations, may be seen from Affidavits 1, 7, 12, 19, 33, 40, 41, 42, 6, 12, and 30. Affidavits 5 and 42 show that the ranks of the Stahlhelm members in the SA were given out automatically and were in many cases only titles without corresponding duties.

I don't think, Mr. President, it will be possible for me to be equally brief in grouping the affidavits for the Reiter-SA, because my data on this subject make it difficult...

THE PRESIDENT: Before we hear... Haven't you already given us in your documents adequate evidence about the Riders' Corps? Surely, you have given us four documents generally which allege that the Riders' Corps was purely a sporting organization, and that being, I suppose, the topic of the affidavits, why not give us the numbers of the affidavits?

HERR BÖHM: Yes, Mr. President.

THE PRESIDENT: I am going to adjourn now. I am only indicating to you what you might do. We will adjourn.

[A recess was taken.]

HERR BÖHM: Mr. President, in connection with the Reiter Korps I should like to refer to Affidavits Numbers 1 to 5, which deal with the purpose, development, and organization of the Reiter Korps.

Numbers 6 and 7 confirm that the Reiter Korps was concerned with horse breeding, care of horses, and training in riding. Affidavits Numbers 9, 11, 12, 13, 86, 71, 72, 73, 74, 19 to 24, 87, and 88 are to establish the fact that the Reiter Korps did not commit criminal acts and had no criminal character.

That the Reiter Korps was in no way connected with the Wehrmacht and did not furnish replacements in horses for the Wehrmacht, is confirmed in Affidavits Numbers 11, 13, 86. That the Reiter Korps did not participate in the seizure of power is established in Affidavits 71 through 74, and Affidavits Numbers 19 to 24, 87, and 88 prove that the Reiter Korps did not commit crimes against humanity.

The attitude of members of the Reiter Korps to the Jewish problem is proved in Affidavits 19, 20, 21, and 88; and their attitude to the Church question in Affidavits 22 and 23. That there were differences of opinion on political matters between the Reiter Korps and the NSDAP, is explained in Affidavits 25 and 29; that the Party Leaders were even distrustful of the Reiter Korps is proved in Affidavits 31 and 85, and that those who belonged to the Reiter Korps could hardly have conceived the idea that their membership in the Reiter Korps made them members of a criminal organization, is stated in Affidavits 76, 34, 77, 33, and 35.

Finally, I should like to give a brief list of affidavits dealing with the Reiter Korps in the various zones and areas of Germany. First the British Zone: Affidavits NSRK 37, 38, 39, 40, 78 refer to the Rhineland; 41, 42, 79 to Westphalia; 43, 44, 45 to Hanover; 46 to Oldenburg; 47 to East Frisia; 48 to Bremen, Hamburg, and Holstein.

In the American Zone: For Bavaria, Affidavits 49, 50, 51; Württemberg, 52, 53, 54; Hesse, 55, 56, 57, 80; Baden, 58, 59, 60; Upper Swabia, 61, 62; Palatinate 63.

For the French Zone, Affidavit 81; and for the Russian Zone, Saxony, 64; Thuringia, 65; East Prussia, 66 and 67; Berlin and Brandenburg, 82; Pomerania, Mecklenburg, 83; Silesia, 84.

Mr. President, I should now like to make two applications. The first application is that I may be allowed to introduce as evidence

the affidavits deposed by Dr. Kurt Schuhmacher and Judge Advocate General Dr. Stapff, of Brunswick, which the Prosecution has obtained. I should like to ask that the affidavit of Dr. Kurt Schuhmacher be given Number SA-91, and that the affidavit of Judge Advocate General Dr. Stapff of Brunswick be given Number SA-92.

THE PRESIDENT: But are they already offered in evidence by the Prosecution?

HERR BÖHM: They have not yet been submitted in evidence, but I should like to introduce them. I do not know whether they will be submitted by the Prosecution. At any rate, I think that valuable material for the defense of my organization is contained in these affidavits, which were obtained not by me but by the Prosecution.

THE PRESIDENT: Why do you refer to the Prosecution then?

HERR BÖHM: The Prosecution has the original of those affidavits, Mr. President. I merely received a copy which was placed in my pigeonhole in counsel's room. That is how I learned of them, and I must mention that, because I now have to ask the Prosecution to give me the originals so that I may submit them.

THE PRESIDENT: Yes. Well, is there any objection, Sir David, to the . . . ?

SIR DAVID MAXWELL-FYFE: My Lord, these were the affidavits to which we referred at the close of the evidence of the witness Jüttner. My Lord, we proposed, as I told the Tribunal, to put in certain affidavits in rebuttal. These two were affidavits which we did not propose to use, but we gave copies to the Defense, and I said that I had no objection to the Defense using them if they so desired. If they think they can get any benefit from them, they can use them as far as the Prosecution are concerned. My Lord, that is the position.

THE PRESIDENT: Yes. Very well, then, Dr. Böhm, you can offer those in evidence. SA-91 and 92, did you say?

HERR BÖHM: Yes, Mr. President; and then I should like to make a second application with regard to the admission of an affidavit by Arnolf Rechberg. I wanted to submit that affidavit to disprove the allegation of the Prosecution that the SA was a uniform entity and that the conspiracy on the part of the SA must be regarded as a uniform action. This affidavit mentions that there was quite definitely a lack of unity in the SA because elements faithful to Moscow had deliberately infiltrated into the National Socialist organizations of the SA and the SS; this process began already before July 1930, and by July 1932, 24,000 Communists, partly upon instructions from Moscow, had changed over to the SA.

It is also mentioned that this infiltration continued after the seizure of power.

THE PRESIDENT: Has this affidavit been submitted to the Commissioners and has it been submitted to the Prosecution?

HERR BÖHM: Yes, certainly, Mr. President, this affidavit was discussed before the Commission, but was not admitted by the Commission. However, I had the alternative of discussing the document before the Tribunal and of asking the Tribunal to admit it, and I have now made use of that alternative. I should like to explain my view by saying that this document is of the greatest probative value, namely, in the following connection: fundamentally, the SA was based on national ideas, whereas these people, whose ideas certainly did not run on national but on entirely different lines, brought into the SA a spirit which no doubt destroyed the uniformity alleged by the Prosecution and which made the alleged uniformity of the aims of the SA quite impossible, for the aims of National Socialism were surely quite different from the aims of the people mentioned in this affidavit.

THE PRESIDENT: Yes, Sir David?

SIR DAVID MAXWELL-FYFE: My Lord, I object to this affidavit as being completely irrelevant and based on sources which have no probative value whatsoever. My Lord, if Your Lordship has in front of you the proceedings before the Commission, at Page 3221, My Lord, there is a summary of the affidavit there. Paragraph 1 of this summary is, "Elements loyal to Moscow infiltrated into the National Socialist combat organizations, SA and SS, consciously, by order of Moscow."

My Lord, that shows the sort of allegation that is made. It is made by Herr Rechberg who, of course, is a person who shows from the affidavit no possible grounds for any confidence being put in his statements. The same applies to the allegation in Paragraph 2 about the 24,000.

My Lord, in Paragraph 4, there is some reference to correspondence which took place between Herr Rechberg and Sir Wyndham Charles and Sir William Turrel, as he then was. But again I have seen the letters. They are clearly cases of somebody pestering these people with letters and getting a reply.

THE PRESIDENT: Sir David, what—in what way does this deponent describe himself? Is he a member of the SA?

SIR DAVID MAXWELL-FYFE: My Lord, I don't—I just saw the affidavit in German this morning. He does not say he is a member of the SA. He is merely a business man who had certain interests in these matters. He quotes two pages from newspapers, one a secondary sheet and one a practically unknown German paper,

which contained declarations by a Soviet official. My Lord, it would be in my submission an abuse of the purpose of the Court, if evidence of an unknown German paper, purporting to quote a Soviet official, were to be taken as a basis in this matter. And, My Lord, as I said, if it were all based on proper evidence, and if the affidavit were the affidavit of a person who showed any grounds of his affidavits being useful, it would still be completely irrelevant to the question of criminality which is before the Court. I respectfully request Your Lordship to uphold the learned Commissioner who excluded it when it came before the Commission.

THE PRESIDENT: Is there anything you have to add, Dr. Böhm?

HERR BÖHM: Mr. President, my view in this matter is quite different from that of the Prosecution . . .

COLONEL Y. V. POKROVSKY (Deputy Chief Prosecutor for the U.S.S.R.): My Lord, the Soviet Prosecution fully agrees with the point of view submitted by Sir David. I would like to add a few words to the objection which he made. Apart from the fact that the Commission has already rejected this document as being irrelevant and without any probative value, I would like the Tribunal to take into consideration that the author of this document is well-known as the source of a number of provocative anti-Soviet inventions. This document contains nothing but slanderous, provocative, dirty attacks in a style typical of the author; such attacks have, I repeat, nothing to do with the present case. At the same time I would like to bring to the Tribunal's attention our objection to Documents 85, 286, 287, and 132. Unfortunately, Sir David did not have the copies of these documents and therefore did not take them into consideration. All four of the documents I have mentioned refer to the year 1925, and to problems connected with the inter-party strife in Germany. They therefore have nothing at all to do with the present case. The last document to which we object is Document 82, of which we have only just heard for the first time. It mentions some person whose name I have forgotten for the moment. Counsel said that he is a former Communist who comes to the conclusion that the SA is not a criminal organization under Article 6 of the Charter. We are of the opinion that this man is in no way competent to draw expert conclusions on questions which only the Tribunal can decide. That is all I wanted to say, My Lord.

THE PRESIDENT: Thank you. Do you want to say anything more, Dr. Böhm, before the Tribunal decides?

HERR BÖHM: Yes, Mr. President. Naturally, I have no intention whatever of abusing the Tribunal, as the Prosecution has just suggested. But the Prosecution has on more than one occasion asserted—and this is shown in the record of 18 December, afternoon

session, and 19 December, morning session—that the SA was a uniform whole and was also united in its aims, and it is my contention that this affidavit is evidence to the contrary. It is also wrong to say that the man's testimony is not trustworthy. The representatives of the Prosecution have known the contents of this affidavit ever since it was discussed before the Commission, they have all known the name of this man and his residence in Germany, and if there had been any doubts about the credibility of this man, then they could have been brought up today, but obviously that was not done. The simple statement that one cannot believe him is no reason for requesting that his affidavit be rejected.

Since I am still of the opinion that such a large number of people with different political views would disorganize and nullify the common, uniform aims of the SA, I must insist that this affidavit be admitted.

THE PRESIDENT: The Tribunal thinks the decision of the learned Commissioner was correct, and the document will be rejected for that reason, and on the grounds that it is irrelevant and the deponent has not stated any grounds for his knowledge. The document is rejected therefore.

HERR BÖHM: Mr. President, I should like to clear up one more question. I was not able to deal with all the evidence contained in my document books, in view of the short time at my disposal. I should therefore like to know whether the judgment will consider the factual and legal aspects of all the documents in my book; for otherwise only part of the material which I regard as important would be taken into consideration. I would like to request, therefore, that all the material which I have submitted be taken into consideration. If I had dealt with all the documents, my evidence would have taken about 6 hours, and since that was impossible, I should like to be sure that all my documents will be considered in the judgment of the Tribunal.

THE PRESIDENT: Perhaps we had better hear you, Dr. Böhm, about these affidavits which have been objected to by the Soviet Prosecutor: 82, 85, 86, 87, and 132. I take it that the Commissioner accepted these affidavits. Have you got the numbers?

HERR BÖHM: Mr. President, all the documents and affidavits which I discussed during the session today were dealt with before the Commission.

COL. POKROVSKY: I beg your pardon, Mr. President. Evidently there has been a misunderstanding in the translation. I mentioned Numbers 85, 286, 287 and 132. These documents are not written statements and, accordingly, were not submitted to the Commission. The last number I gave was 82. This document was mentioned today for the first time.

THE PRESIDENT: What are they; are they affidavits, or what are they?

COL. POKROVSKY: They are documents, My Lord, with the exception of 82. Numbers 85, 286, 287, 132 are various documents.

THE PRESIDENT: Wait a minute, Colonel Pokrovsky, the numbers are not coming through accurately in the translation. What are the numbers? Read them slowly, please.

COL. POKROVSKY: 85 . . .

THE PRESIDENT: 85 did you say? It just now came through as 285, you mean 85?

COL. POKROVSKY: 85. I keep repeating—85.

Then 286, 287, and 132—these are documents. The last number is 82, which is an affidavit.

THE PRESIDENT: Thank you.

Now, Dr Böhm, do you want to say anything about this?

COL. POKROVSKY: I beg your pardon, My Lord. On our copy I gave the number of a document incorrectly. Would you correct Number 85 to 285. So the numbers are 285, 286, and 287. We have just submitted a list of these documents to the Secretary of the Tribunal.

HERR BÖHM: Mr. President . . .

THE PRESIDENT: One moment, Dr. Böhm.

The Tribunal will consider the objections on these documents. And Dr. Böhm, I ought to give you the opportunity of saying what you wish about these documents.

HERR BÖHM: First of all, I want to defend myself against the charge that I did not discuss these documents with the Prosecution. There is not one document in my document book which I have not discussed with Mr. Griffith-Jones, and no other documents have been added to the book. The documents objected to now were included in the book in agreement with Mr. Griffith-Jones. Documents 285, 286, and 287 are extracts from findings of the State Tribunal for the Protection of the Republic, and of the Supreme Reich Court. Their contents are known to the Tribunal; they are in evidence. We are not dealing here with the attitude taken by any particular side with regard to the activities of the Communists during the period under discussion, but with facts which have been established from a report made by the police headquarters at Stuttgart and based on a literal quotation from the verdicts delivered on the matters in question.

My Document 132 is a photostat copy of the *Deutsche Tageszeitung* with a detailed Communist plan of operations for a proposed

Putsch in Berlin. These plans are reproduced here, they are commented upon, and they show that in the Germany of that time it was necessary to create an organization capable of giving protection against such intentions. It is for this reason only that Document 132 was included in my document book.

Affidavit Number 82 is, I believe, one of the last affidavits; it was also discussed with Mr. Griffith-Jones—with Mr. Marreco, and was admitted by the Commission.

I think that the objections raised today in this respect are somewhat belated.

THE PRESIDENT: Dr. Böhm, the Tribunal will take into consideration the matter of these documents and will let you know their decision.

HERR BÖHM: Very well, Mr. President. I have nothing further to say.

LT. COL. GRIFFITH-JONES: My Lord, I have these few documents to put in in rebuttal. My Lord, first I have a document to which Sir David referred in his cross-examination of Jüttner the other day, which was not formally put in. It is D-972, which becomes Exhibit GB-618.

My Lord, secondly I have a document to put in in rebuttal of a document contained in the SA Defense Book, Number SA-156, which was a decree from the Munich University Department to the SA, which, on the face of it, appears to say that membership of the SA was compulsory for all students.

My Lord, I have another document which is very similar in character, and based upon the same order of the Supreme SA Command, which was issued by the SA University Department for Cologne. It is dated two days before the Munich Decree which Dr. Böhm put in. I think you have been given copies of both—translations of both, for your convenience. It will be dealt with later. I would only at the moment draw your attention to Paragraph 3 of each document.

My Lord, taking, if I may, the Munich Decree—that is to say, the SA document—Paragraph 3 reads:

“According to the decree of 7 February 1934, SA Service (SS Service) is compulsory for all German students. In accordance with the decree of the Supreme SA Leadership, F 6914, of 27 March 1934, the ban on taking on newly matriculated students is raised in the period from 25 April to 5 May. All newly matriculated students are therefore bound to join the SA. They have to report at the latest on 5 May 1934 to the local offices.”

Now, if I might just refer the Tribunal to the similar paragraph in the order issued by the Cologne SA University Department, one sees, at least, that that was not common to all universities. The Tribunal will see that it starts in the same way:

“According to the decree of 7 February 1934”—the same decree—“SA service is compulsory for all German students.”

My submission is that that SA service referred to there and in the Munich Decree is not membership in the SA, but a course of training run by the SA. If one might draw a parallel, it is practically the same as what we know in England as the Officers' Training Corps in the public schools.

And then you see, the remainder of the paragraph is considerably different:

“In accordance with the decree of the Supreme SA Leadership”—and it quotes the same decree—“the ban on taking on newly matriculated students is raised in the period”—the same period—“from the 25th of April to the 5th of May. Every student is thereby offered the possibility of joining the SA.”

The SA service is compulsory, but the joining of the SA, becoming a member of it, is left purely to the student himself. He simply is offered the possibility of joining.

My Lord, the matter will be lodged by Sir David in his final address to the Tribunal, and I can leave it for the moment by drawing your attention to these two paragraphs. That document will be GB-619. The Munich Decree is, of course, SA-156, My Lord, and I have a number of short affidavits to put in in rebuttal of the many thousands which have been submitted by the Defense.

Perhaps first I might draw the Tribunal's attention to those two which Dr. Böhm has asked to be submitted—first of all, to the affidavit of Dr. Stapff, which is D-946, and I might mention that the only reason that these two affidavits were not going to be submitted by the Prosecution is because they are not actually in the form of affidavits, but a declaration. Some error was made in obtaining them, and they do not show on the face of them that they are affidavits.

THE PRESIDENT: Colonel Griffith-Jones, haven't we already admitted them? Sir David said that he didn't object to their admission.

LT. COL. GRIFFITH-JONES: I was only going to draw the Tribunal's attention to the one passage, if I might. I think, taking D-946, the second paragraph is the paragraph from which Dr. Böhm probably hopes to receive some assistance. I would draw the Tribunal's attention to the last paragraph which deals with the SS. The remainder of the document describes the appalling atrocities

which were happening in Dachau in and around the year 1934. In fact, the last paragraph particularly, "As far as the SS proper is concerned—in contrast to the Waffen-SS, the conditions of which I am not in a position to judge—the pretext of compulsory membership cannot be credited in my opinion."

And then he goes on to explain why he thinks so. My Lord, I have...

THE PRESIDENT: This is SA-91 or 92, isn't it?

LT. COL. GRIFFITH-JONES: 91. I had forgotten that they had been given. And the second one is the affidavit of Dr. Schuhmacher, D-947, which will be handed up to the Tribunal, SA-92. I think the second half of Paragraph 1 is probably the paragraph to which Dr. Böhm referred: "That voluntary membership remained customary extensively after 1934..."—well, he is dealing now with the SA and the SS—"In a great number of cases membership resulted also from direct or indirect pressure or was the result of personal wrong speculations." And then he says that that is so particularly in the case of the Stahlhelm, and that the Stahlhelm consisted of a number of persons who were not National Socialists.

My Lord, I would draw the Tribunal's attention particularly to the last paragraph, Number 4, of that affidavit, which deals with Blockleiter and Zellenleiter. They "were the foundation for the whole system of terrorism, including the activity of the Gestapo."

DR. SERVATIUS: Mr. President, this document which is being introduced is directed against the Political Leaders, and I object to its use, but for a reason different from the one which has so far been mentioned. I have received a number of copies of these affidavits, and they are the outcome of a general inquiry which has been made. Only some of the answers to this inquiry are contained in the document, and it is my contention that if the result of such an inquiry is utilized at all, then all answers available should be submitted. I think that if, say, one hundred questionnaires were sent out, then there must be material for the defense of the Political Leaders in those answers which the Prosecution has not submitted. I request, therefore, that if the document is admitted, all the results of the inquiry be submitted. We can then obtain a true picture, which might be more useful to me than the testimony of the members of my organization, because the people who have deposed those important affidavits are opponents of National Socialism, and because I must assume that favorable arguments, which might be very valuable as part of a general picture, are contained in those affidavits which have not been submitted.

THE PRESIDENT: Colonel Griffith-Jones, the Tribunal doesn't think it is right at this stage of the Trial to allow this document

to be put in against the Political Leaders, and therefore the document will have to be excluded altogether.

LT. COL. GRIFFITH-JONES: My Lord, if that is so, then that, of course, will apply to the other eight or nine affidavits that the Prosecution has got. These affidavits were obtained to rebut the vast mass of material which has been put in in the form of affidavits by all those organizations. In actual fact, I can state that there were no other affidavits other than the ones that I am proposing to put before the Tribunal, and these two which we were not intending to put because, as I say, they were not in the form of an affidavit; but there are no other affidavits that we have obtained and they, all of them, or most of them, deal with one or more or all the organizations. They are put in simply in rebuttal of the mass of material which has been presented to the Court on behalf of the defense of those organizations. And, if I might say so...

THE PRESIDENT: I think you had better offer those so we may see them. We have seen this one, and we know, of course, from what you have told us that it is one which the Prosecution had before and did not propose to offer, but the others may be different.

LT. COL. GRIFFITH-JONES: My Lord, they are all in very much the same form, and of course, Defense Counsel have had copies of them now for nearly a fortnight.

THE PRESIDENT: Well, you had better offer them to us and we can look at them.

LT. COL. GRIFFITH-JONES: And without referring the Tribunal to any particular passage?

THE PRESIDENT: No, I think you had better offer them and refer to the passages, and we will see whether we will admit them.

LT. COL. GRIFFITH-JONES: If Your Lordship pleases.

DR. SERVATIUS: Mr. President, may I add one remark? These affidavits all originate from persons who are today holding high government offices. They are probably the most important of all the affidavits which have so far been submitted, and I shall now have no opportunity to investigate how they may be refuted in detail. I should like to be in a position to do so, but that, of course, is no longer possible at this stage. Moreover, I did not even know whether these affidavits would be introduced or not, and I have now completed my evidence and am ready with my final speech.

LT. COL. GRIFFITH-JONES: My Lord, might I say this? Sir David, of course, asked the Tribunal's permission to put these in some days ago, the Tribunal will remember. Ever since then Defense Counsel have had an opportunity of investigating and seeing these documents and Dr. Servatius says that he has no—he had no

opportunity to investigate, whatever he means by that, these documents. The Prosecution has had no kind of opportunity to investigate the 300,000 affidavits that have been put in on behalf of the Defense.

THE PRESIDENT: The Tribunal considers that they had better look at them and see.

DR. SERVATIUS: Mr. President, may I draw your attention to a point of formality? I have not got the documents at the moment, but as far as I was able to see, they were deposed after 7 May, which was the key-date, and they do not comply with the formalities. They should have been certified before an officer, but some of them were only certified before a notary; so that according to the rules of the Tribunal which have been in force up to now, they would have to be rejected. I myself have not been able to introduce any statements which were not certified or sworn to before an officer.

LT. COL. GRIFFITH-JONES: At least half of them were performed before Mr. Marreco, counsel, whom you know. Others, from the north of Germany, were—there I agree—some of them performed before local notaries. My Lord, some were performed before Mr. Marreco, of course, who is an Allied officer, and others appear to be sworn before notaries. And as I say, the two that Dr. Böhm had hoped to put in were not signed before anyone.

THE PRESIDENT: I think we should see the documents before we consider the objection.

LT. COL. GRIFFITH-JONES: Might I hand up first D-929, which becomes GB-620. My Lord, it is an affidavit by Dr. Anton Pfeiffer, Bavarian Minister of State, in the State Ministry for Special Tasks.

THE PRESIDENT: When was he Minister?

LT. COL. GRIFFITH-JONES: He is now—he says that: “At the time of the seizure of power, in the year 1933, I was Secretary General of the Bavarian People’s Party.”

DR. BÖHM: Mr. President, it was precisely in order to prevent the type of proceedings which are developing now, that during the hearing of the witness Jüttner I...

THE PRESIDENT: Dr. Böhm, the type of proceedings which are now going on are the type of proceedings which the Tribunal has just ordered. The Tribunal wishes to see the documents in order to decide upon them. Go on, Colonel Griffith-Jones.

LT. COL. GRIFFITH-JONES: My Lord, in that affidavit he says that pressure was brought to bear on certain officials to make them join the Party, that is, civil servants. And then he goes on in the latter half to say how he and other people heard of and knew

about the atrocities that happened in the East and the annihilation of the Jews. He says in the center paragraph, "I am not aware that officials who were Party members were threatened with dismissal from the service if they refused to accept a political Party job, like Blockleiter or Zellenleiter." At any rate, he says: "I never heard of such a case." My Lord, I don't think it is necessary for me to read any other passages of that affidavit, Number D-929.

My Lord, the next affidavit to which I shall refer is D-949, which becomes GB-621, from the Lord Mayor of Brunswick. He describes himself, he gives his own personal data. He then goes on to describe the activities of the SA from 1921 to 1923, in the first paragraph of Number 1; that is, he then goes on to describe their activities in 1933, how he himself was removed from his office by the SA. On the next page, he describes how he was led out of the town hall and put into prison, by the SA again. In the next paragraph he states that membership in the SA was absolutely voluntary until 1937. "While until 1933 one could assume that many SA members acted in good faith, believing that the SA had a just task for combating Communism, after the events of March 1933 there was, in my opinion, no longer any doubt that the SA acted contrary to law by their participation in the seizure of power by Hitler." Then he goes on to say how they distinguished themselves later in illegal manner.

He deals then with the SS. He says that they were voluntary except for those SS that were compelled to join during the course of the war, or drafted to the SS during the course of the war.

He then goes on in the last paragraph of that page to describe his own illegal arrest by the SA—SS and the appalling torture to which he was subjected by members of that organization. He says, some 12 lines down that next page: "Before I was ill-treated, I pointed out that I was a war cripple, to which Sturmführer Meyer replied that in that case the arm would be spared." And he was then beaten with hippopotamus-hide whips until he was unconscious; when he was knocked out, he was revived with cold water and beaten to unconsciousness again.

The second small paragraph on Page 3: "The organization and the ideology of the SS were aimed so exactly and so pitilessly at eliminating political opponents and so-called racially inferior persons that everyone who joined it was bound to realize its criminal nature."

My Lord, I pass on to the next one that I offer to the Tribunal, D-938, which becomes GB-622. That is an affidavit from Dr. Viktor Fenyes, President of the Central Committee of Former Political Prisoners of the Province of Hanover. It first of all deals with the Leadership Corps, in particular the Block- and Zellenleiter.

THE PRESIDENT: Would you tell us, as you introduce each one of these, how they were taken and before whom?

LT. COL. GRIFFITH-JONES: My Lord, I am very much obliged, of course. That one was taken—if the Tribunal would look at the next page of it, it was taken on oath before a notary in Hanover. The previous one—My Lord, the previous one states that it was taken on oath, but I am afraid it is not witnessed.

My Lord, dealing with D-938, as I said, he deals with the Block- and Zellenleiter and he states there was definite pressure brought on people to join the Party, pressure by way of threats; that they assisted in the persecution of the Jews and that the Block- and Zellenleiter participated, almost without exception, in the setting on fire of the synagogues in 1938. It then deals with the SA, "membership was voluntary." In the last three lines he states that former members of the SA protest to-day they entered the organization under pressure. This is not true, for actually not everyone was admitted into the SA. My Lord, he then goes on to deal with the SS; I think it is only cumulative to read any of it again.

My Lord, the next document was one which was signed before Mr. Marreco, D-931, which becomes GB-623. He is the Secretary General of the Bavarian Peasants' Union in Munich, Dr. Schlögl, who was a delegate of the Bavarian Diet at the time of the seizure of power by the Nazis.

Dr. Alois Schlögl, My Lord, was the victim of an assault. And the decision of the Court against the SA men who perpetrated that assault is already before the Tribunal. It was D-936, GB-616, and the Tribunal will remember that, because the decision stated that the deeds and intentions of the SA men were only aimed at the well-being of the National Socialist movement. Political reason and the purity of the intentions was thus beyond doubt. Dr. Schlögl in his affidavit described the ill-treatment he received. And then he says in the third paragraph, "Following my complaint, the perpetrators were not punished but pardoned, the ringleader Bernhard was promoted as a reward and, as I have been told now, rose to the rank of Brigadeführer."

He goes on to say that in his opinion the criminal nature of the SS and SA were common knowledge and that everybody who joined them must have known to what use they were to be put by the Party. And then he—in the last paragraph he...

THE PRESIDENT: Well, perhaps you could just hand them up and not read them into the record, because the Tribunal reserves the right to reject them.

LT. COL. GRIFFITH-JONES: Yes, My Lord. I submit D-934, which is an affidavit—D-934 becomes GB-624, which is an affidavit

sworn before Mr. Marreco, an affidavit by Albert Rosshaupter, Bavarian Minister of Labor in Munich.

D-932, which becomes GB-625, is an affidavit also sworn before Mr. Marreco.

D-933, which becomes GB-626, by a Joseph Ackermann, a director, of Munich, also sworn before Mr. Marreco.

And Affidavit D-950, which becomes GB-627, of a Mr. Adolf Fahlbusch, which was sworn before a notary in Hanover.

Perhaps I ought to say of all the affidavits which were not taken by Mr. Marreco, they were taken by the Legal Division of the Control Commission for Germany, or were taken under their auspices. This Legal Division of the Control Commission for Germany were asked to obtain these affidavits and that is how it comes about that they were perhaps not sworn in accordance with the regulations laid down by the Tribunal.

THE PRESIDENT: Is that all?

LT. COL. GRIFFITH-JONES: My Lord, I have one further affidavit of a somewhat different nature, which shows the credit of, or the value the Tribunal should place on, the affidavits which have been submitted by the Defense. It is an affidavit of an SS man who was in one of the internment camps in the British zone when the questionnaire was filled out at the camp, the questionnaire which I understand the Tribunal allowed the Defense Counsel to submit in these camps. My Lord, I have this affidavit, which I shall hand up to the Tribunal; it is D-973 and becomes GB-628, an affidavit by Mr. Kurt Ehrhardt.

My Lord, he was an SS man who joined the SS in 1933; he never took any part in their activities and was dismissed from the SS in 1937 because he had a Jewish partner and a Jewish brother-in-law. He was...

THE PRESIDENT: I can get all this from the affidavit, I suppose.

LT. COL. GRIFFITH-JONES: My Lord, that affidavit does not show on the copy that it was signed on oath and before whom. My Lord, the original shows that it was sworn before Major Hill of the British Delegation. My Lord, that...

THE PRESIDENT: Could you tell me when it was that Sir David Maxwell-Fyfe offered to introduce these affidavits, or intimated he was proposing to do so?

SIR DAVID MAXWELL-FYFE: My Lord, I shall check it during the adjournment; I would have thought it was the Friday before last, because it was before—My Lord, it was certainly before—I cross-examined the SA witnesses. As Your Lordship may remember, I offered as the alternatives either to put the affidavits to the

SA witnesses or to put them in with the—after the documents of the Defense Counsel were presented.

THE PRESIDENT: That is what I wanted to know. That will be in the transcript, I suppose, that you said—if you could let us know.

SIR DAVID MAXWELL-FYFE: Yes, My Lord, I understand it was accepted that Your Lordship asked if there were any objections and I said that I would give copies at once. And, My Lord, there was no objection from those over there. That is my neglect and I will find the place for Your Lordship.

HERR BÖHM: Mr. President, I recall this matter very clearly. I brought up the subject of these affidavits during the examination of the witness Jüttner, and in view of my objection the Tribunal stated at the time that, if these affidavits were to be presented, they had to be presented then. My objection was that I would no longer be in a position to refute the affidavits once my last witness had been heard, because I would then have no other means of introducing new evidence. I took the decision of the Tribunal to mean that the Tribunal agreed with me that affidavits should not be submitted by the Prosecution once I was no longer able to reply to them as part of my own evidence, and that these affidavits should be submitted while the evidence was being taken, or before that.

THE PRESIDENT: Dr. Böhm, we will refer to the transcript to see exactly what happened.

SIR DAVID MAXWELL-FYFE: My Lord, they had already been mentioned before the incident arose. That was an incident that arose with regard to Dr. Högner's affidavit during the evidence of Jüttner. All the affidavits were mentioned at an earlier date which I'll discover for Your Lordship during the adjournment.

THE PRESIDENT: Very well, then the Tribunal will adjourn now and will sit again at 2:30.

[A recess was taken until 1430 hours.]

Afternoon Session

THE PRESIDENT: With reference to the first group of documents which were objected to by the Soviet Prosecutor, the Tribunal thinks that, as those documents had been included in the Document Book for the SA after the agreement and the Affidavit 82 had been allowed by the Commission, in spite of the fact that those documents relate to a remote period, they ought to be allowed. They are, therefore, admitted. They are Documents 285, 286, 287, 132, and 82.

With reference to the 11 affidavits—perhaps I should say to the 10 affidavits which the British Prosecution offered in evidence, the Tribunal has reconsidered the shorthand note which shows what Sir David Maxwell-Fyfe said on the 9th of August and what was said on the 14th of August and on the 15th of August, and although there was at that time no doubt a suggestion that these documents might be put in, the Tribunal considers that the question still has to be considered whether the documents ought to be admitted as rebuttal. In view of the nature of the documents, the Tribunal thinks that the documents are not proper evidence in rebuttal on the whole, and that therefore they ought to be excluded. That includes all the affidavits with the exception of the affidavit of Kurt Ehrhardt, which stands in a different position. In view of the nature of the evidence contained in that affidavit, it will be admitted.

That is all.

HERR BÖHM: Mr. President, I should like to ask you to hear me a moment longer. In my presentation of documents, I avoided quoting from my document books. As, however, this morning the Prosecution put Document SA-156, which is a directive of the SA University Department in Munich, in juxtaposition to the same directive as given out by the SA Hochschulamt in Cologne, I should like to point out that in Figure 3 of both of these directives the same decree of 7 February 1934 is mentioned and that when these two documents are put in juxtaposition, it says in each case, "For all members of the German student body service in the SA has been made obligatory." In order to make it understandable that the Prosecution believed they had found a contradiction, I should like to read the last sentence under Figure 3 of the directives issued by the SA University Department in Cologne.

THE PRESIDENT: The Tribunal will consider the true interpretation. We quite understand that on the one hand you are contending that the service in the SA was compulsory and the Prosecution are contending the opposite, and they are putting in

this other document which they say supports their view. It isn't necessary to have an argument about it at this stage.

HERR BÖHM: I merely wished to add four more words, four words to the last sentence of Figure 3, "...or not to study."

Then the Russian Prosecutor stated today that Document 91...

THE PRESIDENT: Are you saying that there is some misprint in the document or what?

HERR BÖHM: No, Mr. President, I wanted to...

THE PRESIDENT: Then you are simply arguing on the interpretation of the words and I have told you that the Tribunal will consider the interpretation and decide the interpretation for itself.

HERR BÖHM: Very well, Mr. President; but may I put in the next document, which the Prosecution asserts I submitted only because of the last paragraph. That is not correct. The next document, General SA-91, was not submitted by me because of the last paragraph, but rather because of the first paragraph. That refers to the attitude of the Attorney General with the District Court of Appeal in Brunswick.

THE PRESIDENT: All right. We understand that you rely on the first paragraph and not on the last paragraph.

HERR BÖHM: Yes, Mr. President. Thank you very much.

HERR PELCKMANN: Your Lordship, may it please the Tribunal. Yesterday, on behalf of the SS which I represent, I submitted a summarization of 136,213 affidavits. I ask you not to confuse this summarization with some statistics, which I said at the conclusion of yesterday's session I would submit without comment. Everything that I said yesterday about the testimony and points of view of SS men refers only to the 136,000 affidavits which contain a complete text and which are independent affidavits. The statistics which I mentioned toward the end of yesterday's session are based on a questionnaire, and are not to be confused with those 136,000 affidavits which I used. This questionnaire, however, was not asked by me. I did not attach any value to this questionnaire and the replies made in answer to it, and I merely handed it in—merely handed in these statistics—in order to get rid of all the material which I had received. I did not ask for this questionnaire, and I was not the attorney or defense counsel for the SS mentioned by Herr Kurt Ehrhardt in his affidavit. It is well known to the High Tribunal that the defense has changed counsel in the meantime.

THE PRESIDENT: Yes, we quite understand that it was not asked for by you. We accept that.

HERR PELCKMANN: Still, I should like to clarify matters by stating that the assertion made by Herr Ehrhardt does not refer to the 136,000 affidavits, but rather to the answers to a questionnaire. I should expressly like to withdraw as evidence the statistics which I announced yesterday in a couple of words, and which the General Secretary now has. I do not attach any value to these statistics.

THE PRESIDENT: Dr. Pelckmann, you are going to make a speech, aren't you, in a few days time. Isn't this a matter with which you will deal then? You will have the opportunity of criticizing Ehrhardt's affidavit. This isn't the time to do it.

HERR PELCKMANN: Mr. President, I believe it is my duty to state my views concerning an affidavit which has been submitted by the Prosecution even though the presentation of evidence has been concluded. I will do more...

THE PRESIDENT: Well, Dr. Pelckmann, I just told you that it is not your duty and you will be able to deal with it when you make your speech and therefore the Tribunal doesn't desire to hear any more about it.

HERR PELCKMANN: In order to reply to this affidavit by Herr Ehrhardt, although I attach no value to the statistics, I request you to summon two witnesses from this camp, for naturally I cannot...

THE PRESIDENT: If you want to make an application, you must make it in writing. Now, Dr. Servatius.

CHIEF COUNSELLOR OF JUSTICE COLONEL L. N. SMIRNOV (Assistant Prosecutor for the U.S.S.R.): Mr. President, I ask to make two short applications on behalf of the Soviet Prosecution. The first one is concerned with the excluding from the record of the morning and afternoon sessions of 23 April 1946 of the discussion which...

THE PRESIDENT: Don't go too fast, April what?

COL. SMIRNOV: 23 April, Mr. President; the morning and afternoon sessions of 23 April. The discussion which arose about the official appendix to the report of the Government of the Polish Republic. I mean the directive from the Department of Propaganda in Poland. The witness Bühler declared here that he doubted the authenticity of this document and referred to certain expressions which seemed to him not quite German, but alien to the German language. Upon investigation of this episode, it appears that the witness had not seen the German original but a translation from German into Polish and then from Polish into English and then from English back into German which, of course, caused a certain confusion in terminology. As far as I was informed,

Dr. Seidl, counsel for the Defendant Frank, became familiar with this document and has not objected to excluding this part from the minutes inasmuch as it was caused by the defects of translation. All these documents have, therefore, been submitted to the Secretariat of the Tribunal. That is the first application which I would like to submit to the Tribunal. The second one is...

THE PRESIDENT: I am not certain, but I thought we had already dealt with that point, in view of Dr. Seidl's withdrawing his objection to that document, and perhaps you can find out afterward whether we have already dealt with it. There was certainly a document presented to us from Dr. Seidl in which he said that, having checked up on the particular document with which he was dealing, he was now convinced that it was all right.

COL. SMIRNOV: Yes, Mr. President. As far as I know, Dr. Seidl does not object to excluding this part from the record because the confusion was caused by a faulty translation.

THE PRESIDENT: You mean that your application is to strike out Bühler's evidence?

COL. SMIRNOV: On the part concerning this document.

THE PRESIDENT: We will consider your application, Colonel Smirnov.

COL. SMIRNOV: The second application consists of the following. In the report of the Polish Government submitted to the Tribunal, in many cases only incomplete figures are stated for the losses suffered by Poland as a result of the war. This was caused by the fact that at the time when the report was made, these losses had not been calculated yet, and I would like to ask the Tribunal to admit an official memorandum of the Presidency of Polish Ministers, War Reparations Branch, which contains the complete figures of the losses suffered by Poland during the second World War. The text of this document has been translated into all four languages; that is to say, into English, Russian, French, and German. That is my second application to the Tribunal. I have no more applications to make, Mr. President.

THE PRESIDENT: Are you suggesting that this is evidence in rebuttal?

COL. SMIRNOV: No, Mr. President, it was caused by the inexact translation. This is a document supplementing the governmental report of the Polish Republic with the exact figures of the losses suffered by Poland during the war. It contains data on the military losses of Poland during the second World War, on the losses in manpower and in property. It is a supplementary document and not one in rebuttal.

THE PRESIDENT: Colonel Smirnov, the document is dated 29 January 1946, and now you wish to offer this document in evidence at the end of August 1946, at the very end of this Trial.

COL. SMIRNOV: Mr. President, this document was given to the Soviet Delegation only recently, quite recently. Obviously some time was needed for the translation of this document into four languages. Anyhow we received it only very recently.

THE PRESIDENT: I wasn't suggesting that you were in any way to blame, Colonel Smirnov. The Tribunal thinks that this document can't be put in at this late stage; the document appears to have been made a long time ago and though it may have been received by you recently, it isn't proper that it should be admitted at this stage.

COL. SMIRNOV: I submitted this document, Mr. President, exclusively for one reason; I considered that the data contained in this document lend substantial significance to the picture of the general losses suffered by the Polish Republic. I think that the data could only be completed by submitting this document and that was the reason why I submitted this application to the Tribunal.

THE PRESIDENT: That may very well be, Colonel Smirnov, but the reason why the Tribunal rejects it is because it is submitted at such a late stage when it is impossible for the Tribunal to go into the facts which are alleged in it or to give the defendants the opportunity of contradicting it. We will consider the other matters you have drawn our attention to.

DR. OTTO NELTE (Counsel for Defendant Keitel): Mr. President, since Dr. Servatius, my colleague, has just been called upon to deliver his final plea, I believe I may assume that the presentation of evidence against the Organizations is now to be considered as concluded. Now, I should like to ask the High Tribunal when the right time would be to settle the applications for evidence which still have to be attended to. This concerns the individual defendants who have made applications for evidence or have submitted affidavits in the course of the proceedings against the Organizations. Can that be done right now, or when should it be done?

THE PRESIDENT: Dr. Nelte, the Tribunal understands that you have got some evidence which you have already applied for; which you want to offer. You have it all ready, is that right?

DR. NELTE: Yes, indeed, I have already handed it in and submitted it to the Prosecution and I informed the High Tribunal about this in writing on 9 August. It is a question of just when I should... it is a question of how I can introduce three affidavits here.

THE PRESIDENT: Have you got the evidence now?

DR. NELTE: Yes.

THE PRESIDENT: Well, Dr. Nelte, we think that you might offer these affidavits now unless they are objected to by the Prosecution.

SIR DAVID MAXWELL-FYFE: There is no objection as far as I know. There is certainly none from Mr. Dodd and myself. I haven't heard from any of my colleagues, but I haven't heard of any objection.

THE PRESIDENT: You may offer them now. With reference to the other defendants, they will...

SIR DAVID MAXWELL-FYFE: I beg your pardon, there is no objection from either one.

THE PRESIDENT: With reference to the other defendants, counsel will understand that if they have any fresh evidence arising out of the evidence submitted on behalf of the Organizations, they will have to offer it during the course of the speeches for the Organizations or immediately at the end of the speeches for the Organizations; and that after that has been done, no further evidence can be offered.

We will take the offering of your evidence now.

DR. NELTE: These affidavits, however, have not yet been translated, since I could not apply for the translation until I had the approval of the Prosecution. May I submit...

THE PRESIDENT: You are suggesting that we postpone hearing the affidavits until we get the translations?

DR. NELTE: Yes.

THE PRESIDENT: Very well.

DR. SAUTER: Mr. President, I still have two interrogatories to pass in. Two interrogatories which were duly approved by the High Tribunal, and which in the meantime have been returned, and which I have already submitted in the prescribed way. One is Interrogatory Number 137, Baldur von Schirach, Document Von Schirach 137, an interrogatory by a certain Günther Kaufmann, who used to work on the staff of the Defendant Von Schirach in the Hitler Youth Leadership. This interrogatory deals chiefly with Schirach's attitude on the question of war, his attitude to foreign policy, his attitude on the treatment of Eastern peoples, and his attitude on the Jewish question, and finally, on propaganda abroad. This interrogatory is being given Number 137 in the Document Book Von Schirach.

The next interrogatory will receive Von Schirach Number 138. It is a Russian interrogatory deposed by a witness, Ida Vasseau, I repeat, Ida Vasseau, who, in the meantime, has been interrogated once more. In this interrogatory I consider only two sentences on Pages 4 and 5 of any value, which I have marked in red in the

margin. This interrogatory, as I said, is being given Von Schirach Number 138.

And finally, may I give you the number for another piece of evidence. On 11 July 1946 I submitted to the High Tribunal the original copy of a newspaper, the *Rhein-Neckar-Zeitung* of 6 July 1946, together with a supplementary document, for the purpose of proving that the witness Lauterbacher, who was heard before the Court in the case of Schirach, has in the meantime been acquitted by a British Superior Court in the well-known matter where a certain Kremer had accused Gauleiter Lauterbacher of ordering the murder of the inmates of the Hamelin penitentiary. An original copy of this newspaper article was already submitted to you on 11 July 1946. It is being given Schirach Exhibit Number 139.

MR. DODD: Mr. President, that matter has been raised so many times by Dr. Sauter; I think we should make the record clear. The time that I used that paper that was in our hands for the purpose of cross-examining the witness Lauterbacher, the Tribunal ruled that the matter should not be submitted or would not be accepted in evidence, and so it never has become evidence before this Tribunal. I pressed for it at the time, I am frank to say, but the Tribunal very briefly, as the later events revealed, refused to have it submitted in evidence. If Dr. Sauter takes pleasure in talking about it once in a while, I have no objection to it, but it doesn't help this Court very much, and it doesn't seem to do very much good to constantly bring it up.

DR. SAUTER: Mr. President, the newspaper article which I submitted on 11 July bears the date of 6 July 1946, the sixth day of the seventh month of the year, and thus dates from a time after the witness Lauterbacher was interrogated. Therefore, it obviously could not have been taken into consideration during Lauterbacher's interrogation; however, it might be of importance for judging the character of the witness Lauterbacher. For the High Tribunal will perhaps remember that it was precisely Mr. Dodd who at that time confronted Lauterbacher with this business of the Hamelin penitentiary. Lauterbacher contested this under oath, whereas a witness named Kremer asserted everything in an affidavit. In the meantime this witness Kremer has been convicted, but the witness Lauterbacher has been acquitted, and I believe that this fact would appear to be of importance to the High Tribunal in judging the credibility, the reliability, of the witness Lauterbacher.

MR. DODD: I will withdraw my objection. If Dr. Sauter wants to prove that he wasn't a hangman, I have no objection to it. I don't suppose it is very important. I won't object to it if he wants to put it in that he wasn't poisoning some people and hanged nobody. Von Schirach rejected the document. Now, Dr. Sauter

wants to prove that he wasn't anyway. I don't suppose we should object to it.

THE PRESIDENT: He just wants to show that Lauterbacher was freed by some . . .

MR. DODD: He was freed of the charge I raised against him here. Dr. Sauter is not content with that; he wants to prove it over again. He wants to prove that he wasn't a hangman and not a poisoner. We don't object to that.

DR. SAUTER: Mr. President, of course, I do not wish to prove that Mr. Lauterbacher is not a hangman, for up to now even the Prosecution has not been seriously able to maintain that. I merely want to prove that the witness whom the Prosecution brought forward with an affidavit—namely, this Dr. Kremer—is not a trustworthy witness and that he did not tell the truth. And that in the meantime has been legally established by the judgment of a British court. That might be of importance in the question of the credibility of the witness Dr. Kremer in his affidavit, on the one hand, and that of the witness Lauterbacher who appeared here, on the other.

THE PRESIDENT: What is the document you are wanting to put in? A newspaper article?

DR. SAUTER: The name of the newspaper—I have submitted it to you—is the *Rhein-Neckar-Zeitung*, R-h-e-i-n N-e-c-k-a-r Z-e-i-t-u-n-g, of 6 July 1946, and I submitted it to the Tribunal with the proper form on 11 July 1946.

Mr. President, I think that will be all I should like to say regarding requests for evidence. Thank you very much.

THE PRESIDENT: We will consider it. Now, Dr. Servatius.

DR. SERVATIUS: Mr. President, the English translations were to have been completed this morning, and it is quite possible that they are ready now. But I am not certain on that point. Therefore only the German text is available. I gave a copy to the interpreters.

Mr. President: May it please the Tribunal, the Prosecution has moved to have the Corps of Political Leaders declared as criminal. What is the charge against the persons grouped together under this name?

Topics of investigations were: the persecution of the Jews, the conflict with the Church, and the dissolution of the trade unions; the incitement to lynch flyers who made emergency landings; the maltreatment of foreigners; the arrest of political opponents, and methods of surveillance and police spying.

In relation to this, the fundamental legal point involved in the accusation raised by the Prosecution has to be expounded. The accusation is to the effect that the Corps of Political Leaders collectively

committed the deeds mentioned for the purpose of unleashing a war of aggression, or that they had banded together in order to commit the above-mentioned war crimes.

It must be made clear at the outset that deeds which do not result from these motives, or which as individual actions do not belong to the Common Plan of the Conspiracy, are not included in this accusation. The major crimes, such as the extermination of the Jews and the killing of political opponents in concentration camps, are not crimes against humanity within the meaning of the Charter, and the minor measures of police spying or election frauds are in themselves insignificant in this Trial, provided that they were not carried out with the aim of being crimes against international law, crimes against peace, and war crimes as set down in Article 6 of the Charter.

I have already referred to this legal position without meeting with any contradiction. In order to support this opinion, I should like to refer to the Supplementary Berlin Agreement to the Charter of 6 October 1945. This concerns an agreement of the four Signatory Powers to the Charter, the sole point of the agreement being the changing of a semicolon to a comma. Through this agreement, we have the correction of the text of Article 6 c, which had been separated into two parts by the semicolon in the English and French texts. The result had been that crimes against humanity could have been prosecuted without being connected with crimes against peace or war crimes, which are under the jurisdiction of the Tribunal.

This possibility of interference with the internal matters of a state without any connection with a war does not now apply, after Article 6 c has been drawn up in accordance with the Russian text. Any interference for humanitarian reasons alone is, therefore, denied the Tribunal.

In all of their basic statements, the Prosecution have continually tried to establish the connection of all their charges with crimes against peace and war crimes by proving a conspiracy. Who is included in the Indictment brought against the Corps of Political Leaders?

According to the Charter, it is for the Prosecution to determine that circle of individuals which is to be declared criminal as an organization or as a group. Here the Indictment is directed against the Corps of Political Leaders, according to National Socialist terminology.

Despite the designation which refers to an organization, such an organization did not exist. The designation "Political Organization," which had been chosen for the same group of persons, was even expressly prohibited by a decree of the Führer's Deputy in the Party, Hess, on 27 July 1935 (Document PL-12). The reason given

for this was that there could not exist any special organization within the Party. Actually, this group of persons consisted only of functionaries such as exist within every party as executive and administrative agents.

But there is no doubt that there are a great number of people who, because of their titles, must be defined as Political Leaders. It is not a group which banded together, for one could not enter the circle of Political Leaders merely by joining, but only through an appointment which took place, without any effort on the part of the person concerned, by an act of sovereignty. The legal position is comparable to that of any civil servant who enters the circle of his colleagues through his appointment.

How does this circle denote a special group? Besides being appointed, only by the right to wear a uniform, which was connected with it. In addition, there is the oath, but that did not represent anything special, inasmuch as all civil servants and soldiers had to take this in the same way.

The duties and activities of the members of the Corps of Political Leaders, however, are completely varied according to their nature and importance. There were Political Leaders who worked in associations, such as the German Labor Front and the National Socialist Peoples' Welfare Association, and who wore uniforms during their practical administrative work only for decorative reasons. These are the members of the various affiliated associations who have deliberately not been included in the charges of the Prosecution.

Besides these, there are Political Leaders who directed the actual political machinery; these were the Hoheitsträger and the members of the Political Staffs, who are characterized by the Prosecution as "top leaders" or "main leaders".

From the reasons given by the Prosecution to support their Indictment it appears that by the Corps of Political Leaders they mean only the latter individuals who are enumerated from Reich Leaders to the Block Leaders. From the affiliated organizations, Political Leaders were included only insofar as they were active on the Political Staffs which grouped themselves around the Hoheitsträger.

This circle of persons can be comprised in a special definable group, insofar as a connection exists between them through the relationship of subordination, disciplinary power, and business routine. The number of persons so affected has been estimated by the Prosecution at about 600,000, according to the number of offices existing in the year 1939. As the document used as a basis for this shows (2958-PS), the posts in the staffs are not included. The figures show that, in addition to the Hoheitsträger, including the Cell and

Block Leaders, there were some 475,000 such posts which were filled by Political Leaders. The number of Political Leaders on the Political Staffs for the year 1939 is thereby increased to about one million. As can be estimated from Party statistics, the figure is increased one and a half times because of the heavy turnover of personnel over 12 years, that is, to about two and a half million. In this connection, the fact is taken into account that in the beginning the number of posts was only half that number. If the members of the Ortsgruppenstäbe are deducted a figure of about one and a half million remains. Not included in these figures are the office holders from the staffs who were not appointed Political Leaders, nor those who were ordered to serve on an honorary basis as Political Leaders during the war in subordinate positions; during the war the latter were primarily Cell and Block Leaders. According to the testimony given by witnesses, their number may be estimated at 600,000. If, as the Prosecution does, one includes these individuals in the circle of Political Leaders, then the entire figure of persons involved rises to 2,100,000. This figure is still further increased because there were also other office holders on the Political Staffs who were not appointed Political Leaders.

Because of the fact that the charge raised by the Prosecution is restricted to Political Leaders, a part of the persons on the staffs are not included. They are the ones who were not appointed Political Leaders even though they held office. An extension of the charge to these persons cannot now take place subsequently without legal prejudice to those affected, since they were not given an opportunity to apply for a legal hearing in the first proclamation by the Tribunal.

Before dealing with the question as to whether this specific group is to be declared criminal, we must discuss the question of whether the charges are admissible under international law. According to Article 50 of the Hague Rules of Land Warfare, a collective punishment of the population is only admissible if all the population are considered jointly guilty for individual actions. This is an exceptional regulation which serves solely for the protection of the occupying power.

Thus a similar measure arising out of general political considerations is prohibited. You may not punish a group because the guilt for a war is imputed to its members, or because you held them responsible for moral resistance. You cannot arrest all "Political Commissars" or Jews, and condemn them because of their political attitude. This prohibition of the Hague Rules of Land Warfare is based on the individual principle of democratic criminal law, which has not lost its prestige.

Whether the charges of the Prosecution are legal or whether the Charter has invalidated Article 50 of the Hague Rules on Land

Warfare, must be examined officially. If you consider the proceedings admissible, then we shall have to examine whether the group's complicity in guilt can be considered proved. How such proof is to be furnished neither the Hague Rules of Land Warfare nor the Charter indicates.

We can follow two principles: either that of justice or that of expediency. The principle of justice demands proof of individual guilt, and the condemnation of a group is to be rejected, "if there is only one just man among them." The principle of expediency admits the possibility of outvoting the innocent ones, and thus shows a preference to punish the innocent rather than to let the guilty ones go unprosecuted.

The Prosecution has stated repeatedly that the aim of the Indictment was to punish only the guilty ones and not to set a trap for the innocent, or catch them all in one net. These words are in accordance with the principle of justice, but the motion to characterize the group as criminal in itself rests on considerations of expediency. This apparent contradiction can be resolved only by requesting the Court's decision on a matter of procedure in order to meet an emergency. Accordingly, it is true that a number of innocent persons were included in the preliminary proceedings here before the Tribunal, but in subsequent proceedings they are to "have the right to raise any objections," as Justice Jackson has stated.

In its decision of 13 March 1946 regarding the regulation of the procedure for taking evidence, the Tribunal expressed itself in a sense which makes a majority ruling appear possible; a clear basis for the decision itself, or its ultimate influence on the subsequent individual trials, was not created. The decision of the Tribunal in this regard must depend essentially on the results which its verdict can be expected to have.

Therefore, Law Number 10 of the Control Council, of 20 December 1945, is of the utmost importance. From the text of this law it appears as if mere membership in an organization or a group which has been declared criminal will be punishable. If that were the case, the inclusion of innocent persons in the present proceedings would seriously impair the principle of guilt which forms the basis of modern criminal law.

Such an interpretation would not be compatible with the text of the Charter. There, indeed, Article 10 declares the objection that an organization was not criminal to be inadmissible, but one may still raise the objection that one did not know about its criminal character.

It follows also from Article 11 of the Charter that a conviction is contemplated only because of participation in the criminal activity. The informed press and the radio have also expressed themselves in the same vein.

The question arises as to how the criminal character of the group is to be established, which is decisive for its conviction. The attitude of the Tribunal can be learned from its ruling of 13 March 1946. The essential factor is participation in the conspiracy. This presupposes the formation of the group for the commitment of a specific act which has been declared criminal by Article 6 of the Charter. Such a formation, however, in the case of every conspirator is based, among other things, on concrete knowledge of the crime contemplated.

As proof of this knowledge the Prosecution alleges the notoriety of the crimes or the comprehensive information available to the Political Leaders. The persecution of the Jews and the conflict with the Church were publicly known as general tendencies. The criminal excesses proceeding from them were not known.

In this connection the following is also important: The thing that matters is not the general knowledge of the facts, but the general knowledge of the motives behind them. Unless we are concerned with genuine war crimes, the motive for aggressive war must be known; the actions must have been recognizable as the first stage of a war of aggression. Only in this way could participation in the criminal conspiracy result.

The Prosecution concludes that these motives must have been self-evident to the persons affected from the doctrine of National Socialism. There, it is claimed, aims were stated which of necessity had to lead to a war of aggression. In this way even building up the Party and recruiting members, as well as the seizure of power, become criminal, proceeding from the motive of a war of aggression. It is claimed that an alliance existed for waging an aggressive war or for the commission of war crimes. Is this conclusion correct?

As manuals, the Political Leaders had the Party Program and the book *Mein Kampf*. The Party Program had been attacked vigorously by domestic opponents, but no official foreign agencies had objected to it. In 1925 the Interallied Rhineland Commission in Coblenz had approved the Party Program for the Rhineland, and later the League of Nations had done likewise for Danzig. The Party was permitted, including its philosophy as expressed in the book *Mein Kampf*. Besides, it was known that Hitler had declared that his book was out of date in many points.

It is true that the goals to which the Party aspired could lead to a war, and it is also true that a war which aims at something which infringes on the property of someone else, must include an attack on such property. But the slogans "Lebensraum" (Living Space) and "Los von Versailles" (Away with Versailles) just as little as the slogan "Workers of the world unite" is bound to result in aggressive war. A door always remains open to negotiation

through an appeal to reason. Just as strikes, uprisings, and revolutions within a state can be justified for workers in their struggle for existence, so wars may come about in the life of nations. But the normal way is that of negotiation. Otherwise, any member of an opposition party could be prosecuted for high treason.

That an aggressive war was actually waged, which would obviously go beyond the technical concept of the opening of hostilities, has been contested with cogent arguments in the proceedings before the Tribunal by many of the major defendants. If Hitler demanded living space, the result of the war forces one to believe that other nations are taking it without condemning the principle which as a "law of life" is supposed to have been the cause of this war. The archives of the world remain closed.

For the Defense it is not so important to determine whether an aggressive war was waged, but rather to determine whether the Political Leaders knew about it and whether it became generally obvious to them.

The facts themselves speak eloquently against the general knowledge of aggressive intentions. To every Political Leader Hitler's offer to disarm down to the last machine gun must have been impressive, and also his repeated declaration that the misfortune of other peoples could not bring any advantages to his own people, but rather that the welfare of all should be the basis of international life. Equally impressive must have been the naval agreement with Great Britain, his declaration to France that he did not intend to make further territorial claims, the Munich Pact, and finally the Treaty of Friendship with the Soviet Union. The latter in particular caused a wave of rejoicing because it seemed to bring about peace with the very adversary who had hitherto been designated as our worst enemy. Precisely this treaty proves at the same time how impossible it is to derive any directives for practical use from the book *Mein Kampf*.

Of primary importance for judging the rearmament of Germany as far as the Political Leaders are concerned is Hitler's repeated declaration that "Bündnisfähigkeit" (the ability to conclude alliances) must be established by an equality of armaments. The extent of rearmament was not perceptible in relation to the strength of our opponents, and Hitler himself had declared it to be folly for a small nation to challenge the whole world.

However, the cornerstone of the conviction of all the Political Leaders that no war was being planned was the fact, emphasized again and again, that Hitler himself had served as a frontline soldier in the first World War; one could not, therefore, expect him to bring on the miseries of a new war.

Thus at the 1936 Party Rally in Nuremberg, on the occasion of an appeal directed exclusively to the Political Leaders, Hitler literally stated:

"During these long years we had no other prayer than 'Lord, give our people domestic peace and grant and preserve for them peace with other nations'. In our generation we experienced so much of fighting that it is understandable if we long for peace...."

"We wish to care for the future of our nation's children, and to work for the future, not only in order to safeguard their lives but also to make them easier. So much misfortune lies behind us that we have only one request to address to a merciful and benevolent Providence: 'Spare our children that which we had to suffer!' We desire nothing but peace and tranquillity for our work." (Document PL-41a.)

These words were directed to the very same men who as Political Leaders are today affected by the Indictment.

In contrast to thought of war there were strong foundations for a positive policy of peace. For all those who fought for Socialism and who believed in the realization of peace plans, the fact that Hitler himself had been a worker was of primary importance. The elimination of unemployment appeared as the greatest possible accomplishment of peace; a success which was convincing for everyone who regained employment. It was not Hitler's demoniacal magic which brought 7 million unemployed and the same number of partially employed people with their families to his ranks; what moved the masses was the fact that he gave them work and bread again.

It cannot be denied that the position of the worker was improved to something beyond a bare existence, and that his social standing was raised. At the beginning of the war a great social work was in the process of construction, namely, the universal old-age insurance system. To the Political Leaders this did not look like aggressive war.

There is still one more important reason why the occurrences and their motives were not generally known: it is the system of secrecy. The means of preserving secrecy are known to the Tribunal from the evidence they have heard. I would like to emphasize another point which helped in a particular way to preserve secrecy; it is the confidence which Hitler enjoyed.

This confidence was nourished from the huge reservoir of social success which he had gained by eliminating unemployment, which had brought human beings to the edge of despair. To this were added his successes in foreign policy, which had been recognized abroad. Everything was supported by the traditional authority of the State and by emphasizing that tradition; both are things which

have much influence on the people. To that was added a hitherto unknown frankness of speech in matters of foreign policy which the French Prosecutor has called *naïveté*. Within Germany this frankness brought about the conviction that Hitler would not instigate anything secretly. That picture was completed for the millions of followers by the façade of respectability and dignity which was kept up by that very circle around Hitler from whom criticism and warnings were first to be expected. From all this one has to conclude that the Political Leaders could not have gained knowledge of any aggressive intentions.

The assumption by the Prosecution that special information had been given about these plans also seems untenable in the light of the evidence submitted during the Trial. The Prosecution's allegation presumably rests on their original assumption that it was a part of the normal business routine to inform all Hoheitsträger, whereas it has now been established that only a very small circle was initiated.

The situation is different with regard to the war crimes: here the deciding factor is not proof of the motives for known occurrences, but the knowledge of the facts themselves. It is certain that war crimes, because of their despicable motives, are kept secret as a matter of course. In the course of testimony the Tribunal has learned of the ring of silence which was drawn around the worst atrocities. Other war crimes with which the defendants are charged are individual cases which did not become publicly known. We shall comment on these in connection with the individual points of the accusations.

A number of happenings have been adduced by the Prosecution which according to the Charter itself do not constitute crimes. Evidence has been given concerning the development of the Party, the seizure of power, and the maintenance of power. These are occurrences the general nature of which has not been denied. The creation of a dictatorial state and the prohibition of other parties is a measure of home policy which every state may take according to its judgment. To allege that these methods were created for a war of aggression and that they are therefore criminal is an unnatural construction of the facts. Proof for any such assumption is lacking.

The organization of the State along dictatorial lines may be necessary for the establishment of Socialism as well as for a war of aggression. Thus, the direction of the economy can serve good as well as evil.

The British Prosecutor has shown us another point of view. He has stated that intervention is possible in order to protect citizens against their own government; from this he concludes that

even war can be waged out of humanitarian reasons. The Charter does not confer such a right of intervention, as has already been stated in the beginning. But even international law has hitherto never recognized any right of intervention upon moral grounds. Crusades are not permitted. If the so-called methods of the Party are commented upon here, it is because its abuses are connected with the crimes in the Charter.

Four documents have been submitted which are connected with Political Leaders and concern the influencing of elections. The most important one is Document D-43 from the year 1936. It concerns an inquiry by the Reich Minister of the Interior as to which civil servants did not fulfil their obligations to vote. The Ortsgruppenleiter are asked to comment upon this. This is a letter from the Kreisleiter's office in Bremen. Another Kreisleiter, the witness Kühl, declared before the Commission that he did not receive any such inquiry. The general character of this inquiry is thus put in doubt.

One document, R-142, dating from the year 1938, is of purely local importance. It originates from the Coblenz SD Sector and mentions the statement of the Kreis Manager (Kreisgeschäftsführer) about the reasons for the bad election results because of personal quarrels. Both documents deal with the results of the election after the vote.

Two further documents—D-897 and D-902—dating from the year 1938, are letters exchanged between the lowest offices of the SD in Erfurt about supervision of the election. Concerning this, the closest possible co-operation with the Ortsgruppenleiter is ordered.

As far as the proceedings against the Political Leaders are concerned it is shown that the order-issuing apparatus of the Party in no way intervened here. These are merely independent and isolated measures by other offices. No general practice or knowledge, therefore, can be deduced from that.

Another charge is that of police spying. The pretext for this is in a passage of the Organizations Book, Page 101 of the 1940 edition, according to which Blockleiters are to report persons spreading dangerous rumors. In connection with this the keeping of household card index files is mentioned, as practiced in the Cologne Gau and including detailed supervisory questions.

The question now is whether this was generally handled by the Political Leaders in this way, and whether it was done in conformity with Party directives. The Party directives to the Political Leaders specify the exact opposite. See Decree Number 127 of 5 October 1936 in the orders of the Führer's Deputy (Document Number PL-34).

The witnesses examined in connection with this question have testified that these instructions were followed and that the card indexes known to them contained nothing resembling police spying. This confirms the fact that there existed no general order resembling the system in the Cologne Gau which was binding on all Gaue.

In this connection we refer particularly to the testimony of the witness Dr. Kühn who, as Counsellor of the District Court of Appeal was the qualified adviser for the Subversive Activities Law (Heimtücke-gesetz) in the Ministry of Justice.

The witness declared in his interrogation on 10 July 1946 that the proceedings instituted could mostly be traced back to statements by hostile neighbors or other informers and only very rarely originated with Political Leaders. The only concrete testimony about cases of police spying which the Prosecution has submitted is Document L-901, in which a Block Leader and janitor of a Parish Hall reports a secret meeting of the members of the Confessional Church in his building.

The charge of police spying is also coupled with that of causing persons to be placed in protective custody and sent to concentration camps. That political adversaries in a State should be declared enemies of the State and arrested seems to be a prescriptive right which politicians arrogate to themselves. It is based upon reciprocity and represents in this case a retaliation for the losses in the political struggle.

A connection with a war of aggression is not established. The charges of the Prosecution will, therefore, be directed against misuse of office through excesses and atrocities. It was not the Party which was competent in this sphere, but the State agencies. In accordance with orders by the Chief of the Security Police and SD of 10 March 1940, Document Number PL-100, arrests were solely the function of the Gestapo. Any interference on the part of Political Leaders was strictly forbidden (Number PL-29). In this manner secrecy was assured from the very beginning.

The real conditions in the concentration camps were concealed from the Political Leaders through the fact that orders were issued and carried out that even after their release political prisoners and their families should remain under thorough supervision. This is Document Number PL-100, which creates such astonishment when read today. When the witness Count von Roedern was interrogated before the Commission concerning knowledge about conditions in the concentration camps he said that in the beginning of 1943 the Landesgruppenleiter of the Auslandsorganisation of the Party had visited the concentration camp at Sachsenhausen, and had gained the impression on that occasion that the rumors about

concentration camps which were circulated abroad at that time were without foundation.

The witness Sieckmeier states in Affidavit PL-57 that in the spring of 1939 he visited the concentration camp at Buchenwald with 150 American guests, and the witness Wünsche states in Affidavit PL-57b that in June 1938 he visited the concentration camp at Sachsenhausen with a class of the Berlin Zollschule (School for Customs Officials). Both state that the quarters and the food of the prisoners were in conformity with the regulations. Thirty-five more statements by Political Leaders who had visited such camps are contained in the collective affidavits. They are all to the same effect.

14,000 statements summarized in Affidavit PL-57 show that these Political Leaders knew nothing about the conditions in the concentration camps, that in seven cases they received no answer to their inquiries, but that satisfactory answers were received in 102 cases.

Then incriminating documents about euthanasia were submitted. It has been shown that the Political Leaders had no part in carrying out these measures, and that they had no general knowledge of them.

Document 630-PS, a letter of Hitler's of 1 September 1939, shows that this was a so-called "special secret order," which was given directly to Reichsleiter without portfolio Bouhler and Dr. Brandt. Neither the Reichsleiter nor Gauleiter were informed about any such special secret order (Proof: Document 59a, Hederich Affidavit).

According to Document D-906, Numbers 3 and 6, the medical commission concerned seems to have established contact with the Gauleiter or Kreisleiter in individual cases. It is noteworthy, however, that precisely this last document mentions that the Hoheitsträger are not included, since the regulations do not contemplate this.

Confirmation of these facts is given by the collective affidavits PL-59 of Karl Richard Adam, who states that 7,642 Political Leaders executed affidavits to the effect that they had not received any orders, and had not been involved in carrying out such measures.

All other measures were also taken to preserve secrecy about this matter, which had already become known here and there and had given rise to many rumors. This is shown by the special notes recommending secrecy in the incriminating documents. The witness Meyer-Wendeborn stated before the Tribunal that upon his inquiry he was told that these were only rumors; and a physician, Dr. Engel (PL-59b), and Kreisleiter Dr. Dietrich (PL-59c) confirm this official denial of the mercy killing.

Were these measures in any way connected with the conduct of the war? It is certain that euthanasia was already being discussed in 1934, as shown by Document M-152. Carefully worded articles were published in the press, which encouraged this idea from the viewpoint of eugenics (Zuchtwahl), and which referred to the custom in ancient Greece of exposing and abandoning the unfit. Any connection with warlike intentions, however, is difficult to establish, even though the member of a Gau staff defines mercy killing in case of war as a war measure in Document D-906.

I now come to the events which became public knowledge: smashing of the labor unions, conflict with the Churches, and persecution of the Jews.

The "smashing" of the free trade unions was well known. It was a revolutionary act. It was either permissible or not permissible, as in any revolution. It was an event which happened only once and for which the responsibility is clear. The Political Leaders did not have a direct part in its execution, but they knew of the event and approved it. The question must be examined whether it was a measure anticipating war, or whether other reasons were decisive.

The 150 large and small labor unions, which included 30 percent of the workers, were already at the end of their tether before they were dissolved. Economically, the majority of them were facing collapse; the many years of unemployment had depleted their treasuries, while increasing the demands upon them. The political parties which dominated the unions had been helpless in the face of the economic crisis; they had been powerless against Hitler, and so they resigned. Mass withdrawals, which began at the end of 1932 and the beginning of 1933, had thus made the unions mere shadows. On the other hand, the workers transferred to the NSBO, and thereby aligned themselves with the idea of peace within the ranks of labor, which was clearly preparing the way for the solution of the economic crisis. In the same way the employers' organizations were compelled to maintain peace within labor, and were dissolved.

The purpose of the elimination of all organizations was to effect a settlement between labor and capital; the class struggle was replaced by the duty to care for the workers on the one hand, and the duty of loyalty on the other as a key to the elimination of economic distress. That the proceeding was so understood and approved by the workers is shown by their willing cooperation; thus the economic-political proceeding was justified after the event.

Then the Church question is also an incriminating point. It is well known that the Churches lived in constant strife with National Socialism. It is not known that the cause of this strife lay in the opposition of the Churches to an intended war of aggression.

After initial differences about power politics, it was only later that reasons of Christian morality impelled the Church in an ever-increasing degree to fight against National Socialism. In general, the Churches were indifferent to the foreign policy of nations, in accordance with the principle, "Give unto Caesar that which is Caesar's".

Conflict with the Church was contrary to the Party Program, and Hitler himself never preached it; he would probably have preferred to win over the Churches. He tried to do so through the Concordat, and had some success through the proclamation of the Fulda Conference of Bishops and the proclamation of the Austrian Bishops after the Anschluss.

Propaganda against the Church was kept at a minimum, and was directed against members of the clergy who interfered in politics. There was no real, organized fight against the Church. The separation of Church and State was demanded to overcome the division of the people through various denominations.

Thus, Hitler told the witness Count Wolff-Metternich, immediately after the seizure of power in 1933, that a campaign against the Christian Church would be inexcusable (Affidavit PL-62c), and the witness Fabricius, a Professor of Divinity, confirms this attitude (Affidavit PL-62a).

For the Political Leaders this conviction manifested itself in the fact that even before 1933 many theological students, professors of divinity and churchmen had joined the Party. After 1933 a strong movement started for rejoining the Church among those who had left the Church under the influence of Marxism. Retroactive marriage and christening ceremonies took place in large numbers, as is shown by affidavits PL-62a and 62b—Professor Fabricius and theologian Buth.

The witness Schön confirms in Affidavit PL-62 that out of 500 Political Leaders whose testimony he examined 42 percent simultaneously held Church offices. The witnesses Wegscheider and Kaufmann, who were examined before the Tribunal, also testified that numerous Political Leaders held a Church office. The Bishops Dr. Gröber and Dr. Borning were appointed to the State Council (Staatsrat), as shown by the affidavit of Count Wolff-Metternich, PL-62c.

The actual picture is shown by the collective affidavit of the witness Schön who, after examining about 21,000 affidavits, noted that in the former Ortsgruppen (local Party districts) Church life remained undisturbed and that the Party occasionally participated in Church life officially, in some cases in uniform. Accordingly, in the individual local districts there were good relations with the clergy, and this found public expression at celebrations. On the other hand, there was a campaign led by a small anti-Church

group whose activities and statements are in contradiction to the general Party line. The leader of the group was Bormann.

Of 23 documents which were submitted by the Prosecution against the Political Leaders on the Church question, no less than nine documents are statements of opinion by Bormann. Seven documents concern the SS, as well as the SD and the Gestapo. Four documents deal with three local occurrences, and one document consists of the personal opinion of Gauleiter Florian. There follows a quotation from the *Myth*, and a document with directives for the Reich Labor Service. None of these documents shows that the Political Leaders participated as a unit in the elimination of the Church.

I shall comment on the individual documents: The most incriminating document is the secret decree of Bormann to the Gauleiter on "National Socialism and Christianity" (Document D-75). On this subject there is an affidavit by the witness Hederich, of the Party Chancellery (PL-620). According to this, Bormann issued this decree on his own authority and Hitler instructed him to recall and destroy this circular. The witness Gauleiter Kaufmann confirmed before the Tribunal here that this decree actually was recalled. The same thing is shown by the testimony of the witness Hoffmann before the Commission on 3 July 1946. In Affidavit PL-62b the witness Buth, a theologian, states that the Defendant Rosenberg likewise rejected the decree and raised objections.

Document 098-PS is a letter from Bormann to Rosenberg, and it deals with a so-called National Socialist Catechism. It is a personal opinion of Bormann. There is no answer of Rosenberg at hand. In this letter a meeting of the Reichsleiter is suggested. The affidavit of the witness Hederich states that such a meeting never took place.

There follow a number of documents which show Bormann's constant personal efforts in the direction of the separation of Church and State. Document 070-PS regarding school devotions lies in this direction; as also Document 840-PS, admission of theologians into the Party; and 107-PS, instructions for the participation of the Reich Labor Service in Church ceremonies.

The following documents, 100-PS and 101-PS, are letters from Bormann to Rosenberg expressing the wish for their own literature for soldiers; Rosenberg is here attacked because of the attitude which he took in favor of a book in a religious vein by Reich Bishop Müller. This proves Bormann's purely personal activity.

In the same field is Document 064-PS, again a letter from Bormann to Rosenberg. It requests his opinion on an enclosed letter from Gauleiter Florian of 23 September 1940, who had objected to a religious writing by General Rabenau. It is a personal opinion which is not typical of the general attitude of the Political Leaders.

A further action of Bormann is shown by Document 116-PS, a letter to Rosenberg of 24 January 1939 about the restrictions imposed on the theological faculties. Here Rosenberg is not instructed to carry this out, as the Prosecution erroneously assumes; another letter is merely sent to him for his information, in which a restriction of the faculties was welcomed.

The continuation of his efforts to win Rosenberg over to his views is shown by a letter of Bormann of 17 May 1939 to Rosenberg. Here Bormann forwards a plan by the Reich Education Minister on the restriction of the theological faculties, likewise only with a request for his opinion, and not, as the Prosecution assumes, for the immediate execution of the measure under consideration.

Then the Political Leaders are charged here with Gestapo activities, on the basis of the files of a conference of Gestapo Church specialists (Document Number 1815-PS). This cannot be taken as evidence of proof of the anti-Church attitude of the Political Leaders themselves. Nor did the Political Leaders have any direct connection with the confiscation of Church property.

Document R-101—correspondence of the RSHA—shows confiscations by the Reichsstatthalter and Gauleiter and by the Eastern German Agricultural Company (Ostdeutsche Landwirtschaftsgesellschaft GmbH.) in the Warthegau. Both acted in their capacity as state offices, so that this is not a general measure making use of the Party machinery, with the knowledge of all Political Leaders.

Document 072-PS, a letter of Bormann to Rosenberg of 19 April 1941, expressly emphasizes that it is not the business of Political Leaders to confiscate Church property.

There follow the public campaigns against the Church, which the Prosecution has brought forward. Document 848-PS and 849-PS deal with excesses against Bishop Sproll in Rottenburg. It is evident that this action was carried out by forces foreign to the local Party.

Document 1507-PS deals with incidents on the occasion of a sermon by Cardinal Faulhaber at Freising. The records show that the Political Leaders were given explicit instructions not to interfere with the religious services held there, even if the Cardinal should deliver a sermon against National Socialism. As a matter of fact, there was no interference with the service by Political Leaders. It is noteworthy that, according to the records, Cardinal Faulhaber declared himself willing to officiate a few months later in the same church, and this was "through the mediation of Mayor Lederer of Freising, who was at the same time Kreisleiter and local leader of the SA."

It thus appears that the measures seem more extensive than they were in reality and that the Political Leaders could not have had any real idea of what happened.

Nor could the *Myth* give them any information on the Church question. This book was hard to understand and never received the official Party stamp of approval (Document PL-62e). The witness, Count Wolff-Metternich, has stated that Hitler expressly characterized the book as a private work of Rosenberg, which did not please him. That is Affidavit PL-62c.

The persecution of the Jews was the most obvious event. It can be explained quite apart from any war of aggression. The events are well known: economic repression of the Jews, defamation by the Star of David, and elimination from social life, the issuance of the Nürnberg Laws, evacuation toward the East, and finally, extermination. Here it can only be a question of investigating the extent of the active participation of the Political Leaders and their knowledge of the nature and extent of the measures.

The legal measures were taken without consulting the Political Leaders. Insofar as they were directed toward restricting the influence of the Jews, they were welcomed by them and were in keeping with the Party Program.

Nor was there any objection to the Nürnberg Laws, but the Star of David was considered shameful. Opposition, however, commenced with the confiscation of property and the evacuations.

This history of 9 November 1938 is known to the Tribunal through the examination of witnesses. It was a surprise maneuver prepared by Goebbels when the Gauleiters were absent from their Gaus. The Party machinery was avoided, because opposition could be expected here. As far as the Political Leaders had any opportunity to interfere, many Gauleiters refused to obey or issued counter-orders as soon as they learned of the operation. The witness Gauleiter Kaufmann has confirmed this for Hamburg; the witness Wahl has testified the same before the Commission about the Swabian Gau; and the attitude of the Gauleiter for Coblenz-Trèves is corroborated in Affidavit PL-54f.

On the level of the Kreis and Ortsgruppenleiter, no planned use of the Political Leaders has been established either. Here the testimony of all witnesses confirms that the event was received with surprise, opposition, and disunity. (Affidavit Dr. Volkmann, PL-54a)

Hitler repudiated it, Göring repudiated it, and even Heydrich declared before the Gauleiter and Gau judges on 20 November 1938 that the severest measures would be taken against all who participated in it (Affidavit PL-54d and e). The report of the Supreme Party Judge, Buch (Document 3035-PS, USA-322), submitted by the Prosecution, according to which the punishment was permitted to

become a mere farce, remained unknown. The slight penalties imposed by the court were explained by saying that one could not condemn the little man as long as Goebbels, the instigator, went free. (Affidavit Buch, PL-54c)

The rejection of any solution by violence in connection with these events led to a belief in the sincerity of the resettlement plans, which in reality were the preliminary steps for extermination. When the decision for extermination was made is unknown. An affidavit signed by the witness Albert, PL-54h, says that even in 1942 Himmler pretended in a memorandum that he was striving for a legal and humane solution of the Jewish problem at a cost of 25,000 to 30,000 million marks.

The obvious reason for all these measures was not the desire to wage war, but exclusively the solution of the racial question. The real happenings in the East came through only as distant rumors and because of their monstrous nature were not believed, but were regarded as enemy propaganda. In this connection, the "explanation" issued by the Party Chancellery on 9 October 1942 is significant. This is Document PL-49. Here the Political Leaders were given an official denial of the atrocities.

Document D-908, containing the periodical *Die Lage* of 23 August 1944, contains a reference to the Jewish problem in Hungary, but does not mention any actual events. Because of its small circulation and the fact that this article appeared only toward the end of the war, it was not of a sort to affect the fundamental judgment of the public.

The attitude of the majority of the Political Leaders on the Jewish question, irrespective of their rank and district, is clearly shown by Affidavit PL-54, which contains a summary of 26,000 sworn declarations.

The next question to be examined is the Indictment of the Political Leaders for war crimes. Primarily, this is a Jewish question again, inasmuch as foreign Jews were affected. The majority of the Political Leaders cannot be assumed to have known of events which took place outside the territory of the Reich. It was announced in the press that the governments of other countries, such as Hungary, France, and Italy, adopted measures similar to those of the Germans. What really happened remained unknown in Germany. Document PL-49, confidential information of 9 October 1942, issued by the Party Chancellery concerning "Rumors about the Situation of the Jews in the East," served to cover up and deny the facts.

Three documents were submitted to the witness Hirt before the Tribunal concerning the Germanization of Slav territory. Document USSR-143 concerns the removal of Slovenian street names and use of the German language for officials. Closer examination, however,

shows that this was a measure of the Styrian Home League (Heimatbund) which issued circulars to its local districts. The Styrian Heimatbund was not a Party organization (Affidavit by Roedern, Number PL-67). These events concerned a little town called Pettau, which was inhabited by Germans before the 1918 peace treaty.

Document USSR-449 also deals with the recovery of territory in Carinthia and Carniola, which formerly was inhabited by German settlers, and Document USSR-191 shows that these were measures taken by the SD in the border regions of Styria. All documents lack the basis for any general knowledge of these orders, the carrying out of which remained unknown to the Political Leaders.

Much space is occupied by charges against the Political Leaders concerning the administration in the East. Whether these charges are generally justified cannot yet be judged on the basis of the proceedings to date. However, the question can be examined as to what knowledge the Political Leaders could have of these events and to what extent they are responsible for them.

Document 1058-PS contains Rosenberg's speech before the beginning of the Eastern campaign, and his defense counsel has commented upon it in detail. This speech was secret and known only to a small circle. Document L-221 of 16 July 1941 concerns the Crimea. These are secret marginal notes by Bormann concerning a discussion in the Führer's headquarters. A memorandum concerning a conversation between Rosenberg and Hitler on the Crimea likewise remained unknown to the public (Document 1517-PS).

Frank's Diary (Document 2233-PS) is the basis of the charges against the Political Leaders on the food situation in the Government General. General knowledge of the fact that 40 percent of the population suffered from malnutrition during the year 1941 cannot be assumed without further question. As far as food difficulties had become known in the border region, they can be attributed to other causes, especially after a lost war.

Document R-36 shows Bormann's horrible views on the treatment of the population in the Eastern Territories. It is a comment by Dr. Markull of the Ministry for the Occupied Eastern Territories, dated 19 August 1942, and addressed to Rosenberg. The frank and vigorous language, as well as his indignant refusal, specifically prove that Bormann's views were not accepted and that other measures were taken. The very fact of this open appeal to Rosenberg proves that there was no doubt that the latter would agree with the refusal.

Other incidents became known to a fairly large number of people. Document 1130-PS contains the oft-quoted speech by Reichskommissar Koch of 1 April 1943 in Kiev on the "Master Race." That Koch himself knew that his opinions were not shared is revealed by documents according to which he said that his chiefs of sections fell into two groups, one working openly against him, the other secretly.

Document R-112 contains decrees by Himmler in his capacity as Reich Commissioner for the Strengthening of Germanism, dating from February and June 1942. They refer to the re-Germanization of former German nationals in the Eastern Territories, which in itself was not prohibited. One of those decrees is addressed, among others, to the Gauleiter for their information. It contains no references whatsoever to any criminal measures.

The Prosecution concludes from Document Number 327-PS that the Gauleiter took part in the liquidation of "enormous fortunes" in the East. A closer examination shows that this was a matter of the liquidation of German firms which had been set up as state enterprises at the cost of considerable subsidies. In a letter of 17 October 1944 the Gauleiter are merely requested not to interfere with the liquidation which was meanwhile taking place on German territory. All this goes to show that the Political Leaders as a body could not have had any specific knowledge of criminal occurrences.

THE PRESIDENT: Dr. Servatius, the Tribunal will adjourn tomorrow, Friday, at 4:00 o'clock in the afternoon.

[The Tribunal adjourned until 23 August 1946 at 1000 hours.]

TWO HUNDRED AND TENTH DAY

Friday, 23 August 1946

Morning Session

MARSHAL: May it please the Tribunal, the Defendants Hess and Von Papen are absent.

DR. SERVATIUS: Mr. President, may it please the Tribunal, yesterday I had spoken about the individual war crimes and now I shall turn to the activities of the Einsatzstab Rosenberg, and this begins on Page 39 of the written script.

The activity of the Einsatzstab Rosenberg was no official Party matter. As the counsel for the Defendant Rosenberg has already explained, this has to do with an order by Hitler giving personal instructions to Rosenberg, not to a Party agency. This is shown in Document 136-PS, which is a letter of Hitler's of 29 January 1940, and in the Führer Decree of 1 March 1942, Document 149-PS. It is confirmed by testimony given before the Commission by the witness Dr. Müller and by Count von Roedern. An affidavit by the witness Künzler (Number 58-A) is to the same effect, stating that the offices of the Reich Treasurer knew that this order was intended for Rosenberg personally.

As a matter of fact, the Einsatzstab Rosenberg was not a Party organization. The members were scientists and specialists who had nothing to do with the Party and who in some cases were foreigners. All had been recruited on the basis of the compulsory emergency service law. The leader of the Einsatzstab in Paris was not a Political Leader. This special section was distinguishable outside the Party by a uniform of its own.

From the financing of the Einsatzstab Rosenberg through the Reich Treasurer of the Party, the Prosecution concluded that Political Leaders were involved. But Document 145-PS shows that it was only an advance of funds and that the Rosenberg Ministry, as a State office, had to bear the costs. This was corroborated by the witness Künzler, a leading official in the Party finance administration, in Affidavit 58-A. The witness Dr. Müller, consultant for matters of private property, testified to the same effect before the Commission.

To prove direct participation of the Political Leaders, the Prosecution referred to Document 071-PS, according to which the final

settlement of the confiscations which had been carried out by the Einsatzstab Rosenberg should be made by the Gauleiter. The preface of the document, however, shows that it applies only to the confiscations within German territory of property belonging to "ideological opponents." It is connected with Document 072-PS which merely contains a proposition in connection with the Church question. This proposition does not suggest that the Gauleiter should confiscate things, but that they should look after them until they were taken into custody by a more competent authority, in order to prevent destruction. These documents cannot refer to lootings abroad, since no Gau offices existed there to which any such instructions could be given.

Finally, may I point out that no orders had been given as to the ultimate destination of these cultural objects. The witnesses Müller and Künzler stated before the Commission that these objects were to be dealt with in the peace negotiations. There remains the program concerning furniture mentioned by the Prosecution, whereby the furniture of 70,000 households in France was removed. This was a program of the Eastern Ministry carried out by its own personnel (Document L-188). With reference to prisoners of war, other counsel have already made the juridical situation clear, and have shown that the Political Leaders were not concerned with them. But the Prosecution have confronted the Political Leaders with Document Number 656-PS, USA-339, which is a directive of the OKW from the year 1944. It gives the guards the right of self-defense in view of the incitement by enemy propaganda to prisoners of war to use force. In cases of extreme emergency use of arms is deemed permissible. The Political Leaders are in no way connected with this directive and its execution.

I have defined in detail my attitude with reference to foreign workers in my capacity as counsel for Sauckel. The witness Hupfauer has testified before the Commission and before the Tribunal regarding actual conditions. I further refer to Affidavits 55a to 55d, and to Affidavit 55 which summarizes 15,000 statements under oath. They give a reliable picture of the general living and working conditions of these foreign laborers. Everything belies a systematic program of negligence and ill-treatment or general approval of the conditions which have been alleged to exist.

It is necessary to make a special statement with reference to Document EC-68. This is a directive of the State Farmers' Association of Baden of 6 March 1941 regarding treatment of Polish agricultural workers. It is an individual measure and it originates from a time prior to the unified regulations for the employment of labor. It does not originate with a Party office, the State Farmers' Association being an independent professional organization outside

the Party's formations. The directive itself was rescinded by the subsequent regulations applying to all foreign workers.

It has been firmly established on the basis of the evidence, however, that this directive in practice was not carried through with the approval of the Political Leaders. Here reference is made to the testimony of a number of Political Leaders from the Gau Baden, which has been collected in Affidavit 68. I further refer you to the testimony of the witness Mohr (State Farmers' Association, Bavaria) who was heard before the Commission on 3 July 1946, to the testimony of Gauleiter Wahl for the Gau of Schwaben on 15 July 1946, and to the testimony of Ortsgruppenleiter Wegscheider for the Allgäu before the Commission on July 16 and before the Tribunal on July 31.

With reference to the interruption of pregnancy in foreign female workers, it is shown from the "Confidential Information of the Party Chancellery" of 9 December 1943 that such interference was only carried through at the express wish of the person concerned. The list annexed to the document also shows that interference was the exception (Affidavit Haller 56a).

The accusation of the lynching of fliers who made emergency landings is the last war crime which particularly incriminates the Political Leaders. We are not concerned here with whether the attacks of fliers against the civilian population were admissible, or whether the rage of the population was justified, but only with the fact that the killing of such fliers by the population was permitted without previous judgment. It remains now to clear up the question . . .

THE PRESIDENT: Dr. Servatius, you are passing from the treatment of foreign workers to another part of your speech. The Tribunal would like to know what your case is with reference to the treatment of foreign workers by the Political Leaders, and whether you contend that they did not assist in placing and controlling the laborers who were brought to Germany under the forced labor program.

DR. SERVATIUS: I deny that they participated in the rounding up and bringing in of these laborers. They only had the duty of supervising the welfare of these workers, and I assert that they carried out this duty of caring for the workers.

THE PRESIDENT: You agree then that they undertook the duty of supervision of the laborers?

DR. SERVATIUS: Yes. After all, for the case of Sauckel a number of Gauleiter were heard on the subject, all of whom have confirmed the fact that they were authorized to employ workers and that they took care of their welfare. That was dealt with in detail in the case of Sauckel.

I am just given to understand that I did not understand your question. It is a question of guarding. Mr. President, should I have commented on the guarding of foreign laborers?

THE PRESIDENT: The words I used were whether you contended that they had not assisted in placing and controlling the laborers who were brought to Germany under the forced labor program.

DR. SERVATIUS: Then I understood you correctly, Mr. President, and my answer can stand as I gave it.

THE PRESIDENT: You do agree that, although you say they did not assist in the rounding up, I think that was the word you used, or the bringing in of the laborers to Germany, they did assist in the supervision and controlling of the laborers when they had been brought to Germany?

DR. SERVATIUS: Yes, and as the persons authorized for the employment of labor they had the duty of supervising. They had to check whether the Labor Front and the factory leaders were caring for the workers properly. They had no direct responsibility, only an additional duty as Sauckel's agencies. In this way Sauckel wanted to check whether his instructions were being carried out.

THE PRESIDENT: Are you contending that they did not know the laborers had come there involuntarily?

DR. SERVATIUS: I do not deny that they came because they were obliged to. I admit that the Gauleiter had to know and did know that the majority of the workers came on the basis of a compulsory service law.

THE PRESIDENT: Thank you. I think you got to the bottom of Page 44 or near it.

DR. SERVATIUS: I was dealing with the question of lynch justice.

THE PRESIDENT: Top of Page 44, in the English.

DR. SERVATIUS: I was on Page 44. I said that we must still clear up the question of whether such war crimes were generally tolerated and approved of by the Political Leaders.

The Prosecution has submitted 5 documents in this connection. Firstly, a directive of 13 March 1940, from the Deputy of the Führer in the Party, Hess, Document 062-PS, USA-646. It concerns a secret directive regarding the behavior of the population towards shot-down aircraft and towards parachutists, and with reference to the latter it contains a directive that they are to be either arrested or "rendered harmless."

In order to understand these words which are dubious today, one has first to consider that we are here concerned with enemy soldiers

who have been set down for combat action. It is hardly possible for the civilian population to arrest them and we therefore have to understand the expression to mean that other security measures have to be taken in order to avoid damage. For the purpose of explanation it is essential to note that during the year 1940, in view of the then prevailing air situation, one could only theoretically count on such things happening; it was a preventive measure which, according to the document itself, followed the French directives.

The passage in the document asking for special secrecy can perhaps be explained by the fact that the civilian population had received a directive which might cause them to be combatants. Actually no events have become known from that time where a violation of international law was committed against fliers. Furthermore, the "Confidential Information of the Party Chancellery" of 4 December 1942 (PL-94), speaks clearly against such a measure. It specifically rejects a measure against fliers which was taken in Japan.

The later documents, however, openly approving of and inciting war crimes, have to be judged differently. In this case an examination of the documents has to determine to what extent the Political Leaders had knowledge in general, or were participants.

Himmler's order, dated 10 August 1943, Document R-110 (USA-333), is addressed to the Higher SS and Police Leaders. According to this, the "competent Gauleiter" had to be informed, but only those were competent who held official functions, that is, Reich Defense Commissioners and Reich Governors (Reichsstatthalter). Therefore this had nothing to do with activity in the political sector. The Party Chancellery would have been competent for such an incitement. Thus the conclusion is to be drawn that not all Gauleiter were informed and certainly no Kreisleiter nor subordinate Party offices. I draw your attention to the evidence of the witness Hoffmann during his interrogation on 2 July 1946. The other Gauleiter too have confirmed in this connection that they were informed of Himmler's directives to the police officers only in their capacity as Reich Defense Commissioners.

Bormann's circular of 30 May 1944 (Document Number 057-PS) was intended to inform all Political Leaders that they should tolerate the lynching of fliers; it is the result of Goebbels' press article of the previous day.

THE PRESIDENT: I am not quite sure that I understand what your argument is there. Is your argument that in Document 110 the "competent Gauleiter" does not include all the Gauleiter?

DR. SERVATIUS: Yes. Only those who were Reich Defense Commissioners. They received the information from the police

agencies in their capacity as agents of the State, while the other Gauleiter who did not have State positions—and there were a number of them—were not informed. And another result is that a Gauleiter in his capacity as Reich Defense Commissioner did not inform his political subordinate, so that the Kreisleiter did not receive any information about this.

THE PRESIDENT: Do you say that the Gauleiter ceased to have control over their Gaue unless they were appointed Reich Commissioners and Reichsstatthalter?

DR. SERVATIUS: The offices were separated, and instructions only reached the Kreisleiter if they were Party instructions, so that in the prescribed official channels in any case, no . . .

THE PRESIDENT: That is not the answer to my question. What I asked you was, are you saying that the Gauleiter who were not Reich Defense Commissioners or Reichsstatthalter had ceased to hold any authority in the Gaue of which they were Gauleiter?

DR. SERVATIUS: No, I do not mean to say that. I only want to say that these instructions did not pass through the usual channels. I have cited witnesses who testified that the Kreisleiter actually did not receive any knowledge of these instructions. It was different with the subsequent instructions. Later they could and should have received knowledge of these instructions, but not in the case of this directive of Himmler's.

THE PRESIDENT: Go on.

DR. SERVATIUS: That is the next letter. Bormann's circular of 30 May 1944 (Document 057-PS) was intended to instruct all Political Leaders to tolerate the lynching of fliers. This is the result of Goebbels' newspaper article of the day before, in which he addressed the population directly.

For the Defense it is essential to determine in which way the Political Leaders co-operated, and whether these war crimes were committed everywhere with the consent and general approval of the Political Leaders. The contrary seems to be the case. The three Gauleiter who testified before the Commission concurred in stating that they realized the effects which the circular might have, and that they did not forward it to the Kreisleiter, contrary to the orders given them. That is by the witness Hoffmann, the witness Kaufmann, and the witness Wahl, the three Gauleiter. The same was testified to by the Gauleiter of Mecklenburg, Weser-Ems, and Tyrol (Affidavits 61-E, 61-H, and 61-G).

The fact that most of the Kreisleiter had no knowledge of the Bormann decree indicates that the same was done in other Gaue. So far as they received the decree, they did not put it into practice in their Kreis and did not pass it on because of its dangerous nature.

I cite the following witnesses in this connection: Meyer-Wendeborn for Kreis Oidenburg; Kühl, Kreisleiter of Ost-Hannover; Biedermann for Gau Thüringen; Brückmann, Kreisleiter of Hessen-Nassau; Naumann, Kreisleiter of Saxony; Eber, of Gau Westmark; Haus, Kreisleiter in Wetzlar.

The above-mentioned witness Hoffmann belongs to those witnesses who confirmed that they did not forward the decree. An announcement concerning the admissibility of lynching was made in his Gau on 25 February 1945, that is, 9 months later. In connection with this matter it is worthy of note for the Political Leaders that this witness hesitated such a long time before acting according to the desires of Bormann and Hitler. During his testimony before the Commission the witness declared that he had withdrawn his draft, and that the announcement was made without his knowledge. In fact, in his Gau the order was never carried out (proved by affidavit of Scholtis).

As to the testimony of the Gauleiter and Kreisleiter as a whole, it is to be remarked that only a few witnesses have been examined, and that only a few affidavits could be taken out of the mass of material available. However, it is established beyond doubt that in general the Political Leaders did not follow the criminal suggestion. In spite of bitterness, despair, and misery at the destruction of many human lives, violation of the rules of warfare was prevented.

Affidavit 61 summarizes approximately 11,000 individual statements. These statements not only bear witness to a passive rejection of this dangerous method, but in many cases confirm positive steps taken to protect fliers against the excited population.

Finally, the Political Leadership Corps has been accused by the Prosecution of having acted, through the Auslands-Organisation of the NSDAP, as a fifth column abroad. Evidence for this has been produced neither during the hearing before this Tribunal when the case of Hess was dealt with, nor during the hearing of evidence before the Commission. The Auslands-Organisation merely served to draw together the Party members of German citizenship abroad, and it was meant to keep alive in them an appreciation for Germanism. It was expressly prohibited for members of the Auslands-Organisation to make propaganda for the National Socialist ideology among the inhabitants of foreign countries, or to co-operate with political groups abroad even if those represented National Socialist or Fascist ideas (Documents PL-57, 58, 59). For that reason, it was also forbidden for them to collaborate with the German-American Bund; this prohibition was also strictly observed. (Proof: examination of the witness Von Roedern).

On the strength of the experience the Germans living abroad had had during the first World War they were, as testified by

witness Von Roedern, against every policy of expansion. They had no other goal but that of maintaining peace by all means, and for that reason it was out of the question that they could be used for fifth column purposes. Members of the Auslands-Organisation were prohibited from any collaboration with the German Intelligence Service by order of their Chief, Bohle. If individual members of the Auslands-Organisation infringed on this order, then they did not do so on behalf of the Auslands-Organisation, but against its explicit instructions. This becomes apparent from the fact that the foreign states concerned, for instance England, never prohibited the Auslands-Organisation in spite of such instances; on the contrary, the legal character of the Auslands-Organisation was repeatedly and expressly recognized by foreign states. Finally, that the Auslands-Organisation never acted as a fifth column becomes apparent from the fact that it remained operative in neutral countries until the end, even at a time when no difficulties of a diplomatic nature could have arisen for these states had they prohibited it.

I have commented on the individual points of the charges, and the question now is: what over-all picture results? We must still examine whether the cases investigated were individual occurrences, or whether they were held together by a mutual bond, and thus indicate the criminal character of the Political Leaders.

The Prosecution has pointed out that it has presented particularly extensive evidence. It must be conceded that on the basis of the occupation of all of Germany and by the activity of the authorities the last nook and cranny has been searched and the evidence brought here, but for that very reason the material surprises one, on closer examination, because of its scantiness; it is shown that the scope of the Prosecution's charge is not substantiated. Not fragmentary evidence, only systematic evidence can bring conviction that occurrences which happened once at one place necessarily happened constantly everywhere else. The individual occurrences might be summarized into a system only by the "conspiracy" which would demonstrate their criminal character, but it is exactly that conspiracy which ought first to be proved by the disassociated facts.

The documents of the Prosecution are contradicted by the testimony of the Defense witnesses. The Prosecution has questioned the credibility of the witnesses on the grounds that they are all witnesses on their own behalf. They were reproached for having remained in office until the end.

If one were to follow this line of thought, the possibility of legal hearing of the members as guaranteed by the Charter would be void of meaning. The witnesses are not appearing on their own behalf, but as witnesses with a general knowledge of occurrences

and conditions which can only be cleared up through the members of the organization themselves. Their credibility must be shown by the uniformity of many testimonies.

One cannot in general reject testimony when the express purpose of the proceedings is to eliminate evidence on these points in subsequent proceedings. There every individual would be able to bring witnesses for the correctness of his testimony, but too late. If specific testimony is said to be untrustworthy, this must be proved in each case; such evidence cannot, however, be produced by making a witness draw conclusions which he is unable to draw correctly due to lack of insight and knowledge. Only a few witnesses were heard before the Commission and the Tribunal.

The testimony of individual witnesses is no criterion to establish the criminal character of an organization. The witness can generally give little testimony about conditions as a whole which are under examination. Even if he has an extensive knowledge of things his testimony remains only fragmentary.

Only a comprehensive inquiry can bring clarification. The Prosecution had a good opportunity for this in the camps. That all internees were examined is shown by the individual trials which were carried out as a result of this examination, but crime as a general phenomenon could not be established.

The Defense for its part gathered together all available evidence by means of a sort of *enquête*. In the proceedings before the Tribunal, *enquêtes* were admitted on principle in the form of government reports. To prove general occurrences they in fact appear indispensable.

The weaknesses of the *enquêtes* are well known; their main danger lies in the choice of witnesses. In the present case, however, the circle of witnesses is limited to camp inmates. The submitted affidavits of approximately 58,000 persons are not a selection from the camps, but a digest.

The second difficulty of the *enquêtes* is the impossibility for outsiders to check the statements, because of their extent. Under the prevailing circumstances, however, this very checking is assured; the circumstances of all witnesses from the camps are known and confirmed by investigations. The statements of the witnesses can be checked at any time. That such an examination is possible is shown by the establishment of Denazification Courts. If one denies the evidentiary value of the testimony of witnesses and the affidavits in their totality, without having examined their real value, this Trial cannot lead to any real result. If the testimony of witnesses is given even a little evidential value, then the uniform picture is destroyed on which the Prosecution has based its plea.

Another question is whether, through the responsibility of all Political Leaders based on their position or based on their knowledge and approval, a joint responsibility can arise. The practical question is whether a Kreisleiter in the country is jointly affected through occurrences in an Ortsgruppe in the city, and whether someone who was a Political Leader in 1930 is affected by events which have occurred during the war. The question is whether a Blockleiter is affected by the circumstance that, on the basis of secret instructions, human beings were removed by mercy killing.

It appears obvious that differences must be considered here. First of all, a difference with regard to time. The conspiracy which connects individual actions, according to the statement of the Prosecutor of the Soviet Union, cannot be proved with certainty before the year 1935. According to Appendix A of the Indictment of the Organization, the Reich Government is held responsible for a conspiracy only after 1934. Only one of the documents used against the Political Leaders refers to the year 1933; it is 374-PS, and deals with a local Jewish boycott. All other documents concern events after 1938. The majority of documents only deal with war-time conditions.

When establishing the incriminating period, an isolated case must not be decisive, but only happenings which at the time bore a general character. If the Prosecution maintain their Indictment as covering the entire period of the existence of the Party, I believe this position to be untenable.

It is furthermore impossible to follow a train of thought according to which the honorary Blockleiter is supposed to be responsible on a par with a Reichsleiter or Gauleiter. A difference must be made according to the position held. A Gauleiter has other possibilities of gaining insight, and his knowledge and experience is greater than that of an Ortsgruppenleiter. The professional Political Leader must be judged differently from one who is acting in an honorary capacity. Only if proof of a joint conspiracy is furnished, could they be put on the same level. But that conspiracy in particular has yet to be established.

When examining the incriminating documents, the difference in this responsibility becomes evident. There are instructions given at the higher level, of which merely the smallest circle gained knowledge; there are instructions meant to be communicated generally to Political Leaders, which, however, did not pass through the entire chain of command; there are instructions which, issued independently in a certain part of the Reich, did not become known in other Gaue. There are measures, carried out by supreme Political Leaders, which were entrusted to them only because of special

State positions, and which therefore had no connection with the apparatus of the Party.

The difference in position has in fact been recognized by the Prosecution in its Indictment of the Political Leaders, and accordingly the members of the Ortsgruppen staffs and the auxiliaries of the Zellen- and Blockleiter have been omitted from the proceedings. It is in accordance with this principle that in addition the degree of responsibility on the part of the remaining groups must be examined.

That Zellen- and Blockleiter are still included in the proceedings, whereas members of the staffs of the Ortsgruppen who held a similar or even higher rank are not included, is due to the fact that in the organization manual they have been described as "Hoheitsfräger."

The significance of the organization manual is misunderstood by the Prosecution. The book was a theoretical work which was described as such by the personal adviser of the Reich Organization Leader, Ley. The designation "Hoheitsträger" was given to Zellen- and Blockleiter for merely constructive reasons, because in that way they could be included in the territorial organization. This interpretation leads to the conclusion that a Blockleiter appears as an important functionary whereas a Reichsleiter lacks this same characteristic; on the other hand, the Blockleiter, as a Hoheitsträger, falls into the same category as the Führer himself, as a functionary of the Reich. I call your attention to Affidavit Hederich, Number 27, Affidavit Schmidt, Number 25, and Affidavit Förtsch, Number 26. These are witnesses who were active in the organization as organizational leaders.

Accordingly, in the book by Oberbereichsleiter Dr. Lingg, entitled *Administration of the NSDAP*, which appeared in 1940, Zellen- and Blockleiter are not listed as Hoheitsträger. The designation Hoheitsfräger only goes down as far as the Ortsgruppenleiter (Document PL-1). In the same manner a decree of the Party Chancellery, dated 8 October 1937, does not include the Zellen- and Blockleiter among the Hoheitsträger (Document Number 2). There only four spheres of official jurisdiction are mentioned, and they end with the Ortsgruppe.

In addition there is an announcement by Hitler dated 23 April 1941 (Document PL-4) regarding authority to enter damaged property after air raids. There again Zellen- and Blockleiter are not listed amongst the Hoheitsträger. Similarly, the periodical *Der Hoheitsträger*, submitted by the Prosecution, as Document 2660-PS, for the purpose of proving the special character of the Zellen- and Blockleiter, shows that the periodical was only delivered down to the Ortsgruppenleiter (Document PL-25).

THE PRESIDENT: Dr. Servatius, are your pages in the German the same as the English pages or not?

DR. SERVATIUS: I have not been able to check them; they ought to be the same. I am now on Page 54.

THE PRESIDENT: Yes. I want you to go back to Page 53 for a moment. I did not understand your argument at the bottom of Page 53. This is what it says in the English: "The designation 'Hoheitsträger' was given to Zellen- and Blockleiter for merely constructive reasons..." I do not know what the word "constructive" means there; and it goes on: "...because in that way they could be included in the territorial organization. This interpretation leads to the conclusion that a Blockleiter appears as an important functionary, whereas a Reichsleiter lacks this same characteristic."

Then on the next page, Page 54, you go on to say in the third paragraph: "In the same manner a decree of the Party Chancellery, dated 8 October 1937, does not include the Zellen- and Blockleiter among the Hoheitsträger (Document PL-2). There only four spheres of official jurisdiction are mentioned, and they end with the Ortsgruppe." Well, that is equivalent to saying, is it not, that the Reichsleiter are Hoheitsträger?

DR. SERVATIUS: No. On the Reich level there is only one Hoheitsträger and that is Adolf Hitler himself as the Führer, whereas Reichsleiter are not Hoheitsträger since they themselves have no allotted territories. The Führer, Hitler, requested that and that is how it was constructed—the Reich, the Führer, and then come the Gauleiter, Kreisleiter, and Ortsgruppenleiter, and there it ends. There is no "Reich" for Block- and Zellenleiter.

I continue with the last paragraph.

Further instructions of the Party Chancellery were issued on 7 December 1943, in which the Block- and Zellenleiter were not counted among the Hoheitsträger (Document PL-24). But not only from the point of view of form, also from the point of view of their activity, the Zellen- and Blockleiter were not persons to whom special privileges and authority were granted; their activities have been described by witnesses examined before this Tribunal; it consisted of practical assistance. These Political Leaders were active in the administration of the Party or, during the war, to an ever-increasing degree, in carrying on social work to alleviate distress after air attacks, to which was added practical assistance in resettlement and the prevention of damage during air raid alerts. Self-sacrifice and strenuous work was demanded of these people.

These Political Leaders did not occupy a particularly predominant position. Of interest in this connection is Document PL-9, the appendix to the announcement by the Deputy of the Führer, dated

12 July 1940. It appears from this that, in contrast to the actual Hoheitsträger, the political reliability of Zellen- and Blockleiter had still to be established if they applied for a marriage loan or any other type of assistance. That such people could not be regarded as generally suitable for the duties of a spy is a certainty.

It also becomes clear that they had no tasks of political leadership; they were mostly common people who lacked the time and the knowledge for such work. The fact that from certain more highly educated circles individual persons were appointed as Blockleiter also shows that it was not their political ability which was to be used.

Particularly important in this connection is Document PL-24, regarding "Pointers on Leadership from the Party Chancellery." These "Pointers on Leadership" are issued, as is stated in the document, "for the immediate political enlightenment of the Hoheits-träger (that is, the Gau-, Kreis-, and Ortsgruppenleiter) and for the support of their leadership work." In order to inform the junior leaders of the formations and affiliated organizations, the Hoheits-träger are, each in his own sphere, (Gau, Kreis, and Ortsgruppe) to acquaint the corresponding leaders of formations and affiliated organizations with these pointers on leadership.

Block- and Zellenleiter, therefore, were neither the regular recipients of leadership instructions, nor were Ortsgruppenleiter allowed to acquaint them therewith. This proves that Zellen- and Blockleiter were excepted from the political instruction which was meant to be achieved by these leadership pointers, and that they had no tasks, or only very small ones, of a leadership nature, and that it was not considered essential to aid them by means of these pointers on leadership. The fact that, particularly during wartime, Zellen- and Blockleiter were simply appointed to their offices also speaks against the political significance of their positions. The refusal, repeatedly made during the war, to accept such an office also shows considerable pressure on the part of the Party to force acceptance of such a position. It has become clear, on the other hand, that the refusal did not take place because the tasks which had to be fulfilled were considered criminal; it was the effort and the work involved in addition to strenuous professional activity in wartime which were the cause for such refusal.

It is an error of the Prosecution, arising from the Organization Book, if it is assumed that a Zellen- or Blockleiter had the power to issue orders or institute disciplinary action, or that he had powers similar to those of the Police. (See Official Party Information, Document Number 29.) It is furthermore not correct that he had the right to call upon the SA, SS, or the Hitler Youth to aid him. The evidence taken before the Commission has established

this fact. I draw your attention to the examination of the witnesses Hirt, Engelbert, Schneider, and Kühn. Additional affidavits confirm this fact. Everything corresponds to the official Party instructions, Documents Number 26 and 27.

A Zellen- or Blockleiter, on the basis of his actual position, could have no knowledge of events which are criminal according to the Indictment; furthermore, general activity of that type cannot be proved. The knowledge of an ordinary Political Leader was no greater than that of every Party member. I draw your attention to Document PL-47. His duty to support the Party and the State was no greater than that of any civil servant (see Document PL-37). That there have been individual actions by Political Leaders which are very incriminating is something which everyone knows who has lived in Germany, but it is equally well known that this did not represent the typical attitude of the majority of Blockleiter. From the point of view of time, too, this group requires special examination.

Until 1 December 1933, every Party member was under an obligation to the Party alone to comply with a request to take over an office in the Party. With the introduction of the Law for the Safeguarding of the Unity of Party and State on 1 December 1933 (1395-PS), this duty to co-operate, until then in the nature of a private contract, became a legal obligation toward the State. In Article 5 of this law, detention and arrest are threatened in the event of failure to comply with this duty, that is, penalties which according to German law could only be imposed in the event of violation of legal regulations.

By Article I, Paragraph 1 of the Enactment Decree of the Law for Safeguarding the Unity of the Party and the State, the Statute of the NSDAP was given an official character. Thereby Article IV, Paragraph 2-b of the Statute was also given official character, which formed the basis for the obligation, previously based on private contract, to take over a function in the Party. That the law dated 1 December 1933 went into effect shows that the acceptance of an office in the Party became a lawful duty. The *argumentum e contrario* is demonstrated by a specific statement contained in Article 20 of the Reich Labor Law dated 26 June 1935 (1398-PS) where it is expressly stated that members of the Reich Labor Service are entitled to refuse the acceptance of an honorary function in the Party. No special legislation would have been necessary regarding the exception of Reich Labor Service members from the duty of taking over a function in the Party, had not the duty of co-operating in the Party been compulsory.

In practice the duty to co-operate amounted to coercion. Anyone refusing to comply with instructions to take over an office would

without a doubt have been ejected from the Party by the Party Court (see Documents PL-63, 64 and Number 8). Exclusion from the Party would have been equivalent to the loss of one's means of livelihood with all its consequences (Document PL-65). Apart from this, a Party member who refused to accept such a function could reckon with the loss of his liberty (Document PL-63). Therefore, the coercion to accept a function in the Party was simultaneously physical coercion.

Anyone working in the Party before the seizure of power was probably doing so for idealistic reasons. Anyone who was given a function after the seizure of power probably accepted it in most cases without enthusiasm, particularly since he, as shown by the evidence, was taking upon himself a distasteful burden without reaping advantages in the process. Without doubt, however, almost without exception all who became Party officials after the beginning of the war accepted a Party function only on account of existing legal regulations. Those men not called up for the Armed Forces were either physically unfit or professionally so overburdened that they neither had the time nor the inclination to take over a function in the Party. This explains the fact that instructions from the Führer and the Party Chancellery, in which the Party offices were instructed to call upon Party members for their co-operation, became more and more rigorous and even urged that Party Court proceedings be instituted against anyone refusing to collaborate in the Party (Documents 61 and 62). During the war the legal and physical coercion regarding co-operation in the Party existed not only on paper; indeed that this possibility was resorted to as far as possible is proved by Document Number 8.

It can therefore be justly assumed that if anyone became a functionary and Political Leader during the war it was as a rule the result of legal prescriptions and the threat of being prosecuted by the Party Court. This applies in practice to all the Block- and Zellenleiter and members of the Ortsgruppen staffs appointed during the war.

The Prosecution has asserted that, on the contrary, this compulsion to work in the Party was merely the result of a voluntary entry into the Party. This would lead to the conclusion that membership in the Party would in itself be punished; on the other hand, one cannot argue, as has been done, that the Party members concerned could have avoided the compulsion to collaborate in the Party, had they accepted a position in one of the affiliated organizations, for instance the NSV, in good time. The incorrectness of this conception becomes apparent once it is realized that in this way collaboration in the Party is being recommended, though in a different capacity.

In the case of civil servants the further coercion existed of pressure exercised by the superior departments and ministries (compare Documents Numbers 67 to 70). These decrees were the means by which civil servants could also be forced to work with the Party. If a civil servant refused to comply with this request, then he would have to reckon with dire consequences for himself; he would have had to fear that disciplinary action would be started against him by his superior department, which would lead to the loss of his livelihood and which could lead to starvation for his entire family. If, on the other hand, he wanted to escape this risk by first of all leaving the Party, he would likewise suffer the loss of his livelihood (see Document Number PL-71). Civil servants therefore found themselves in a particularly difficult situation. In view of these circumstances, we cannot consider this group of people as a freely constituted body. The tasks of the Zellenleiter and Blockleiter, and therefore the importance of their positions, also varied according to the times.

Whoever was a Zellenleiter and Blockleiter before the seizure of power in 1933 must certainly have been more active politically than the person who accepted these positions at a time when only practical tasks could be performed. During the war persons were employed in these offices as auxiliaries, who by reason of their age or their occupation had not been drafted for military service. It is obvious that these persons were not elite troops of the Party, destined to spread fear and dread, and who played at being little Caesars. If, in addition, one considers the difference between town and country, one cannot conclude that these 1,200,000 persons included in this group were essentially criminal.

The Prosecution has excluded the members of the Ortsgruppen staff from the proceedings. The point of view is presumably that they, as honorary helpers of the Ortsgruppe, held a position of less importance. It would be well to examine whether the members of the Kreis and Gau staffs could be excluded on the same grounds. Their connection with the influential Hoheitsträger puts them under more serious suspicion. The nature of this connection must be examined more closely.

The leading political offices of the staffs were the Staff Office, the Propaganda Office, the Training Office, the Organization Office, and the Personnel Office. Their personnel consisted of paid officials. The treasurer was another member of the staff. He was not responsible, however, to the Hoheitsträger but to the Reich Treasurer (Document PL-73). The Party finance administration had created an independent control and accounting system which functioned in a purely bureaucratic manner and was of a nonpolitical nature. It comprised about 70,000 Political Leaders.

Besides the political offices, there were consultant Political Leaders. There were the four following categories: A representative of the different sections of the NS Women's Association, NS University Teachers' Association, and the NS Student Association, a representation of the Welfare Associations, NSV and NSKOV, the leaders of the professional organizations for teachers, civil servants, physicians, and members of the legal profession, and the representatives of the technical offices: DAF, industry and commerce, agrarian policy, *et cetera*.

In order to gain an over-all impression of the dimensions of these offices, it must be pointed out that they generally had no staff of their own and very often no office space. Sometimes they were not even in the same building as the staff, but some distance away.

There was little practical co-operation with the Gauleitung and Kreisleitung. A number of affidavits corroborate that these agencies were hardly ever visited by the Hoheitsträger (see Affidavit PL-39) and that they did not work with them (see Affidavits 48 to 50). During the war, some of these agencies were dissolved because they had become superfluous, such as the Legal Office in 1942, and the Office for Civil Servants in 1943. The task of these offices was mainly technical, and their officials therefore received instructions not from the Hoheitsträger, but from the competent superior agencies (Document PL-72). No direct accusations have been made by the Prosecution against the activity of these staff members.

Physicians have been accused in connection with mercy killing and concentration camp atrocities, but these are not physicians of the Public Health Office. Agreements between the Reich Minister of Justice and Himmler and Goebbels regarding a special criminal law and extermination through labor have been mentioned. The Kreis and Gau legal offices for justice are in no way connected with this.

These offices certainly represented the National Socialist ideology within the staff, for this was their task, but here it is important to establish how far the Political Leaders were concerned, outside their official activity, in a conspiracy aimed at a war of aggression or the commission of war crimes. One cannot declare them to be criminal on the grounds of a general supposition that they might have had some knowledge of these facts. First of all there exists for us the important task of verification, and it must not be passed on to a court sitting at a later date.

The verdict of the Tribunal will aggravate threefold the sentence of any future court. It is to be feared that during the subsequent trials individual guilt may be too easily presupposed upon the assumption of their general guilt. In judging the technical offices, it must not be forgotten that about 140,000 persons are concerned who were employed in an honorary capacity.

THE PRESIDENT: What is the evidence for that statement that 140,000 persons were employed in an honorary capacity?

DR. SERVATIUS: These are the members in the technical departments, who worked on the various staffs of the Kreis, Gau, and Ortsgruppen. In the case of the Ortsgruppen, the Prosecution has left these people out of the proceedings. I want to establish that these people in the higher staffs were also honorary specialists who had no part in the crimes against peace or in the war crimes. They did not come under the Gauleiter, but received instructions directly from their respective technical representatives who were their superiors. Their activities appear rather intense in the field...

THE PRESIDENT: Dr. Servatius, you have not answered my question. What is the evidence for the statement, and I want to ask a second question, what do you mean by honorary capacity?

DR. SERVATIUS: By honorary capacity, I mean people who were not paid for their work. "Honorary" means without payment.

THE PRESIDENT: You said they were technical experts?

DR. SERVATIUS: Yes, they came from their organizations: jurists, doctors, and teachers, all were represented; or else they were the representatives of the welfare organizations or the Labor Front. Each one of these was an expert in his own field, who was consulted on a honorary basis.

THE PRESIDENT: Again I ask you, Dr. Servatius, what is the evidence that there were 140,000?

DR. SERVATIUS: That figure is carefully calculated on the basis of the Organization Book. I can supply more complete details later; it would take too long now and, besides, I am not at the moment in a position to present the figures. I have stated with respect to each subject how many people were concerned in order to give a general picture.

THE PRESIDENT: Go on.

DR. SERVATIUS: We still have to examine the group of the real Hoheitsträger, who made up the nucleus of the Party. Their special position and their political authority set them apart from the other Political Leaders, but their positions vary considerably. Whereas the Ortsgruppenleiter is restricted in his sovereignty to the circle of his Ortsgruppe, the authority of the "Higher Party Leaders" ("Höhere Parteiführer") goes beyond Party limits, affecting the rights of those who do not belong to the Party. Only the Kreis- and Gauleiter have the right to pass political judgment upon outsiders and in that way determine the fate of those outsiders. At the same time they exert great influence on the life of all the people in this way. The decisions which they make are based on their own judgment. This

fact is indicative of their personal responsibility. The Ortsgruppenleiter is only asked to furnish evidence for the judgment. He is only an organ of execution and a man without any independence. Externally the difference is indicated by the fact that the Ortsgruppenleiter acts only on an honorary basis, that is, without pay. His profession prevents him from concerning himself in a comprehensive manner with all that is happening. This was especially the case during the war, when necessity directed all one's thoughts and powers towards one's own problems.

The 70,000 Ortsgruppenleiter were members of the lower middle class who had not previously been active in politics and who lacked experience in this dangerous sphere. Most of the Ortsgruppen were in the country, where agricultural work and life went on as usual. The testimony given by witness Wegscheider before this Tribunal gave a true picture of the situation.

The position of the Ortsgruppenleiter becomes particularly clear when we compare his responsibility with that of the Higher Party Leader, who was appointed by Hitler directly. Because of his connection with the highest leadership, the probability of wider knowledge is greater in the case of the Higher Party Leaders.

This Trial has shown that the separation of departments and the artificial severance of administration and Police have played an important role. But, because of the merging of many functions, and because many strings were gathered in one hand, at least the Higher Party Leaders could see when something was not as it should be on critical points. The question is whether a Gau- or Kreisleiter could set his mind at rest because everything was as it should be in his sector and the questionable incident was taking place outside his domain or his department.

We shall have to answer this question in the negative. He had the duty to obtain such knowledge in view of his own sovereign rights, for he had deprived others of the possibility of concerning themselves with these things. He had the right, entailing the obligation, to be active because of his office. He had become the sole politician and was therefore bound to concern himself with politics.

Actually, those Gau- and Kreisleiter who were examined here did concern themselves with current happenings. They investigated the transporting of the Jews. They endeavored to get into concentration camps and they investigated the conditions of foreign workers. They voiced their misgivings and they made protests. Did they fulfill their obligations in that way? In this connection we will have to examine the question of the sharing of responsibility. It is not possible for all to concern themselves with everything. The lowest offices have practical concern of a local nature, and they cannot be concerned with the problems found at the top level. Not every

shock can be transmitted to the entire machine. The Kreisleiter who in a dictatorial state passes on reports upon individual incidents to the Gauleiter must be credited with this distinction, but he must also concern himself with the results of his reports, and draw his own conclusions.

This is all the more true of the Gauleiter, in view of his superior position. There exists a limit where moral principles become involved and daily routine no longer matters. When one came up against Himmler's barriers, was one to be expected to proceed, regardless of what would happen? An answer to this question has already been attempted several times. Must one really demand action, immediately and without compromise? Is it really "all or nothing"? Can one afford to let things take their course, or is it "now or never"? Must one weigh guilt and merit, and can one hope for improvement? Is it sufficient to remain at one's post when one disapproves, or hopes to prevent worse by remaining, or does one become guilty even by remaining and keeping up appearances? Has he who "always takes pains to make an effort" any justification? Must he take up the struggle against adverse circumstances, even though his own life be uselessly jeopardized, or should he endure and bow to fate? "To be or not to be: that is the question." An answer cannot be found without thorough examination of the legal basis of guilt: knowledge, sanction, and criminal negligence. If the criminal nature of this group is to be established, these questions must first be decided upon. Such an examination can be carried out for individual cases only. It is practically possible in the case of a group of 2,000 Kreisleiter and Gauleiter. These persons are known, their actions took place in public and are not difficult to clear up. There remains the group of the Reichsleiter. The same views are applicable to them as to the Gauleiter.

Himmler, who had only the rank of Reichsleiter, does not belong to this group (Document PL-59a). That position of the Reichsleiter, however, is of great legal importance to all Political Leaders. They include the principal defendants, in connection with whose actions, according to Article 9 of the Charter, the conviction of the group only can take place. The trial brief only mentions Rosenberg and Bormann. Only Annex B of the supplement to the trial brief added four more Reichsleiter, thus including the Gauleiter Sauckel and Streicher. Frick, too, held only the rank of Reichsleiter, which is in contradiction to the direct inclusion of his actions. Where the other principal defendants are concerned, one must examine whether they committed the acts with which they have been charged in their capacity as Political Leaders, or in another capacity. The Prosecution has recognized the legal significance of this distinction by referring in the summary of the trial brief only to those deeds of

Rosenberg and Bormann with which they are charged in their capacity as Political Leaders (Page 75 of the trial brief).

One must not depart from this distinction. The ruling of Article 9 of the Charter is no purely formal prerequisite for the Trial. It is a material limitation of the extent of the criminal group. The group must not be formed arbitrarily and without limitation by the Prosecution; there must be some connection between it and the act of one of the principal defendants. This is only possible if one of the principal defendants acted within the Corps of Political Leaders. Nor does the connection exist where the effect of the action of one of the principal defendants fails to affect all levels of the Political Leadership Corps; this must be considered in passing judgment on the lower grades.

The connection is also lacking in the case of those principal defendants whose connection with the Corps of Political Leaders was established only later, with the exception of Hess. In the case of Rosenberg, the actions with which he is charged were essentially in the State sector, where he was active as Reich Minister for the Occupied Eastern Territories. The actions of Bormann as Chief of the Party Chancellery from 1941 on are primarily decisive for the judgment of the Political Leaders. As a result of the absence of this principal defendant, however, it is of doubtful wisdom to base the condemnation of the group on his deeds, since there was no close investigation of the occurrences. For the most important charges it would have to be cleared up whether Bormann acted as Chief of the Party Chancellery, or as Secretary of the Führer outside of the Party machine, or whether he acted independently contrary to all instructions (Document 53).

It is noteworthy that Hess, Bormann's superior, is not included in the original trial brief, although until 1941 he was Deputy of the Führer in the Party. Presumably, the Prosecution was at the time of the opinion that he could not be charged with any action in connection with the Corps of Political Leaders which would indicate a criminal character. This is a significant point of view for the judgment of the group as regards time.

The actions of Gauleiter Sauckel and Streicher cannot be taken as a standard for the Political Leaders as a whole. As Gauleiter they could only act in their own districts. The actions with which they are charged in this Trial they undertook outside of their function as Political Leaders, namely, as Plenipotentiary General for the Allocation of Labor or as a newspaper publisher.

I want to present two additional legal viewpoints which can be of significance for the judgment. One idea is the retroactiveness of the verdict. I do not want to attack it as being legally inadmissible, since the Charter has ordered it, but since the verdict is at the

discretion of the Tribunal, the matter of fairness can be considered here.

Retroactiveness in an individual trial can be justified by the fact that the perpetrator was warned and had to realize the fact. It is different with the bulk of little Political Leaders, who are made responsible for a conspiracy only indirectly through their leaders.

The second point of view is the lack of legal hearing. In these proceedings before the Tribunal the preliminary decision is reached, which is decisive for every member of the organization. Therefore, everyone was given the right to request a legal hearing. Only comparatively few have made use of this right. One must assume that many have not been informed of their right or have had no opportunity to submit their applications to the Court. There are applications from only about one-third of the camps of the British and American Zones; from the French Zone, from only two camps; but particular reference should be made to some areas from which no applications at all have been received. There are no applications from Austria, and the camps there could not be visited. The permission of the military authorities was given, but the approval of the Control Council was not received. This is noteworthy since there are special circumstances in this case which might possibly exonerate the members; special treatment and judgment, especially in regard to time, is advisable. Nor are there any applications from the Soviet Zone, although the official announcement is said to have been made. I myself only recently had an opportunity to visit two camps. Those interned there declared that they knew nothing of their right to a hearing; not all wanted to submit applications.

For these districts, therefore, the Defense was in a difficult position as regards evidence. For these zones a few Political Leaders were heard who could be reached in British or American camps. Although one obtains a certain picture in this way, the taking of evidence before the Commission has shown that there may be testimony of significance for the Defense.

Thus a Kreisleiter of the West was able to testify that the construction of the West Wall had convinced people there of Hitler's defensive intentions. A Kreisleiter of the North referred to the Naval Treaty with Britain, which the coastal population particularly considered a sign of the will for peace. Other witnesses have brought forward noteworthy arguments from the Church membership of the Political Leaders in their district. The real significance of the limitation could be judged only after a hearing, so that a judgment on this subject is not yet admissible.

The following question is also of considerable significance for the procedure. The Charter has guaranteed the opportunity of a hearing. Every provision of form has its deeper sense and its basic significance. Here legal hearing is held up as a democratic principle

in contrast to rejected police methods. This principle was put forth jointly by the signatory powers and the Tribunal must see to it that it is observed. This is an unrenounceable objection which I hereby expressly assert.

THE PRESIDENT: Mr. Biddle would like to know exactly what you mean by those last two sentences.

DR. SERVATIUS: I did not hear what you said.

THE PRESIDENT: Mr. Biddle would like to know what you mean by your last two sentences, "Here legal hearing is held up as a democratic principle in contrast to rejected police methods. This principle was put forth jointly by the signatory powers and the Tribunal must see to it that it is observed. This is an unrenounceable objection, which I hereby expressly assert." Does that mean anything?

DR. SERVATIUS: It means that I cannot forfeit the right to raise the objection that in entire territories hearings have not been made possible, that is, in Austria and the Soviet Zone. And it is an objection which I cannot renounce but which must officially be taken into consideration.

THE PRESIDENT: Go on.

DR. SERVATIUS: The observation regarding divergent practice in the interpretation of Article 9 of the Charter must be made from another point of view also. It has to do with the danger of divergent interpretation and application of the Tribunal's verdict with regard to the organizations. Therefore, in addition to a specification of the group of persons affected by the verdict, a clarification of the elements of guilt to be proved should be laid down in the interest of subsequent separate trials.

Also the degree of punishment is uncertain. The scope of the penalties fixed in Law Number 10 of the Control Council, which includes the death penalty, offers no legal protection if their interpretation is left to the free decision of the various national tribunals which may subsequently sit in judgment. The judgment of the Tribunal might cause new harm. Particularly in this regard the Tribunal must see to it that the goal which it seeks to attain will be attained. The punishment must not become a revenge. The measure of punishment must not be based on the theory that millions of victims necessarily imply the guilt of millions to be brought to punishment. If the basic aim of judgment is to deter, the following must be borne in mind:

No one who appeared before this Tribunal has attempted to justify the crimes which are the subject matter of this Trial.

All who appeared here disassociated themselves from these crimes:

No one has declared that the extermination of the Jews had been necessary, or that a war of aggression was a goal worth striving for, or that the persecution of the Church and the concentration camp atrocities could not have been dispensed with. Only if this had been the case would this be a trial involving an ideology which was to be eliminated.

That is why we see here no typical advocate of this ideology to say "I have millions behind me," or, "I cannot do otherwise, so help me God!" The millions were set in motion by another goal, for which they fought. This goal was not the world of crime, but the shining radiance of Socialism. The masses believed that a miracle of progress would succeed the period of misery, and were strengthened in their belief. They are ready to believe once more. The foundation of this belief is the justice of the verdict in the case of the organizations, by which the entire population will be affected. This verdict must inaugurate an era of new international law and punish those who are responsible for the war. It is only just that the old legal concept should disappear from the stage of world history, which punishes an entire people by means of peace treaties involving annexations and contributions without regard to guilt. Today we face the threat of twofold and threefold punishment, by the peace treaty, by Law Number 10 of the Control Council, and by the Law for Denazification.

We are still in a state of war and this Trial has been called the continuation of the war effort.

But there must be peace, and "Should war not end with war, whence then shall come the peace"?

THE PRESIDENT: Dr. Servatius, the Tribunal observes with appreciation that you have kept within the limit of time which the Tribunal hoped would be kept to by all counsel on behalf of the organizations. You have made your speech within half a day, but some of the other speeches which have been deposited for translation appear to be very much longer than yours, and the Tribunal wishes me to point out to those counsel that they will have to make their speeches also within half a day.

The Tribunal will now adjourn.

[A recess was taken.]

THE PRESIDENT: We call on Dr. Merkel.

DR. MERKEL: Mr. President: May it please the Tribunal, in the proceedings against the individual defendants, the deeds of individuals were examined. During the proceedings against the organizations, the question we are concerned with is whether a new basic

principle is to be introduced into the legal structure of this world. The trial of the Gestapo is given its significance by the conception of the Prosecution that the Gestapo had been the most important instrument of power of the Hitler regime.

As I defend the Gestapo, it is with the knowledge that a terrible reputation is associated with that name, that it conjures up horror and fear, and that waves of hatred radiate from the very name. The words I am about to speak will be spoken without regard for the opinions of the day, because I hope to be able to present factual and legal evidence which will place this High Tribunal in a position:

- (1) To examine whether, by sentencing the organizations, a legal development will be introduced which will serve humanity;
- (2) To establish the truth regarding the Gestapo; and by this
- (3) To save the innocent amongst the former members of the Gestapo from a tragic fate.

The first two tasks necessitate the answering of a question which represents a preliminary problem connected with the problem of the Gestapo as a whole.

No allegation made by the Prosecution has shaken me more than the assertion of the British Chief Prosecutor that the Germans, after 6 years of Nazi domination, by replacing the Christian ethical teachings by idolatry of the Führer and the cult of blood, had become a depraved nation. If this judgment is true, then the fact of its existence, apart from the circumstances just mentioned, is due to yet another extraordinary factor—a factor of a character so unusual that history hardly knows it: The symptoms of the demon, the demon in Hitler, and the infiltration of the demon's spirit into his regime and into the institutions which he created and employed.

How far Hitler was demonic has been illustrated by Goethe's words already quoted from *Dichtung und Wahrheit* by my colleague Dr. Dix:

“... they (the demon-men) radiate an enormous force. . . . All ethical forces united cannot defeat them. . . . They attract the masses. . . and it is from such sayings that the strange, yet dynamic phrase may have arisen: *Nemo contra deum, nisi deus ipse.*”

The effect of demonocracy in the wide world has become clear to you in some of the cases of the individual defendants. The case of the Gestapo will demonstrate to you how an institution of the State was repeatedly misused by the demonic leaders of that State. Here, during the discussion of this preliminary question, yet another interest arises, the interest of the legal significance of demonocracy for this Trial. In order to satisfy that interest I shall give another short quotation from Goethe:

"Demonocracy is a power which, though it does not oppose the moral world order, nullifies it."

According to this verdict the crucial point is that two powers determine the history of this world, "the conflict of which," as Mr. Justice Jackson said in agreement with Goethe, "forms much of the history of humanity: The moral world order and the demonic." The juridical value of this judgment for our set of circumstances becomes clear from the following considerations:

The moral world order was represented by the traditional order. Opposed to this, Hitler represented the power which, while it did not oppose it, nevertheless rendered it ineffective. In this Trial the aim must be to exterminate the remains of this demonic power. Can this and should this be done in accordance with the traditional principle of the victorious moral world order, or should it be done by other methods?

Here we have the first juridical alternative of this Trial clearly before us, deriving from the greatest of possible perspectives, that is, consideration of the differences between the moral world order and the demonic.

Controversial points of view dominate the present attitude toward these matters. The Charter on the one hand has chosen the traditional specific principles of the moral world order. It wishes to see judgment passed against the representatives of demonocracy, the individual defendants and organizations, by means of an orderly trial, a proper indictment, with appointed defense counsel, and resulting in a sound verdict. On the other hand, the "law of the Charter" itself, according to the words of Mr. Jackson, is "a new law" with principles which contradict the age-old traditional legal conception. As examples I quote the assumption of collective guilt and the introduction of laws with retroactive effects.

In this way it becomes apparent that the leading thoughts directing this Trial are in opposition to each other. It is our common task to recognize this fact and also, through joint efforts on the part of the Prosecution, the Defense, and the Tribunal, to arrive at a *concordia discordantium*, a balance of conflicting opinions.

My leading argument as defense counsel for the Gestapo will have to be devoted, therefore, to the question of how the rules of the Charter are to be understood, according to which the Tribunal can declare, from the trial of Göring, Kaltenbrunner, or Frick, that the Gestapo was a criminal organization.

Once again I must come back to the principal consideration. If two powers of historic importance for this world decide the moral world order and the demonic, then, if this world is to be cleansed, moral order must be victorious. But is the moral world order

empowered to conduct the fight against its opponent with exceptional rules which differ, themselves, from the basic principles of the moral order? For the sake of the purity of its character and of its victory, the moral world order must only fight with the weapon of its own categorical imperative, without any compromise. Because it is thus that the opponents of Hitler fought during 6 years of war, starting with the principles of the Atlantic Charter. But is it right that they, the declared representatives of the moral order, should now, with the battle of arms at an end, conduct the final struggle against demonism with such exceptional rules? Surely that is impossible! Would it not create the impression that the victorious powers, particularly in the realm of ethics, do not have sufficient confidence in their innermost essence?

As a result, for coming generations this maxim would develop: "That which benefits the victor is right." The pitiless *vae victis* would have been enthroned, whereas the victors had especially emphasized that they were entering the lists for justice, and because of justice. With the word "Justice" the signatory powers have called the Tribunal into existence by stating in Article 1 of the Charter that "an International Military Tribunal shall be established for a just trial. . ."

They gave the word "Justice" emphasis by having Part IV of the Charter headed "Fair Trial for Defendants"; and then they took the precaution of specifying that the regulations contained in Articles 9 and 10 are such as may be applied.

That the victors should wish to have organizations with such a reputation as the Gestapo declared criminal—who would not understand that? But they guarded against making Articles 9 and 10 compulsory regulations. In that way "Justice" became the first premise of the Tribunal. Within its limits, therefore, the regulations that may be applied under Articles 9 and 10 are to be handled as if the entire stipulation had the following wording: "If the Court considers it just, it may declare the organizations criminal." In this way the entire decision rests on the concept of "Justice."

"Justice" in its truest form is an attribute of God—"God is just." This sentence has penetrated our consciousness in the sense that God will call to account only him who is really guilty according to the word of Josiah, "I have called you by name."

This confirms the principle which should guide all the deliberations according to which the organizations and their members must be dealt with. In the main, two points are involved: The members of the organizations, who with their families make up at least 15 million people; then also we have to see that "this remarkable but terrible saying" does not prove true because of the judgment,

"No one can do anything against the moral order of the world except that moral order itself."

From this, the following conclusion arises for my final plea: The question put by the Charter to the Prosecution, to the Defense and to the Tribunal, whether rules of exception are admissible, whether, above all, the organizations are to be considered collectively capable of guilt, whether laws with retroactive force may be applied—that question must be answered in the negative.

The counterquestion as to whether the world in the future can, on the basis of the system of individuality, be protected from demonic catastrophes, and whether the Hitler catastrophe did not prove the opposite, I should like to answer to this effect: The protection of the world against such catastrophes is not a question of a system, but rather a question of determined men who rest secure in the moral order of the world.

The significance and the consequences of the demand voiced by the Prosecution to have the organizations declared criminal are of tremendous scope. That is reason enough for defense counsel to examine with the utmost conscientiousness and thoroughness, and from every point of view, whether the foundations are present which can carry an indictment of such proportions in terms of justice under the moral world order.

First of all, I should like to establish with all emphasis the first and most important result of my examination: A group cannot be declared guilty. For criminal guilt means the embodiment of conditions which are punishable not only in an objective, but also in a subjective form. In other words, a crime can only be committed in terms of guilt, that is, only intentionally. According to natural concepts, we can speak of intent only in the case of an individual, but not in the case of a group, and if foreign laws are referred to in this connection, this, in the final analysis, amounts to confusing the coinciding will of numerous individual persons directed toward a fixed aim.

However, the problem of collective guilt lies, in a sense, much deeper. The thought of rejecting collective guilt goes back to the most ancient times. It originated in the Old Testament, and through Hellenic culture and Christianity it spread over the entire world. In this way it has become the guiding legal principle of the entire moral order of the world. In Roman law this sentence was expressed clearly: *Societas delinquere non potest*. In modern times we have retained the thought of individual guilt.

On 20 February 1946, the Pope said in his radio speech that it was a mistake to assert that one could treat a person as guilty and responsible merely because he had belonged to a certain organization, without taking the trouble to investigate in each case

whether the person in question had made himself personally guilty through his actions or his failure to act. That was an encroachment on the rights of God. In the same sense the Hague Rules on Land Warfare of 1907 in Article 50 expressly prohibit the infliction of punitive fines because of the actions of individuals for which the population cannot be considered co-responsible.

Finally, the former State Secretary, K. H. Frank, was condemned to death and executed because he had, among other things, wiped out the village of Lidice because of the conduct of individual inhabitants of the village. That is to say, the fact that he had assumed the collective guilt of the village community and inflicted a collective punishment on the village was counted as a crime. Thus, in our case, it cannot be proper to punish an organization as a whole, collectively, because of the crimes of individuals.

With these brief references I believe I have made clear that the basis of the accusation against the organizations is not firmly established. I agree with the legal statements of Mr. Jackson only insofar as he concludes his legal observations with the statement that "it is completely intolerable from such thinking according to the letter of the law to deny personal immunity." The personal immunity of the individual members of an organization in connection with the punishable actions committed within the organization cannot be derived from the denial of collective guilt; rather can the culpability of the individual for the punishable actions committed by him be emphasized more strongly.

The legal basis of the whole Trial against the individuals and organizations here accused is the Charter created by the United Nations. The Defense has already taken the opportunity to express its misgivings about the Charter, to which I make reference.

I want to bring out only one point of view once more. If, in case an organization is declared criminal, the former members are to be punished because of their mere membership, then they must do penance for something which was legally permitted at the time of the action. Thus the Charter establishes norms with retroactive force. The legal principle, however, which prohibits laws with retroactive force, is firmly established in the law of all civilized states.

Thus the French Constitutional Assembly, on 14 March 1946, decided to give the Constitution of the French Republic, as a preamble, a new formulation of the "Declaration of Human Rights." This declaration reads, in Article 10:

"No one can be condemned or punished save on the strength of a law passed and published before the deed."

According to this general international legal concept, the American Military Government in Germany ordered through Law Number 1, in Article 4:

“A charge can only be pressed, sentence passed, and punishment executed, if the act at the time of its commission was expressly legally declared punishable.”

The same law prohibits the use of analogy or so-called sound national instinct. The American Military Government even considers the principle mentioned to be so important that it punishes its violation with the death penalty.

Finally, may I be permitted in this connection to mention Article 43 of the Hague Convention of the year 1899, according to which the United States of America, as well as England and France, undertook the obligation toward the other states, in occupying a foreign country to observe the laws of that country unless a compelling obstacle existed.

The United Nations have proclaimed that the goal of this Trial is to restore justice and respect for international law, and thus to promote world peace. They have acknowledged fundamental human rights and the recognized principles of international law. Stamping as criminal formerly legal political convictions, however, might be considered a limitation of this acknowledgment and shake confidence in fundamental human rights. As a precedent, such a judgment might well have disastrous consequences for the idea of justice and personal freedom.

My previous statements concerned the admissibility of the charge against all organizations. For the Gestapo there are two further factors. The Gestapo was a State institution, an aggregation of State agencies. An agency, in contrast to a society or other private organization, pursues not self-chosen, but State-ordered aims; not with its own but with State means. It fulfills its function in the framework of the total activity of the State. Its actions and measures are State administrative acts. In the case of a State agency one cannot speak of submission to a common will of the agency nor of an association, more or less by agreement, for a common purpose. Thus there is lacking here the prerequisite for the concept of an organization or group, and of membership in the sense of the Charter. If private organizations cannot be considered responsible and subject to punishment, then State agencies and administrative offices certainly cannot. Only the State itself could be held responsible for its institutions, if that were at all possible, but never the institution itself.

The institution of the police—including the political police—belongs to the internal affairs of a state. A recognized international

legal maxim, however, prohibits the interference of a state in the internal legal affairs of a foreign country. And so from this viewpoint as well there are objections to the charge against the Gestapo, which I consider my duty as counsel to point out.

Finally, there is a further question to be examined: If the Gestapo is to be declared criminal, one of the principal defendants should have been an official of the Gestapo. But was any one of the principal defendants ever an official, and thus a member, of the Gestapo? That this prerequisite for trial exists seems very doubtful, for Göring, as Prussian Prime Minister, was Chief of the Prussian Secret State Police and could give orders to it, but he did not belong to it. His position as "Chief of the Secret State Police" was, moreover, eliminated with the appointment of the Chief of the German Police and with the incorporation of the Prussian Secret State Police in a Reich institution in the years 1936 and 1937. Frick, as Reich Minister of the Interior, was the competent minister for the Police but he was never an official of any particular branch of the Police. Kaltenbrunner, finally, testified that with his appointment as Chief of the Security Police and the SD he was not made Chief of the Gestapo, and in fact he was not—as Heydrich had been since 1934—the head of the Secret State Police Office. Nor was the Chief of the Security Police and the SD on the budget of the Secret State Police, but was carried on the budget of the Reich Ministry of the Interior.

In the event, however, that the indictment and condemnation of the Gestapo should nevertheless be judged admissible, I now turn to the question of whether the substantive legal prerequisites exist for declaring it criminal. In other words, it must be examined whether the Gestapo as a whole was a criminal organization or group in the sense of the Charter. In the examination of this question I shall follow the conditions laid down and designated as relevant in the ruling of the Court of 13 March 1946.

But before I go into this question I must point out a general error regarding the type and extent of the activity of the Gestapo. Among the German people, and perhaps even more abroad, it was customary to ascribe to the Gestapo all police measures, terror acts, deprivations of freedom, and killings, as long as they had any police connection at all. It became the scapegoat for all misdeeds in Germany and the occupied territories, and today it is made to bear responsibility for all evil. Yet nothing is more mistaken than that. The error arises from the fact that the whole police system, whether Criminal Police, Wehrmacht Police, Political Police, or SD, without distinction of the branches, were considered Gestapo. When Heydrich said at the German Police Rally in 1941: "Secret State Police, Criminal Police and Security Service are enveloped in the

mysterious aura of the political detective story," this characterized the almost legendary atmosphere by which the Gestapo in particular is surrounded to the present day. It was apparently in keeping with Heydrich's tactics to let the Gestapo appear in the opinion of people at home and abroad as an instrument of terror, to spread fear and horror of it, in order to create fear of engaging in activity hostile to the State.

That the Gestapo was unjustly accused of many crimes may be shown by a few examples. One of the most disgraceful individual crimes during the war was the murder of the French General Deboisse, at the end of 1944 or the beginning of 1945. The French Prosecution charges it to the Gestapo on the basis of Documents 4048 to 4052-PS. According to 4050-PS, however, Panzinger, who was entrusted with the execution of the plan, was at the time head of Amt V of the RSHA, that is head of the Reich Criminal Police Office. Schulze, who is mentioned in 4052-PS, also belonged to the Reich Criminal Police Office. 4048-PS, according to the file reference "V," was also drawn up by the Reich Criminal Police Office as Amt V of the RSHA. Amt IV of the RSHA—the Gestapo Office—was thus not involved, but only the Reich Criminal Police Office which included the section charged with searching for prisoners of war. Himmler, who as Chief of the Replacement Army was also in charge of the Prisoners-of-War Organization, contacted Panzinger directly in this matter; Amt IV did not have knowledge of this occurrence at any stage. Whether Kaltenbrunner knew anything, he will have to state himself.

These facts are proved by Gestapo Affidavit Number 88.

In the report on the condemnation of participants in German war crimes in the Russian city of Krasnodar (USSR-55), which was submitted by the Russian Prosecution, the commission of these terrible crimes is charged again to the Gestapo without further proof. In reality, this was the activity of an Einsatzkommando, not of the Gestapo. (See Gestapo Affidavit Number 45).

I would like to refer to the testimony of the witnesses Dr. Knochen and Franz Straub. It proves that in Belgium and France, as everywhere, the Gestapo was frequently unjustly accused of crimes. Through several witnesses (Dr. Knochen, Straub, Kaltenbrunner), it has been established, besides, that frequently in the occupied territories and in the home area swindlers and other shady characters appeared who passed themselves off as Gestapo officials. Himmler himself demanded that such false Gestapo officials should be placed in concentration camps (see Exhibit Gestapo Number 34 and Gestapo Affidavit Number 68).

As indicated, the Chief of the Security Police, Heydrich, was not entirely without responsibility for the wrong opinion concerning the

Gestapo. Thus he deliberately furthered the rumor that the Gestapo knew everything politically suspicious because it spied on the population. This could not be true, as is proved by the fact that the approximately 15,000 to 16,000 Gestapo officials in question, even if they had watched and spied on the people, would have been far from adequate for this purpose (see statement of Dr. Best).

The crimes which Gestapo members actually committed shall not be excused in any way. But it is equally certain that many things occurred for which the Gestapo officials are not responsible, and that usually no effort was made to examine and differentiate whether certain deeds or misdeeds were carried out by members of the Gestapo or the Kripo, the SS or the SD, or even by native criminals. If, in the interest of combating crimes, it is judged proper, in passing sentence at a trial, to establish a form of option as regards the deed, in the sense that punishment will be inflicted regardless of whether the established deed comes under this or that penal law, such an option can never be taken as regards the person of the perpetrator. In other words, it would not be just to ascribe a deed to the Gestapo as long as the guilt of its members is not absolutely established.

As already stated, the Gestapo is no union of persons in the technical sense of the word, and probably also not in the sense of the Charter. Its constitution, its aims and tasks, and the methods employed by it cannot fundamentally be designated as criminal. The position of the Political Police, its special tasks, and the measures to be taken by it of course demanded the form of organization especially adapted to these purposes. In this connection I consider a terse but still comprehensive presentation of the organizational and personnel structure of the Gestapo to be all the more important, since the Court by its rulings of 14 January and 13 March 1946 showed that it might be inclined to ascribe decisive importance to the clarification of this question.

Your Lordship, in order not to tire the Court with the presentation of the organizational structure and the personnel setup, I shall not read the next nine pages, but shall ask the Court to take judicial notice of them.

I draw the special attention of the Court to Pages 20 to 24. They deal with the fundamental difference between administrative and executive civil servants, the technical personnel, the employees, the emergency draftees, and the groups of persons who were taken over as units into the Gestapo—the Secret Field Police, the Customs Border Guards, the Military Counter-Intelligence, and affiliated units.

In the development of the German Political Police from 1933 until the end of the war, three periods can be noted from the organizational point of view:

(1) The time from the so-called seizure of power until Himmler's appointment as Chief of the German Police, that is, until June 1936. In this connection I refer

to Document 2073-PS, Exhibit Number Gestapo-12. The characteristic aspect of this developmental period, which was not entirely alike everywhere, was the police sovereignty of the individual Länder of the German Reich resulting from their political independence. This decentralization was, however, limited when Himmler gradually, in 1933 and the beginning of 1934, became Police Commander in all Länder of the German Reich with the exception of Prussia.

In the spring of 1934 Himmler was also appointed Deputy Chief of the Prussian Secret State Police, which meant that Himmler had obtained influence over the Secret State Police of all Länder of the German Reich. Until June 1936 the Secret State Police was on the budget of the Länder.

(2) The second period is introduced by the appointment of Himmler as Chief of the German Police on 17 June 1936. A few days later SS Gruppenführer Heydrich was appointed Chief of the Security Police, which included the Secret State Police and the Criminal Police; while Police General Daluge was appointed Chief of the Regular Police, which included Municipal Police, Gendarmerie, and Communal Police. Thus, the German Police had been made uniform throughout the Reich.

The central office of the Secret State Police for the whole Reich was the Secret State Police Office, Berlin, to which all agencies of the Secret State Police in the Reich were subordinate. These subordinate agencies were Secret State Police main agencies at the seats of the Provincial Governments, and Secret State Police agencies with almost all Regierungspräsidenten or parallel administrative offices in Prussia and the Länder.

(3) With the creation of the RSHA, announced on 27 September 1939, the third and last period was introduced. Chief of the Security Police Heydrich, by a merger of Party organizations and State Police agencies—that is to say, heterogeneous elements—in the RSHA realized a plan of long standing, and it is true that for an outsider it was completely impossible to distinguish whether Heydrich in any given case was acting as chief of a State agency or as chief of a Party office.

The RSHA in its most extensive development included the following offices:

- Amt I : Personnel (State agency)
- Amt II : Administration (State agency)
- Amt III : SD Domestic (Party organization)
- Amt IV : Secret State Police (Gestapo; State agency)
- Amt V : Reich Criminal Police Office (State agency)
- Amt VI : SD Foreign (Party organization)

In 1944 the Military Intelligence Service was added.

- Amt VII: SD Scientific Exploitation (Party organization)
- Amt N : Technical Communications (State agency).

Thus the RSHA was not a unified agency but only the collective agency of the various offices which did not change as to their legal structure. The individual parts of the RSHA remained what they had been before, that is:

a) as far as the individual offices sprang from the Reich Ministry of the Interior, such as Amt I, Personnel, and Amt II, Administration, they remained branches of that Ministry;

b) Ämter IV and V, that is, the Secret State Police Office and the Reich Criminal Police Office, remained as such;

c) the parts coming from the former SD Main Office, Ämter III, VI, VII remained an organization of the SS and the Party.

Nor did the tasks change their State or Party character. Not the RSHA as such was a Main Office of the SS, but only the parts of it formed from the former SD Main Office.

Amt IV of the RSHA—the Secret State Police Office, the chief of which was SS-Gruppenführer Heinrich Müller—was changed several times in its organizational structure during the time from 1939 to 1945, and at the end of 1944 included the following special departments:

- IV A 1 Leftist and Rightist opposition
- IV A 2 Anti-Sabotage operations
- IV A 3 Counter-Intelligence

- IV A 4 Jews, Churches
- IV A 5 Special assignments
- IV A 6 Protective Custody
- IV B 1 Occupied Western Territories
- IV B 2 Occupied Eastern Territories
- IV B 3 Occupied Southeastern Territories
- IV B 4 Passes and Identification
- IV Ba A Basic questions of the employment of foreign workers
- IV G Customs Border Protection (Zollgrenzschutz), Border Inspections.

On the whole nothing was changed from the state of affairs before 1939 in the organizational structure of the subordinate agencies, that is, of the Gestapo Leitstellen with the Governments of the Länder and the most important provinces of Prussia as well as the local Gestapo offices.

A distinction must be made between the organization of the Gestapo presented here and the Einsatzgruppen and Einsatzkommandos established for Security Police purposes in case of war. In them the term "Security Police," which in peacetime had appeared only in the titles of the Chief of the Security Police and the inspectors of the Security Police, had assumed a character which differed in its nature from the branches of the Gestapo and the Kripo from which part of the personnel was taken. In the employment of the Security Police and the SD in the occupied territories, a distinction must be made between

a) the employment of the Sipo and the SD in troop formation, that is, in Einsatzgruppen and Einsatzkommandos under the orders of the Wehrmacht, and

b) employment after the establishment of a military or civil administration. The stationary agencies were subordinate to the Higher SS and Police Leaders who were in a position to give the most extensive orders to their subordinate commanders of the Sipo and the SD. In many cases the Reich Commissioners took an important part in the giving of orders, for example Terboven in Norway and Bürckel in Lorraine. It must also be pointed out that the Higher SS and Police Leaders frequently reported directly to Himmler and received orders from him directly instead of through the Chief of the Sipo and the SD.

The agencies of the Sipo and the SD in the occupied territories were organized with reference to Ämter III or VI (SD), IV (Gestapo), and V (Criminal Police), but the appointment of personnel as well as the activity of the individual sections of a local office was subject to difficulties brought about by war conditions. Thus members of the Criminal Police, which is not charged, were given Gestapo tasks, and vice versa members of the Gestapo were given purely Criminal Police tasks. The necessity, arising since 1942 from the lack of trained personnel, of taking more and more members of the Secret Field Police of the Wehrmacht into the Security Police as emergency draftees, although they had practically no specialized police knowledge—in addition to emergency draftees from the Reich and employees from the country in question—must be mentioned here in order to be able to judge correctly the activity of the Security Police in the occupied territories.

This condensed survey of the structure of the organization offers a basis for the judgment only in connection with the survey of the organization of personnel. The following are the groups of persons composing the staff of the Gestapo according to their training and assignments:

(1) Administrative officials.

They were not police officials under the German Police Officials' Law. Paragraph 1 of this law, Document Number Gestapo-9, states that the law applies to executive officials of the Municipal Police, Criminal Police, Gendarmerie, and the Gestapo. The administrative officials of these police branches had neither a criminal nor a municipal police training, and they were never—not even exceptionally—used for executive duties. Neither were they auxiliary employees of the public prosecutor's office. Their training and activities were the same as those of all other branches of the administration. The activities of administrative officials consisted of personnel matters; economic matters, such as setting up budgets, housing, clothing, cashiers' office duties, et cetera. The administrative officials had the same duties abroad. They were what would be called in the Armed Forces, on the front as well as in task forces, quartermasters and paymasters. Towards the end of 1944 the number of administrative officials amounted to approximately 3,000, which was roughly 10 percent of the total regular personnel

of the Gestapo. To prove the above-mentioned facts I refer to the affidavits introduced as Numbers Gestapo 17, 18, 19, 20, 31, 34, and to the testimony of the witnesses Oldach, Albath, Tesmer, Hoffmann, and Best before the Commission or the Tribunal.

(2) Officials of the Executive formed the second group of persons, which amounted towards the end of 1944 to 40—45 percent of the total regular personnel of the Gestapo.

They were subdivided as follows:

Civil servants of the senior grade: Regierungs- and Kriminalrat.

Civil servants of the higher service beginning with Criminal Inspector.

Civil servants of the medium grade beginning with Criminal Assistant.

At the beginning the employment of executive officials took place in the actual Political Police departments, as I have introduced them with my description of the organization of Amt IV of the RSHA.

The so-called Counter-Intelligence Police also figured among the executive organizations of the Gestapo. This, formerly Amt III of the Secret State Police Department, later IV A 3 of Department IV of the RSHA, had the task of discovering and clearing up all crimes of high treason from the Criminal Police point of view.

In Affidavit Number Gestapo-89 the number of the members of the Counter-Intelligence Police is estimated at 2 or 3,000.

(3) The Border Police also belongs to the executive organizations of the Gestapo. The tasks and personnel conditions of the Border Police have been made clear through testimony and affidavits of the witnesses Best and Goppelt (Affidavit Number 22) and Document Number Gestapo-18. The approximate strength can be estimated at having reached the figure of 3,000, which includes the total figure of executive officials.

(4) A further part of the Gestapo are the employees and persons on the payroll who—including those persons allocated for work in the Gestapo by the Labor Offices and the emergency draftees—numbered approximately 13,500, thus reaching almost the same figure as the executive officials.

(5) Furthermore, the Gestapo operated a special service in which technical personnel, numbering approximately 500, were working who were responsible for the instalment, maintenance, and servicing of the telephone and telegraph installations.

(6) If I have spoken above of the "regular" personnel of the Gestapo, then the group of persons of which I am about to speak, though formerly belonging to the Gestapo, was nevertheless incorporated in the Gestapo during the second half of the war under circumstances which cannot leave the least possible doubt as to the nonvoluntary character of their membership in the Gestapo, about which I shall have to speak further at the proper time.

a) With regard to the chronological sequence I shall, first of all, have to deal with the above-mentioned emergency draftees. As the witness Krichbaum has explained, the Secret Field Police of the Armed Forces released, beginning in 1942, in France, 23 groups; then in Belgium, 8; in Denmark and Serbia, 1 each; and in the East, 18 groups; that is to say, altogether 51 groups with a total strength of at least 5,500 men by order of the OKW. All were released simultaneously from the Armed Forces and thereafter used as so-called emergency draftees by the Security Police in occupied territories. The emergency draftees were used by the Security Police in all spheres, as well as by the Gestapo, the SD, and the Criminal Police, who are not included in the Indictment.

b) The Military Counter-Intelligence organization of the OKW was transferred by Hitler's orders to the Security Police or the SD, respectively, in the spring of 1944, and the Defensive Counter-Intelligence to Department IV, that is, the Gestapo. The other remaining parts were then formed into a department of their own which was given the designation "Amt Mil." in the RSHA. The total number of transferred personnel amounted to approximately 4 or 5,000. It has not been possible to establish clearly how many of them were used within the framework of Counter-Intelligence, that is, in Department IV, but this would hardly be of any decisive importance.

Simultaneously, the Foreign Letter Censorship Department and the Foreign Telegram Censorship Department, until then under the jurisdiction of Military

Counter-Intelligence, were transferred to the Security Police. This concerned approximately 7500 persons who, on the basis of an order, became subject to the jurisdiction of the Security Police (Affidavit Number Gestapo-36 and Document Number Gestapo-19).

As a last group of persons, part of the Customs Police were transferred to the Secret State Police in the autumn of 1944, in the last phase of the war, having until then been part of the Reich Finance Administration. Neither in the organization nor in the tasks of the Customs Police were there any changes after this transfer. According to Affidavit Number Gestapo-31 the strength of these two organizations upon transfer to the Gestapo amounted to approximately 45,000 men.

The above-mentioned State organism of the Political Police with its character as a branch of the State administration was outside the structure of the NSDAP and its organizations. The Gestapo was not dominated by the Party; on the contrary, its independence within the State and outside the structure of the Party was in particular intended to enable it to combat misdeeds of Party members with governmental measures. If Himmler, as Reichsführer SS, became Chief of the Political Police in all states in 1933, and later in the Reich, then the State Police agencies were without influence in that connection. Nothing important changed at first with regard to their activities. The Political Police offices in the German Länder, when they were reconstituted in 1933, were mostly staffed with officials from existing Police agencies; not even the directing officials were in every case Party members. Even later these officials who had been taken over were not replaced by Party members. Only to a small extent, and only as employees and workers for technical duties, such as drivers, teletype operators, and office help, were persons from the Party, the SS, and the SA taken on.

This independence of the Party and its affiliated organizations appears to be contradicted by the so-called assimilation of the Gestapo into the SS. This assimilation merely meant a nominal affiliation with the SS. The reason for this assimilation was the following:

The system of professional civil servants had been introduced and maintained in the Gestapo. But civil servants were, in part, not particularly respected by the Party because of their political or nonpolitical past. In order to strengthen their authority in the discharge of their duties, in particular when acting against National Socialists, they were to appear in uniform, as the witness Dr. Best has testified—who has described himself as the "motor" of this assimilation. With this assimilation the Gestapo officials—as, incidentally, also Criminal Police officials, who were equally to be assimilated—were formally listed among the SD formations of the SS, though they remained solely under the jurisdiction of their own superiors without doing any SS or SD service. Besides, the assimilation was only carried out slowly and to a negligible degree. At the outbreak of war in 1939 only approximately 3,000 members of the Gestapo and the Criminal Police out of a total of 20,000 had been

assimilated. It is significant that Himmler by no means liked to see the Gestapo appear publicly wearing SS uniforms, as becomes evident from Document USA-447.

During the war even nonassimilated persons had to wear the SS uniform on certain assignments, even without being members of the SS. Apart from that the SS did not control the Police or exert any type of influence upon its activities; it was only in Himmler's person that there was personal union in the leadership of the two. With reference to this statement I refer you to the testimony of Dr. Best.

The Gestapo as a whole had nothing to do with the SD, which, as is known, was purely an organization of the Party. Personal union only existed in the person of the Chief of the Sipo and the SD (Heydrich, later Kaltenbrunner), which was accidental, however, and did not signify an organizational or functional interconnection. Certainly the SD were never combined with the Gestapo in order to form a police system. The SD did not have to support the Gestapo in its tasks; it had no police tasks whatever.

The officials of the Gestapo by no means considered themselves members of a uniform organization with the SS and the SD. Everyone in each of the three organizations knew that he belonged to an independent institution serving independent purposes.

Although the Gestapo was, therefore, in no way organizationally or from the point of view of functions connected with the Party, it was, nevertheless, not altogether detached from the administrative tasks of the State, being a State authority. On the contrary, on every level interconnections existed with the general and interior administration. The higher administrative organizations, the Ministers of the Interior of the states, the provincial presidents and district presidents were entitled to receive reports and issue instructions. Evidence has, indeed, shown that the majority of all Gestapo actions were carried out by the district and local police organizations and the Gendarmerie. This fact in particular furnishes an indication of how serious and questionable it is to indict the Gestapo as an institution of the State. Because, if this concept were followed through, the officials of the aforementioned administrative organizations, to the extent that they worked in a State Police capacity, would have to be indicted together with the Gestapo.

If it is impossible for these reasons to speak of a union of persons in the case of the Gestapo, that is, of membership in the sense of the Indictment, the requirement of voluntary membership was even less complied with. Not one of the witnesses examined was able to uphold the Prosecution's allegation in any way; on the contrary, all witnesses had to testify that, as a matter of principle, membership of the Gestapo was generally not on a voluntary basis.

The assignment of officials to the Gestapo took place, to a large extent, by having them transferred to an agency of the Gestapo from a previous organization. The order for transfer had to be obeyed on the strength of the civil service law. Severe disadvantages in one's career would without a doubt have resulted from a refusal, and very probably the loss of the position held; and had such a refusal been based on the statement that for reasons of conscience the official did not sanction the activities of the Gestapo, then he, like any civil servant in a similar case, would have become subject to disciplinary proceedings or even regular penal proceedings, resulting in the loss of his position and hard-earned privileges and, apart from that, he would have gone to a concentration camp.

Replacements of civil servants in the Gestapo were regulated in such a way that, in accordance with the police civil service law, 90 percent were drawn from former Regular Police officials who wished to become Criminal Police officials, whereas a maximum of 10 percent could be taken from other professions.

Aspirants from the Regular Police could not, however, freely decide whether to join the Gestapo or Kripo; they were allotted by the Personnel Office of the Police at Potsdam to the Gestapo or the Kripo, according to requirements, and even against their will. Incidentally, we are here concerned with Regular Police officials with 8 to 12 years' service, that is, old police officials who had been in the police service already before 1933.

It was almost impossible for an official to break loose from the Gestapo, except for general reasons such as death, sickness, and dismissal because of malfeasance. During the war the Gestapo, just like the entire Police, was considered as being on active service and was subject to military discipline, so that resignation was totally impossible. It was even prohibited to volunteer for military service at the front.

The same principles of assignment and retirement also applied to the institutions under the jurisdiction of the Gestapo, such as Border Police, Military Counter-Intelligence, and Customs Police, not to mention the numerous emergency draftees in wartime, who at times represented nearly one-half of the total personnel strength.

From these statements, mostly based on the testimony and affidavits particularly of the witnesses Best, Knochen, and Hoffmann, the following becomes apparent: the Gestapo consisted of a multitude of State agencies. But in the case of an agency one cannot speak of members of that agency in the same way as of members of a private organization. For that reason there was no "membership" in the Gestapo, much less a voluntary one; there was only the official position of a civil servant.

The question, also, as to whether the aim and task of the Gestapo was criminal, must be answered in the negative. The aim of the Gestapo—just like that of any political police—was the protection of the people and the State against attacks of hostile elements upon their existence and unhampered development. Accordingly, the task of the Gestapo is defined in Article I of the Law of 10 February 1936 (Document Number Gestapo-7) as follows; I quote:

“The Secret State Police has the task of investigating all tendencies dangerous to the State and of combating them, of collecting and exploiting the result of such investigations, of informing the Reich Government and other authorities of findings important to them, of keeping them informed and supplying them with suggestions.”

These tasks of the Gestapo had the same character as those of the Political Police before 1933, and as those of any other political police force in foreign countries. What is to be understood by “tendencies hostile to the State” depends upon the respective political structure of a state. A change in the political leadership cannot retroactively render illegal the activities of a political police force which had been directed against other forces regarded as hostile to the State. The activities of the Gestapo had been regulated by legal instructions issued by the State. Its tasks consisted, in the first place and mainly, of the investigation of politically illegal activity in accordance with the general penal code, in which connection the officials of the Gestapo became active as auxiliary officials of the public prosecutor’s department; and it further consisted in warding off such activity through preventive measures.

Now, of course, the methods of the Gestapo are made the basis of serious accusations against it in three ways, and even held against it as crimes. One method is the protective custody and transfer of persons to concentration camps. I realize that the mere mention of the name sends a cold shudder down one’s spine. Nevertheless, even the imposition of protective custody was governed by exact regulations. Protective custody, which in addition is not a specifically German or specifically National Socialist invention, was recognized as legal in several findings of the Supreme Reich Court and the Prussian Supreme Administrative Court, that is, fully constitutional courts.

A second method—that of the so-called third-degree interrogation—must, to put it mildly, give rise to serious misgivings. On the other hand, this method was only rarely used (see particularly witness Dr. Best), and then only by order from the highest authorities, and never to extort a confession. This method, too, which we shall consider further in connection with the discussion of the

individual crimes, was regulated by law, even during the time of the war (compare Document Number Gestapo-60).

Finally the Prosecution accuses the Gestapo in particular of the fact that it was not bound by law but rather that it acted purely arbitrarily. In reply to this I should like to say that if it was established in two laws (dealing with the Anschluss of Austria and the annexation of the Sudetenland) that the Chief of the German Police could take measures exceeding the existing laws, this was not done to sanction arbitrary police action; rather do we find ourselves confronted with a typical legal investiture with authority to establish police law. Measures in the meaning of this law did not refer to individual action, but to orders of a general sort to be issued even though in the countries annexed no law existed as yet in this regard, but which were, nevertheless, binding on the population and the executive organs of the Police, because the necessary authority had been granted by the head of the State.

The principle that individual action must not be taken arbitrarily, but rather that detailed regulations were to be applied and observed in all executive actions, was strictly maintained (witness Dr. Best).

It never even occurred to Gestapo officials, at least not before the war, that they might be accused from abroad of acting arbitrarily. The tasks and methods, which were well-known and legally defined—not only for the members of the Gestapo but for all the world—cannot be considered criminal by the world, a world which not only formally recognized the German Reich Government, which bore the sole responsibility in this matter, but also repeatedly gave visible evidence of its recognition to the German people.

If foreign countries had objected to the aims pursued by the Gestapo, it would not have been conceivable for numerous foreign police systems to have worked in close collaboration with the German Gestapo, a collaboration which was not negotiated through diplomatic circles, but obviously with the intention of learning from it (compare Gestapo Affidavits Numbers 26 and 89). In any event, because of this the individual Gestapo official must have considered his activity internationally recognized.

The aims, tasks, and methods of the Gestapo remained basically constant even during the war. Insofar as acts other than the ones described were intended for it, they must be considered as acts foreign to the Police and outside the organization. Later we shall deal particularly with the Einsatzgruppen, their composition, their activity, and their relation to the Gestapo.

Following the structure of the Indictment, I shall now turn to the question of whether the Gestapo participated in a joint plan for the commission of crimes and whether it participated as a deliberate part in the whole so-called Nazi conspiracy in the sense of the

Indictment. In order to deal with this question, however, it appears necessary to examine, first of all, just which crimes can be proved to have been committed by the Gestapo.

In order to characterize an organization as criminal, just as in characterizing an individual, only typical aspects may be considered, that is, only such actions and characteristics as are in accord with the peculiar nature of the respective organization.

Therefore no incidents can be used which, though they took place within the organization, must be considered to be foreign to the organization, in this case foreign to the Police; and furthermore no actions may be cited which were committed by individual members.

In order to determine whether these actions must be considered criminal, German law should be consulted, which does not deviate from the views held by other civilized countries in the definition of general criminality.

In line with the method followed in the Indictment, I shall subdivide the crimes of which the Gestapo is accused into Crimes against Peace, War Crimes, and Crimes against Humanity.

(a) Crimes against Peace.

In this connection the Indictment makes the charge that the Gestapo, together with the SD, had artificially created border incidents in order to give Hitler a pretext for a war with Poland. Two border incidents are cited, the attack on the radio station at Gleiwitz and a feigned attack by a Polish group at Hohenlinden.

The attack on the radio station at Gleiwitz was not carried out with the participation of Gestapo officials. The witness Naujocks, who was the leader of this undertaking but did not belong to the Gestapo, has confirmed unequivocally that no member of the Gestapo participated in this action. Instructions for this undertaking emanated directly from Heydrich and were transmitted orally by him directly to Naujocks.

Instructions concerning the feigned attack at Hohenlinden were transmitted by Müller, the chief of Amt IV of the RSHA, to Naujocks; however, Naujocks, who directed this action, has expressly denied any participation by Amt IV.

THE PRESIDENT: Dr. Merkel, would that be a convenient time to break off?

[A recess was taken until 1400 hours.]

Afternoon Session

DR. MERKEL: Mr. President, I have heard that the French translation of my final plea is not yet available to the interpreters. For that reason I shall have to speak more slowly for the benefit of the interpreters.

I have already deleted another 16 pages from my plea in order to comply with the ruling that I adhere to a time limit.

THE PRESIDENT: No doubt your speech will subsequently be translated and we shall have those pages before us.

DR. MERKEL: I had gone as far as the testimony of the witness Naujocks regarding the attack on the radio station at Gleiwitz and the attack of that group near Hohenlinden. He stated that, quite naturally, it was not one of the tasks of Amt IV of the RSHA to engineer border incidents. Nor did Müller select members of Amt IV for the purpose of staging the above-mentioned border incident, but only individuals who were in his confidence; for Heydrich did not trust the Gestapo with respect to secrecy and reliability.

Naujocks stated literally: "I cannot identify Müller with the organization of the Gestapo."

These border incidents were therefore no concern of the Gestapo, but rather a personal concern of Heydrich, even to the extent to which Müller participated in them.

The Gestapo has not been accused of other crimes against peace.

(b) War Crimes.

One of the gravest accusations raised against the Gestapo deals with the mass murder of the civilian population of the occupied countries through the so-called "Einsatzgruppen." Not only the Defense but the entire German people condemn the inhuman cruelties committed by the Einsatzgruppen. Those who committed atrocities of that kind and thereby defiled the name of Germany must be called to account. Members of the Gestapo also participated in the actions of the Einsatzgruppen. However, I should like to examine the extent to which the organization of the Gestapo *in toto* can be held responsible for the criminal deeds of the Einsatzgruppen.

The Einsatzgruppen had to fulfill the tasks of the Chief of the Sipo and of the SD in rear echelon areas, which meant that they had to maintain law and order along the rear of the fighting units. They were subordinate to the armies, to whom liaison officers were detailed.

The Einsatzgruppen were units which had been established for certain purposes. They were composed of members of the SD, the

SS, the Kripo, the Gestapo, the Order Police, of emergency draftees, and of indigenous forces. The members of the SD, of the Kripo, and of the Gestapo were used without consideration of their former membership in their own branch.

Purely from the point of view of personnel, we are concerned here with the employment of the entire Police and the SD, not with that of the Gestapo. The actual participation of the Gestapo in the Einsatzgruppen amounted to approximately 10 percent. This, of course, was a very small number in comparison with the total figure of Gestapo officials. Their selection for the Einsatzgruppen took place without any application on their part, very frequently against their will and on the strength of orders from the RSHA. Upon being detailed to the Einsatzgruppen, they were eliminated from the organization of the Gestapo. They were exclusively subordinate to the leadership of the Einsatzgruppe, which received its orders in part from the Higher SS and Police Leader, in part from the High Command of the Army, and in part from the RSHA directly. Connections with their home office and the organization of the Gestapo were almost completely severed by their being employed in the Einsatzgruppe. They could not receive orders of any kind from the Gestapo, and they were removed from the sphere of influence of the Gestapo.

These principles governing the Einsatzgruppen applied particularly to the Einsatzgruppen in the East, which are the ones that have been accused of the largest number of crimes and the most serious ones. To them also applies the fact that service in the East was no Gestapo service either in personnel or in the tasks assigned, but service with a special group drafted from various units specifically for this purpose. The witness Ohlendorf testified to the same effect.

The fact that the Gestapo also supplied men for this does not justify the conclusion that it was responsible for deeds committed by the Einsatzgruppen. Nor is this changed by the fact that the Chief of Amt IV, that is, Müller, the Director of the Gestapo within the RSHA, had an important part in passing on all orders. He was acting here directly on behalf of Himmler and Heydrich. The activity of Müller cannot be decisive in view of the fact that the overwhelming majority of the agents under him had no knowledge of the events. Had that been the case, the Kripo or the Order Police as units would have to be held equally responsible for the events. But the Gestapo cannot be declared criminal because of Müller's position with regard to the Einsatzgruppen, any more than the Kripo—whose chief, Nebe, by the way, was himself the leader of an Einsatzgruppe in the East—can be held responsible, on the basis of the participation of its chief and individual members, for

the mass executions undertaken by the Einsatzgruppen. Therefore mass murders of the civilian population and all other atrocities committed by the Einsatzgruppen cannot be charged against the Gestapo as such.

The next charge refers to the execution of politically and racially undesirable prisoners in camps.

I beg the Tribunal to take judicial knowledge of this as well as of the third charge, according to which the Gestapo, together with the SD, sent prisoners of war who had escaped and had been recaptured to concentration camps.

Decisive is the agreement between the Chief of the Sipo and the SD on the one hand, and the OKW on the other, of 16 July 1941, the so-called Commissar Order, USSR-14. The directives issued by Müller, the Chief of Amt IV, on 17 July 1941 show in what numbers and in what way the Gestapo participated in the details to be assigned to the prison camps.

In the last few weeks the Prosecution produced the correspondence concerning the activity of the Gestapo offices in Munich, Regensburg, and Nürnberg on the subject of the selection of Soviet Russian prisoners of war (Document USA-910). This shows that the selection through special units (Sonderkommandos) of the Sipo was carried out according to the directives of the Chief of the Sipo and the SD, but their execution in the concentration camps to which those selected were sent was not the affair of the Gestapo.

The testimony of the witnesses Warlimont (2884-PS) and Lahousen shows clearly that these measures were planned by the High Command of the Army on Hitler's orders, without participation of the Security Police. I refer to the instructions of the OKH dated 12 May 1941 regarding the treatment of Soviet Russian political dignitaries, which was based on an order of 31 March 1941 (RF-351). Opposition to this order, as the statement of the witness Lahousen shows, was useless even for the highest military authorities. In consideration of the explanations included in the order and particularly in the directives for the selection of Soviet Russian prisoners of war (USSR-14), the individual Gestapo agent was entitled to assume the legality of the orders.

The further charge is made against the Gestapo that together with the SD it sent prisoners of war who had escaped and had been recaptured to concentration camps. It is a question here of the notorious "Kugel-Erlass," according to which all recaptured escaped prisoners—officers and nonworking noncommissioned officers, with the exception of British and American prisoners of war—were to be turned over to the Chief of the Sipo and the SD with the code word "Grade III" (Stufe III). The Kripo was in charge of searching for escaped prisoners and bringing back recaptured prisoners.

The central office was the group "War Search" (Kriegsfahndung) in the Reich Criminal Police Office.

According to Document USA-246, RF-1449, the monstrous order mentioned was proclaimed in an order of the OKW. In which cases the Gestapo was used for such tasks, particularly for the execution of the recaptured prisoners, cannot be ascertained. The witness Straub and Affidavit Number 75 proved that Müller stated at a conference that the term "Kugel-Erlass" had nothing to do with shooting. Rather, in order to prevent further attempts at escape, the prisoners were to have an iron ball fastened to one foot. Even if this description of Müller's is not true, it must nevertheless be held to the credit of the agents who had no reason for not believing their superior.

One serious case must be mentioned in this connection: the shooting of the Royal Air Force officers who escaped from Sagan Camp in March 1944. This event can be traced back to a special order of Hitler and must no doubt be considered a special case. An agency of the Gestapo was misused to execute this order. Gestapo agents of the Breslau Stapo office were to take the recaptured officers from Sagan to the camp where they were shot. Whether this was done by the Stapo agents is not clear, however, nor is it clear whether they knew at all that the officers were to be shot.

This special order and the "Kugel-Erlass" which I have mentioned are among the most regrettable and dishonorable things that happened during the war in Nazi Germany, and they will make every decent German, and particularly every former front-line soldier, blush with shame. As counsel for the Gestapo I nevertheless feel it to be my duty, in spite of my personal horror of such occurrences, to point out that only a few Gestapo men were connected with such misdeeds; that they acted on orders, the reasons and legality of which they could not investigate; that the order and its execution were kept strictly secret; and that for these reasons the crimes which occurred here cannot be ascribed to the Gestapo as a whole as a typical expression of criminal activities.

I continue on Page 38 of the original. I shall now deal with the concentration camps.

The American Prosecution says that the Gestapo and the SD bear the responsibility for establishing and setting up concentration camps and for the assignment of racially and politically undesirable persons to concentration and extermination camps for forced labor and mass murder; that the Gestapo was legally entrusted with the responsibility of administering the concentration camps; that it alone had the power to take persons into protective custody and to execute the protective custody orders in the State concentration camps, and that the Gestapo issued the orders to establish concentration camps, to convert prisoner-of-war camps to concentration camps, and to establish corrective labor camps. In the treatment of this point of the Indictment the widespread error must be corrected that the concentration camps were an institution of the Gestapo.

In reality the concentration camps were at no time established and administered by the Gestapo. It is true that Paragraph 2 of the order for the execution of the law concerning the Secret State Police of 10 February 1936, Document Number Gestapo-8, says that the Secret State Police Office will administer the State concentration camps, but this regulation only existed on paper and was never carried out in practice. Rather was it the Reichsführung SS which was responsible for the concentration camps, and they appointed an Inspector of Concentration Camps whose duties were later transferred to Amtsgruppe D of the WVHA of the SS. This is clearly confirmed, among other facts, by the witnesses Ohlendorf and Best and a large number of documents (compare among other material Documents Number Gestapo-40 to 45).

After Hitler's seizure of power in 1933 the SA and SS had independently established numerous camps for political prisoners. The Gestapo on its own initiative took steps against these unauthorized concentration camps, eliminated them, and released the inmates. The Gestapo Chief, Dr. Diels, even brought upon himself the accusation that he was supporting the Communists and sabotaging the Revolution (Affidavit Number 41, testimony of the witnesses Vitzdamm and Grauert).

Thus the concentration camps were never under the Gestapo. The Inspectorate of Concentration Camps and the Economic and Administrative Department of the WVHA remained independent agencies and their chiefs were directly subordinate to Himmler.

The order contained in Document USA-492 does not affect the administration of concentration camps, but regulates the assignment of prisoners to the various camps, so that political prisoners would not be sent to camps which, according to their structure and their form of work, were meant for hardened criminals.

Of the large number of documents which prove the non-participation of the Gestapo in the administration of the concentration camps, I should like to mention only one more: Document Number Gestapo-38. This shows that persons not mentioned therein—thus all Gestapo officials regardless of their rank or position—would require written permission by the Inspector of Concentration Camps to enter any camp. If the concentration camps had been subordinate to the Gestapo, there would have been no need to obtain this written permission to enter.

In each concentration camp there existed a so-called political department, whose position and connection with the Gestapo is a matter of conflicting views. In this political department were employed one to three criminal officials of the Gestapo or of the Kripo. These officials did not form an office of the Gestapo or of the Kripo; rather were they attached to the commandant of the camp as political experts to fill police tasks in regard to individual prisoners. Above all, they had to conduct the interrogations of those prisoners against whom a case before an ordinary court was pending. This was done upon the request of the ordinary courts, the Gestapo, or the Criminal Police. With regard to the power to issue orders they were exclusively subordinate to the commandant of the concentration camp. They had no influence whatsoever on the administration and conduct of the camp or on the transfer, discharge, punishment, or execution of the prisoners.

Thus the concentration camps were not an independent institution of the Gestapo, but rather institutions which served their purpose in the discharge of their police duties. For the Gestapo they were what the regular prisons were for the courts or for the public prosecutor, namely, executive institutions to carry out the protective custody ordered by the Gestapo. Likewise in my plea I shall not deal with the matter of protective custody and beg the Tribunal to take judicial notice of it.

The opinion prevails that a member of the Gestapo was in a position to send people to concentration camps just as he pleased. This is incorrect. A person could be put into a concentration camp only following proper protective custody proceedings. The legal basis of protective custody was given in the decree of the Reich President of 28 February 1933. It formed the basis for the orders published

concerning protective custody as issued by the Reich Minister of the Interior, which contained minute directives for taking people into custody, its duration, and the formal proceedings. In that order which has been submitted to the Tribunal as Document Number Gestapo-36, as to whether protective custody is permissible, Article 1 says:

"Protective custody can be ordered as a compulsory measure by the Gestapo in defense against all acts hostile to the people or the State; protective custody may not be ordered for purposes of penalizing or as a substitute for penal arrests."

Article 2 says:

"The ordering of protective custody is exclusively the right of the Secret State Police. Applications for such orders are to be directed through the offices of the State Police to the Gestapo. Detailed reasons must be given with each application."

Finally, Article 5 expressly determines that the order for protective custody must be issued in writing by the Gestapo.

In accordance with the decree, protective custody was ordered by the RSHA, Amt IV, in Berlin. The individual member of the Gestapo was concerned only with the investigation. After the completion of the investigation, it was determined whether the files were to be submitted to the public prosecutor, or whether an application should be made for an order for protective custody. As proved by various witnesses—such as the witness Albath—there existed hardly any State office which instructed its officials so thoroughly at regular intervals upon the duty of an objective investigation as the Gestapo. In the case of serious guilt which could not be taken care of by mere instruction, warning, or security payment, the investigating official never knew whether the Gestapo Main Office would order the transfer of the files to the authorities of justice, or rather inflict protective custody. The mere necessity of referring the files to the Gestapo Main Office necessitated most careful investigations; for no official desired to be called to account for an inadequate study of the case or for an incorrect treatment of the indicted person.

At the same time the protective custody proceedings legally required re-examination of custody as such. At certain short intervals, an official study had to be made as to whether the prerequisites for protective custody still applied. The final decision for this also had to be made by the Gestapo Main Office.

Only towards the end of the war were the offices of the Gestapo authorized to take persons into protective custody without such orders by the Gestapo Main Office. This action, which was to last a maximum of 21, later 56, days, was also legally regulated in many details. The subsequent mass transfers of arrestees to concentration camps was ordered, not by the Chief of Amt IV, Müller, but directly by Himmler. Document USA-248 states that "upon order of the RFSS and the Chief of German Police," all people transferred to a concentration camp during wartime were transferred to a special penal department. Equally the transfer of 35,000 employable Jews, as ordered by Document USA-219, to concentration camps was ordered by the Reichsführer SS and Chief of the German Police, not by Amt IV of the RSHA. Equally incorrect is the claim of the Prosecution that the transfer of Poles and Jews, who were dismissed from penal institutions of the justice administration, to concentration camps for life had been ordered by Document USA-497. This is a letter of the Reich Minister of Justice of 21 April 1943. In it he refers to an order of the RSHA of 11 March 1943. This order did not originate with Amt IV either, but as its file number "II A 2 Nr. 100/43" shows, with Amt II of the RSHA.

Finally, one should take into consideration that at least half of the protective custody sentences were pronounced, not for political crimes, nor on the basis of race politics, but concerned professional and habitual criminals. Such persons however were referred to the concentration camps by the Reich Criminal Police Amt (compare Affidavits 49, 50, and 86).

It is possible to blame the Gestapo for assignment to concentration camps only if the Gestapo looked upon the institution of protective custody and of the concentration camps as unlawful and as violating international law, and if it knew of maltreatment, tortures, and killings in the concentration camps.

Certainly protective custody was attended by shortcomings. Above all it could not be examined by the regular courts. Nevertheless, the many orders

issued in this field by the RSHA demonstrate that there was an endeavor to establish a well-ordered and legally-fixed procedure for cases of protective custody and that arbitrary acts were to be excluded. The strict enforcement of the protective custody procedure certainly could not create the impression on the Gestapo officers that they were confronted with illegal measures of an arbitrary nature.

Besides, the application of the protective custody procedure was a relatively infrequent one.

If one takes the trouble to examine the question of the proportion of cases where from among the various measures available to the Gestapo such as instructions, warning, security payment, and protective custody, the latter was actually chosen, one will find that assignment to a concentration camp was the least resorted-to measure. At the beginning of the war approximately 20,000 people were held in protective custody in the concentration camps; half of them approximately were professional criminals, the other half political prisoners. At the same time about 300,000 prisoners were kept in the regular prisons, of whom approximately one-tenth had been sentenced for political crimes.

THE PRESIDENT: What evidence is there of those figures—or the proportions?

DR. MERKEL: Dr. Best made this statement before the Commission on 6 July 1946. Wider use of the concentration camps was made by transferring to them the professional criminals and the antisocial elements, particularly those who had been sentenced by the courts to protective custody, a measure which was not ordered and executed by the Gestapo (compare the witness Hoffmann).

On the basis of Gestapo Affidavit Number 86 the maximum numbers of prisoners sent to the concentration camps by the Gestapo by the beginning of 1945 were about 30,000 Germans, 60,000 Poles, and 50,000 subjects of other states. All other prisoners—on 19 December 1945 the Prosecution claimed that there were in the concentration camps on 1 August 1944, 524,277 prisoners—had been sent there not by the Gestapo but by the Criminal Police, the courts, and various authorities in the occupied territories.

The following parts of my brief, which deal in detail with the question of concentration camps, I shall omit; and I again beg the Tribunal to take judicial notice of them.

The existence of concentration camps could not be considered by the Gestapo as illegal, nor as being in conflict with international law. The concentration camp is not a National Socialist invention, but has been known before 1933. For instance, Austria introduced in 1933 protective custody as so-called "Anhaltehaft" and used it widely against Communists, National Socialists, and Social Democrats (compare the evidence of Kaltenbrunner). In Germany, too, protective custody existed prior to 1933. At that time both Communists and National Socialists were arrested by the Police. In the Third Reich the concentration camps were established on the basis of a legal decree which was in accordance with the constitution. Under these circumstances, the officials of the Gestapo could not consider the concentration camps illegal or as being in contradiction with international law.

As far as detainees were ill-treated or executed in concentration camps, the Gestapo can only be held responsible if they had knowledge of such regrettable conditions and crimes. But, as will be seen from Document Number Gestapo-39, the Gestapo officials were not even allowed to enter a concentration camp.

Moreover, it is not incredible that Gestapo officials had no knowledge of the happenings within the concentration camps. In this connection, I would draw attention to the fundamental Hitler Order (Document Number Gestapo-26), according to which no office should know of any secret matter more than was strictly necessary for the discharge of its duty. Gestapo offices had nothing to do with the administration of the concentration camps, so that they were not informed about the happenings inside concentration camps. The detainees, moreover, were bound to the strictest silence, and, in fact, released detainees seem never to have told anything about happenings inside the concentration camps, least of all to the Gestapo. The revelations about the concentration camps which were made after the collapse of Germany, and especially in the course of this Trial, constituted an enormous surprise for most Germans. It was stated before the Tribunal: "We did not know anything about it. I got to know that only after the collapse." It is thus not at all incredible, but may even be considered as proved by the affidavits presented and by witnesses' testimonies that the individual Gestapo officials, especially the bulk of the executive officials, had really no knowledge of the happenings in the concentration camps. On the contrary, the Gestapo had been against inhuman treatment in the concentration camps during the years 1933 and 1934. This is proved by the above-mentioned actions against the "unofficial concentration camps," which were closed by force.

How could Gestapo officials know what was going on behind the barbed wire of the concentration camps, how could they know of the executions, asphyxiations, and ill-treatment of detainees since no official had access to a concentration camp, and the Gestapo had nothing to do with the administration of the concentration camps. But if the Gestapo had no knowledge of the actual deficiencies of the concentration camps, then they cannot be held responsible for all cruelties committed there. The Gestapo sent the detainees to the concentration camps under legal provisions, and were under the impression that it was merely a justified and temporary deprivation of freedom within the framework of the law.

The following might be said concerning the deportation of citizens of occupied territories for slave labor and the supervision of slave laborers: the Prosecution itself makes a distinction between the deportation of foreign workers from their countries and the supervision of the workers inside the German Reich territory. Sauckel was appointed Plenipotentiary General for the Allocation of Labor by the Führer Decree of 30 September 1942 (Document Number Gestapo-51). This decree gave him sole responsibility to take steps in all matters of Arbeitseinsatz inside the Reich as well as in the countries occupied by Germany. Thus in the course of time a number of offices were created in occupied countries which were all dependent upon the Plenipotentiary General or the German military administration. These offices had nothing to do with the organization of the Gestapo, since the hiring and transport of workers was not a police routine matter. The Arbeitseinsatz offices also had to organize the transports of laborers to the station from which they went to the Reich. The Security Police had merely to screen the workers who had already been gathered, that is, the offices of the Security Police had to check the lists submitted to them by the labor offices to see that among the workers gathered there were none whose transfer to the Reich was not considered suitable for security reasons. The staffs of the Gestapo were so small in the occupied countries that they did not even suffice for the carrying out of routine police jobs. With a weak organization like that which was already overburdened because of its own tasks, it would have been impossible to carry out the hiring of foreign labor. Kaltenbrunner went on record to this effect at a conference of chiefs on 11 July 1944, and Sauckel did the same in a letter to Hitler of 17 March 1944 (Document Number Gestapo-53).

The witness Dr. Knochen, who was Commander-in-Chief of the Sipo and of the SD in France, has fully verified this for France. If on occasion members of the Schutzpolizei, that is, not members of the Gestapo, accompanied the transports of foreign workers simply to maintain order, this does not affect the fact that the responsibility for the entire action did not rest with the German Police, least of all with the Gestapo. There is not a single case known in which members of the Gestapo accompanied these transports.

If in his letter to the presidents of the regional labor offices of 26 November 1942 (USA-177) Sauckel says that the evacuation of Jews from the Reich and their replacement by Poles from the Government General had taken place "in agreement with the Chief of the Security Police and the SD," this does not in any way establish a participation by the organization of the Gestapo. The approval of the Chief of the SIPO and the SD was necessary for reasons of security only (compare Affidavit Number Gestapo-83).

To this subject witness Dr. Ehlich before the Commission, and witness Fromm in Affidavit Number SD-56, have stated that the responsibility for these measures rested exclusively with the Higher SS and Police Leader in the Government General, and that the Security Police and the SD in the Government General in no way collaborated.

For the employment of labor at home, the Gestapo offices equally had no competence; this was up to the Gauleiter as plenipotentiaries for manpower. However, the Police had a right to supervision and control in defense against espionage, and also to keep secret the establishments (compare evidence Sauckel). This means that the only task of the Police in connection with manpower imported into the Reich consisted of security measures.

As Sauckel has explained, the original task of the Gestapo in the field of the employment of foreign labor in the Reich was to counteract acts of sabotage by the foreign laborers. The offices of the Gestapo very soon could establish that acts of sabotage during work and in the plants were definitely only exceptions, in spite of the huge employment of foreign labor. These cases of sabotage which were submitted for action to the Gestapo as a rule were of a nonpolitical character. The local offices of the Gestapo, in addition to the executive treatment of the foreign laborers, could limit themselves to preventive measures. For the same purpose they were used to look after them, in which case they co-operated with the labor offices and the German Labor Front.

The offices of the Gestapo cared for the accommodation of the foreign laborers, which was regulated by certain stipulations. They controlled the adequate provision of lodging in the plants. This control extended to the feeding, treatment in the plants, e t c e t e r a. Upon request by the Gestapo offices, the plants were enabled to acquire additional foodstuffs for the foreign laborers. The offices of the German Labor Front were kept informed by those of the Gestapo on the treatment of the foreign laborers, and particularly on the prohibition of maltreatment and similar excesses. In case of transgressions measures by the Gestapo against the employer or prosecution by the regular courts were threatened. In this connection I refer to the evidence given by Straub and Dr. Hoffmann.

It must be stressed that these measures were taken by the Gestapo on the basis of sober deliberations of the Police, because in this field as in any other the Gestapo as the political police was vitally interested in creating and maintaining conditions which would render unnecessary executive action against a large group of people, in this case, foreign laborers. This statement does not mean to describe the Gestapo as a "welfare association," but rather as a competent political police with foresight which desired the fewest possible number of repressive or punitive measures, and whenever possible desired to confine their scope to the very minimum.

For this reason the Gestapo was also concerned with the personal protection of the foreign laborers. It was in the habit of taking care of justified complaints. Court procedures were initiated against camp commandants, employers, and supervisors who maltreated foreign laborers or who exploited them unduly, or in accordance with the importance of the case, measures were taken by the Gestapo. Disloyal camp leaders of the German Labor Front and plant camps were given very severe court procedures (compare Affidavits Number Gestapo-65, 66, and 67).

By such police measures of a preventive character it was possible to limit to a minimum breaches of contract, shirking, and sabotage of work. If such measures yet had to be taken in consideration of the increasing employment of foreign laborers, the following steps could be taken:

- (1) Instruction
- (2) Warning
- (3) Short term arrests up to 3 days, executed by the local police authority
- (4) Corrective labor camp
- (5) Concentration camp.

The assignment to a concentration camp was applied for with the RSHA only in incurable cases and was the exception. In the case of recurring absence from work the laborer was sent to a corrective labor camp.

I shall continue on Page 50, approximately in the middle of the page.

It is correct that the Gestapo established and maintained corrective labor camps and that it was responsible for any commitment to them.

The purpose of a corrective labor camp is described in the periodical *Die Deutsche Polizei* (Document Number Gestapo-59):

"The purpose of the corrective labor camps is to educate in a spirit of labor discipline those who have broken their work contracts and those who shirk their duty, and to restore to them their old jobs after that aim has been accomplished. Any commitment is handled exclusively by offices of the Gestapo. To be there is not to be considered a punishment, but an educational measure."

It is incorrect to say, as the Prosecution has done, that only foreign laborers were sent to corrective labor camps. They had been established in the same manner both for Germans and for foreign laborers, and also for employers who had transgressed their rights towards their employees.

As the maximum length of stay—which was established after thorough investigation in each case—originally 21 days, later 56 days, was stipulated, in distinction to the verdicts of courts for breach of contract, which ranged from 3 months up to 1 year of imprisonment. Those who broke a contract and were committed to a corrective labor camp in every respect found themselves in better conditions than those who were sent to be sentenced by the courts. The commitment was not entered on the individual's court register of penalties, and, in general, shelter, feeding, and treatment in the corrective labor camps were also better than in the prisons. The food consisted of the regular prisoners' rations supplemented by the additional rations for heavy work; these rations were continuously submitted to inspection as far as quantity, quality, and taste were concerned, as is shown by Document Number Gestapo-58.

The daily number of calories amounted to 3,500 or 4,000, which is many times that of the ration which the German civilian population is allotted at present. The labor earnings were, after the costs of the camp had been deducted, sent to the relatives. Maltreatment of the camp inmates was most strictly prohibited. (Document Number Gestapo-55, further Affidavits Number Gestapo-11 and 60.)

On the basis of these facts, it is not possible to characterize the supervision of the foreign laborers and particularly the establishment of and commitment to corrective labor camps by the Gestapo as a crime, much less a typical crime.

Excesses by individual Gestapo members might have occurred in this field. But as little as one can blame all farmers if individual farmers should have maltreated their laborers, as little is it possible to hold responsible all of the Gestapo for the excesses of a few individuals.

The next link in the chain of major crimes of which the Gestapo is accused is the charge that the Gestapo and the SD executed Commandos and parachutists who had been captured, and protected civilians who had lynched Allied airmen. What can be said in this connection?

In Document USA-500—it is a secret order of the OKW of 4 August 1942 concerning countermeasures against parachutists—the subduing of paratroopers is characterized as the exclusive concern of the Armed Forces, while the subduing of “individual parachutists” was transferred to the Chief of the Security Police and the SD. The latter’s task did not consist in the execution of the parachutists. The transfer was to serve only the purpose of discovering possible sabotage orders on these parachutists and obtaining information about the intentions of the enemy.

On 18 October 1942 Hitler ordered the extermination of all Commando groups (USA-501). This order was directed not to the German Police but to the German Armed Forces. Article 4 of that order stated that all members of such Commandos falling into the hands of the Armed Forces should be transferred to the SD. Nothing can be learned about any part played by the Gestapo in these measures against the sabotage Commandos. If, however, the Gestapo did play a part in it, a task not in the character of a police task would have been transferred to it, and its execution cannot be attributed to the Gestapo as such since doubtless under any circumstances only a small number of individuals participated in it.

Besides, the following should be pointed out: as Rudolf Mildner stated in his affidavit of 16 November 1945—2374-PS—an order was issued in the summer of 1944 to the commanders and inspectors of the Sipo and the SD to the effect that all members of American and British Commandos should be turned over to the Sipo for interrogation and execution by shooting. This may be taken as a proof that, at least up to that moment, the Sipo had not shot any Commando groups, otherwise no need for this order would have existed. Mildner continues to say that that order had to be destroyed immediately, which means that only the commanders and inspectors of the Sipo could gain knowledge of it. On account of the invasion, which had started some time before, and on account of the relentless advance of the Allies into the interior of France, it was practically impossible to execute these orders, because there were no longer any officers of the Sipo left in the field of operations, which was being pushed back continuously. It is

likewise improbable that that order, which presumably was issued by Himmler, ever became known to the bulk of Gestapo members.

Above all, the Prosecution rests its case on an order of Himmler of 10 August 1943 (Document USA-333), stating that it was not the task of the Police to interfere in controversies between Germans and bailed-out British and American terror fliers, and from this the Prosecution concludes that the Gestapo approved of lynch action. However, it is of significance that Himmler's order was addressed to all of the German Police, above all to the uniformed Order Police. For in the case of the bailing-out of Allied air crews, as a rule it was not Gestapo officials who made an appearance, but members of the uniformed Order Police, the Military Police, or the local Police. Only those branches of the Police were in charge of road patrols, not the Gestapo. As proved by the numerous affidavits, none of the Gestapo members were informed of this order, but rather learned of it only through the statements Goebbels made over the radio.

The evidence given by the witness Bernd von Brauchitsch, first adjutant to the Commander-in-Chief of the Luftwaffe, shows in a characteristic manner that that order was generally sabotaged. He stated:

"In the spring of 1944 the civilian losses through air attacks rapidly increased. Apparently this made Hitler issue orders not only for defense but for measures against the aviators themselves. As far as I know, Hitler advocated the most severe measures. Lynchings were to be permitted more liberally. The Commander-in-Chief and the Chief of the General Staff did, it is true, condemn the attacks on the civilian population in the sharpest terms, but yet they did not desire special measures to be taken against the aviators; lynching and the refusal to give shelter to the crews who had bailed out were to be rejected."

And his further statement is of particular importance; I quote:

"The measures ordered by Hitler were not carried out by the Luftwaffe. The Luftwaffe did not receive any orders to shoot enemy aviators or to transfer them to the SD."

Actually the Gestapo officials, in the few cases when members of the Gestapo were accidentally present after Allied fliers had bailed out, not only did not kill them but protected them against the population—compare Affidavit Number Gestapo-81—and if they were wounded they saw to it that the airmen were given medical care. The few cases in which higher Gestapo officials ordered and executed the shootings of crews who had bailed out have already found their just penalty before the courts of the

occupying powers. To hold all members of the Gestapo responsible for them is not justifiable.

The next point of the Indictment states that the Gestapo and the SD brought civilians from occupied countries into Germany in order to place them before secret courts and sentence them there.

On 7 December 1941 Hitler issued the so-called "Nacht und Nebel" Decree. According to this decree persons who had transgressed against the Reich or against the occupying power in the occupied areas would, as a measure of intimidation, be taken to the Reich to be put before a special court. If, for any reason whatsoever, this was not possible, the transgressors were to be placed in protective custody in a concentration camp for the duration of the war.

As may be seen from the distribution on Document 833-PS, this order was sent only to the offices of the Wehrmacht, not to those of the Gestapo—with the exception of Amt IV of the RSHA itself. The execution of this decree was a task of the Wehrmacht, not of the Gestapo. According to directives contained in Document 833-PS, it was for the counter-intelligence offices to determine the time of arrests of individuals suspected of espionage and sabotage.

In the Western areas, for they were the only ones concerned here, this order was to be carried out therefore by the Wehrmacht, which exercised police power through its own men or those of the Security Police who were directly subordinated to the military commanders.

Only to that extent did the Security Police participate in the execution of this order. The Gestapo, which was numerically very weak in the occupied Western areas, was only involved to the extent that the RSHA established a Stapo office, which had to take charge of the arrestees. Through the Stapo offices, in agreement with the competent counter-intelligence offices, the details of the deportation to Germany were determined, particularly whether transport was to be conducted by the Secret Field Police, the Field Gendarmerie, or the Gestapo. The Gestapo had no other tasks assigned to it by the "Nacht und Nebel" Decree.

Just how active Gestapo officials or Gestapo offices actually were in the execution of this decree has not been determined in these proceedings. On the contrary, according to the testimony of witness Hoffmann, it has been established that Amt IV rejected this decree and that it was not applied at all in Denmark, for instance.

As this decree was to be kept strictly secret, and as it emanated from the highest Wehrmacht office, we may assume with assurance:

that only the most intimate circle of individuals, those charged with its actual handling, knew the contents of this decree and its significance. The officials of the Stapo offices charged with the transport received instructions to see that the arrestees were brought to a certain place in Germany without being told for what purpose or on the strength of what decrees the arrest had taken place.

If this were the case—other details have not been established—you cannot hold the entire Gestapo responsible for the practice of turning over prisoners to some offices in occupied territory in order to take them under orders to Germany.

I shall omit the part dealing with the deportation of members of foreign states to Germany for the purpose of convicting them under summary proceedings, and the arrest of next of kin, but I beg the Tribunal to take judicial notice of it.

Another point of the Indictment concerns the arrest and punishment—which, as a rule, meant the execution—of the citizens of the occupied countries in summary proceedings.

We are only familiar with the agreements which were reached in September 1942 between the Reichsführer SS, the Reich Ministry of Justice, and the deputy of the RSHA (USA-218). They concern exclusively the peoples in the East. The last paragraph, Number 14, is the essential one in this agreement:

"We are agreed that in the future, in consideration of the aims pursued by the Government for the solution of the Eastern question, Jews, Poles, Gypsies, Russians, and Ukrainians shall no longer be sentenced by the regular courts. . . . These matters will be handled by the Reichsführer SS."

This, of course, meant that the Reichsführer SS had the last word, and that the final decision was his. The Police, foremost probably the Kreis and local Police and the Gendarmerie, carried on the investigation and then turned the matter over to the Gestapo. Individual Gestapo officials had to carry through investigations and to give their reports to the RSHA. They had nothing whatever to do with the decision itself. You can hardly expect individual Gestapo officials to check the legality and effect of measures agreed to and decided upon by the competent Reich authority, to pass judgment upon them and, finally, to refuse to carry them out. You cannot seriously expect the former of them, but neither could they oppose the carrying out of these orders without risking their own heads. I shall deal later with the question as to how far the vast majority of Gestapo officials had any knowledge at all of the incidents. Taking all circumstances into account I have reached the conclusion that the whole Gestapo cannot be incriminated under this point of the Indictment.

In addition, the Prosecution is making the Gestapo and the SD criminally responsible for the inclusion of next of kin. Two documents have been quoted as proof: A letter of 19 July 1944, written by the commandant of the Sipo and the SD in Radom (USA-506), and the files on the deportation of Luxembourg citizens to the concentration camp at Sachsenhausen in 1944 (USA-243).

The latter incident does not apply in the case of liability of kin. It deals with a directive issued by an Einsatzkommando in Luxembourg to retain certain individuals in the concentration camp at Sachsenhausen giving the reason that they were relatives of deserters and that it was to be expected therefore that they would "harm the interests of the German Reich if they were permitted to remain free." From this we can see very clearly that in this case relatives were not to be affected because they were to be held jointly liable and because they were to atone jointly for the misdeeds of certain among their relatives, but solely and alone because the relatives themselves were a threat to the security of the Reich.

However, a case of true liability of kin clearly appears in the first-mentioned Document USA-506. The directive contained therein can be traced back to a decree of the Reichsführer SS, who had ordered, in all cases where attempts had been made on the life of a German, or where saboteurs had destroyed vital installations,

that not only was the perpetrator himself to be apprehended, but, over and beyond this, that all male members of his kin were to be executed as well as himself, and that the female members of his kin over 16 years of age were to be put into a concentration camp. In addition, the document contains a reference to certain practices which already existed in the new Eastern territories at the end of 1939, especially in the Warthegau, practices which "had shown the best results". Whether such practices actually did exist was never made known. In line with the custom of the rulers of the Nazi System which we have learned about in other ways, it is quite possible that this was devised for purely propagandistic purposes.

I shall not concern myself with matters of penal-political significance and admissibility of the liability of kin, its history, and its application by the various nations. I would not dream of defending the theory of the liability of kin, which I consider immoral. It is possible for me to refer to this matter in two different ways.

Innumerable German families have to suffer most severely because the head of the family had been a member of the Hitler party. Their living quarters are requisitioned, household equipment is confiscated, arrests and similar measures are carried through without regard for the innocent members of the families, and they concern in particular the women and children, regardless of whether they had been most hostile to the Nazi regime. Is that not liability of kin?

And one more point: if it is expressed in the introduction of an order by the Higher SS and Police Leader of 28 June 1944 (US-506) that

"The situation with regard to security in the Government General during the last few months has deteriorated to the extent that hereafter the most radical means and most severe measures must be applied against assassins and saboteurs of foreign nationality,"

and if at the end of the same order mention is made of the preventive influence of such proceedings, then this shows that the measure under consideration is intended as the last resort to protect the security of the Reich against a serious menace.

It is not necessary to examine here to what extent the measures ordered because of a Reich state of emergency lose their criminal character; for how can a little executive official be in a position to recognize the illegal character of such action when his superiors described it as a state necessity, and when he daily was threatened by terrorist attacks from ambush, and thus continuously endangered. How might and how could the individual oppose the execution of an order given by the highest authorities who would not take any "buts" or "nos"? Finally, we have to state that the above order of 28 June 1944 is the only case where in occupied territory the liability of kin was ordered as a means of defense against assassinations.

As far as the Gestapo is concerned, one should add that the execution of the orders about the liability of kin rested not so much in the hands of the Gestapo as of the Kripo, and of the outposts of the Armed Forces stationed in all major localities.

As far as the competencies of the Gestapo were concerned, there did not exist any general regulation which would have provided the basis for the use of relatives as a measure of atonement, and actually the order of the commander of the Sipo and of the SD at Radom of 19 July 1944 (USA-506), which has been quoted here repeatedly, does not mention the Gestapo at all.

As one learned from news and radio reports, relatives are supposed to have been arrested in conjunction with the happenings of 20 July 1944, and in accordance with an order of Hitler. However, it is known that Himmler in each case reserved for himself the right to issue orders for next-of-kin liability.

From these statements, you may conclude that for the crime called liability of kin, not all of the Gestapo can be held responsible.

The next point of the Indictment concerns the killing of prisoners upon the approach of Allied troops.

As a basis for this charge, Document USA-291 of 21 July 1944 has been submitted. It is an order by the commander of the Sipo

and the SD for the Radom district through which he informs his subordinates of the order of the Chief of the Sipo and the SD in the Government General, that in the case of unforeseen developments, which would make the transfer of prisoners impossible, they should be liquidated.

The questions to what extent these or similar orders have existed or were known elsewhere, and to what extent such orders were carried out and the essential question for me to consider, namely, the participation of the Gestapo in them, have not been clarified. On the basis of the affidavits before me, and the statements by the witnesses Straub and Knochen, the Gestapo only in a few places had prisons of its own. As a rule, there existed only one police prison to be used by all local police branches. The administration and supervision of these police prisons were always the tasks of the local police administrator; in the occupied territories it was partly the task of the Armed Forces. At any rate, the Gestapo had no right to interfere with the conditions in which the prisoners found themselves. Therefore, it is unlikely that the Gestapo would have carried out the killing of prisoners upon the approach of the enemy. On the other hand, it has been established with certainty that in many places the prisoners were either dismissed or handed over to the Allied troops when they occupied the locality (compare Affidavits Gestapo-12, 63, and 64).

May I be permitted to dwell on two cases which came up during the proceedings: the witness Hartmann Lauterbacher has given evidence concerning an order in accordance with which the inmates of the prison at Hamelin in Westphalia were to be killed upon the approach of the enemy. The person who issued the order behind the back of the Gauleiter, however, was not a Gestapo official, but the Kreisleiter of Hamelin who, for doing so, was sentenced to 7 years' imprisonment by the 5th British Division, and those who were to execute that order were not Gestapo officials, but prison employees who, however, refused to carry it out.

The second case concerns the camps Mühldorf, Landsberg, and Dachau in Bavaria. I refer to the evidence given by Bertus Gerdes, the former Gaustabsamtsleiter under Gauleiter Giesler of Munich (USA-291). It states that in April 1945, the inmates of the Dachau Concentration Camp and of the Jewish labor camps Mühldorf and Landsberg were to be liquidated; that means to be killed by order of Hitler. It is certain that the order was not given to the Gestapo and, above all, that neither of those actions was carried out owing to the refusal on the part of the Luftwaffe and the witness Gerdes—for their exoneration this must be stated here. Thus, at least in this case crimes did not take place, which by their frightful planning alone shock our deepest feelings. What is of importance for the

organization of the Gestapo, which I represent, is something to which it is my duty as its counsel to draw your attention: the order was given to the competent Gauleiter in Munich, who was to discuss it with the head of the Gau Staff and the competent Kreisleiter. Never was there any mention that the Gestapo should be used for its execution.

I beg the Tribunal to take judicial notice of the next point, the confiscation and dividing up of public and private property.

The Prosecution furthermore allege that the Gestapo and the SD participated in the confiscation by force and distribution of public and private property.

Two facts particularly are quoted in this connection: the confiscation of all personal property, even the clothing of those persons executed in the process of the extermination program for Jews and Communist functionaries, and further, the confiscation of scientific, religious, and art objects of high value.

If, in the document submitted by counsel for the SD, Number SD-58, the confiscation of some articles by the Gestapo on behalf of the Reich is mentioned, then this was done on the basis of legal regulations which not only empowered the Gestapo to carry out such action, but, in fact, made it their duty.

The confiscation of personal property was carried out in connection with the execution of the persons in question by the Einsatzkommandos. An argument favorable for the total structure of the Gestapo, which must be quoted in this connection, must be what I have already said regarding the activity of these Einsatzkommandos.

As is known, the Einsatzstab Reichsleiter Rosenberg was responsible for the rounding-up of cultural property, scientific material, scientific establishments, et cetera, in the occupied territories.

I refer you to Documents Number Gestapo-58 and 59.

As becomes apparent from a document presented by the Prosecution, USA-371, a letter from Rosenberg to Bormann dated 23 April 1941, confiscations were to be carried out by the SD or the Police. The letter expresses the wish that the Police are to deal only with such matters as are of importance for the task of the Police, but that scientific work and certain articles are to be surrendered to the Einsatzstab Rosenberg. The Gestapo is never mentioned at all. It is not by any means certain, therefore, whether members of the Gestapo did participate in those actions. It is for that reason that any implication of the Gestapo as a body must be denied, apart from the fact that it can hardly be proved against any Gestapo officials who may have participated that they acted in full realization that they were committing a criminal deed. For the sake of completeness I only wish to point out at this point that for the carrying out of the instructions for the confiscation of furniture and art treasures in France and other Western territories, to be applied in the case of persons who had not returned to their houses, Gestapo officials were not employed at all, which becomes clear from the testimony of witnesses Dr. Knochen and Straub.

The Prosecution accuse the Gestapo of having employed third-degree methods of interrogation. I have already spoken about this when I discussed the question whether the methods employed by the Gestapo were criminal. At this point I have the following to say with reference to this accusation:

The documents submitted by the Prosecution made it perfectly clear that it was only permissible to employ third-degree methods of interrogation in exceptional cases, only with the observance of certain protective guarantees and only by order of higher authorities. Furthermore, it was not permissible to use these methods in order to extort a confession; they could only be

employed in the case of a refusal to give information vital to the interests of the State, and finally, only in the event of certain factual evidence.

Entire sections of the Gestapo, such as the Counter-Intelligence Police and Border Police, have never carried out third-degree interrogations. In the occupied territories where occupation personnel were daily threatened by attempts on their lives, more severe methods of interrogations were permitted if it was thought that in this manner the life of German soldiers and officials might be protected against such threatened attempts. Torture of any kind was never officially condoned. It can be gathered from the affidavits submitted, for instance, Numbers 2, 3, 4, 61, and 63, and from the testimonies of the witnesses Knochen, Hoffmann, Straub, Albath, and Best, that the officials of the Gestapo were continuously instructed during training courses and at regular intervals to the effect that any ill-treatment during interrogations, in fact any ill-treatment of detainees in general, was prohibited. Violations of these instructions were in fact severely punished by the ordinary courts, and later by the SS and Police Courts (see Affidavit Number Gestapo-76).

Then I beg that official notice be taken of the subsequent pages.

Implicating testimony in this respect from the witness Rudolf Hoess, USA-819, the Camp Commandant at Auschwitz, has been credibly rectified by witness Rudolf Mildner, the former Chief of the Gestapo Main Office Kattowitz. He has stated under oath (see Affidavit Number Gestapo-28) that a Stapo or Kripo criminal official had been posted with every main concentration camp, who had clearly-defined orders, none of which included third-degree methods of interrogation.

The witness Rudolf Bilfinger, too, until the end a higher official in the services of the RSHA, has stated under oath that he had no knowledge whatever of an order according to which ill-treatment during interrogations had been permitted, let alone carried out; and that also during his stay in France, in 1943, he had gained no knowledge of any ill-treatment carried out by the German Police. He only heard of ill-treatment by groups of Frenchmen who acted on behalf of some German agency in carrying out some task. On the other hand, other witnesses and affidavits have stated that ill-treatment had been carried out by the Gestapo. Dr. Gessler, the former German Reichswehrminister, has spoken of tortures which he suffered during his detention at the hands of the Gestapo, and which are supposed to have taken place on explicit orders of Hitler. Freiherr von Weizsäcker, the former German Ambassador at the Vatican in Rome, has generally answered in the affirmative the question put to him by the prosecutor whether he knew that the German Police had left behind in Italy a record of terror and brutality.

I believe that I may draw the following conclusion from the contradictory testimonies of witnesses:

Apart from certain legally admitted types of more severe interrogations which were subject to the strictest rules and regulations, ill-treatment, torture, and the inflicting of pain were not only not permitted, but expressly prohibited under the threat of the severest penalties. If they have nevertheless occurred, and even in comparatively large numbers, then we are here concerned with excesses on the part of individuals, in which connection it must be taken into consideration that towards the end of the war there were more nonpolicemen serving in the German Police than policemen. Numerous sentences passed by SS and Police Courts, which have been confirmed by witnesses, prove that strictest proceedings were instituted against any such excesses. Even if such excesses may have taken place in numerous individual instances, the murmurs and whispers around the Gestapo, of which Heydrich has spoken, must have increased their number too.

Furthermore, knowledge of such excesses was not widespread, as asserted in the evidence to the contrary given by witness Dr. Gisevius who, according to his own admission, has worked for a whole 4 months for the Gestapo, one of several reasons why his testimony cannot be regarded as valuable.

(c) Crimes against Humanity.

The Prosecution alleges that the Gestapo, together with the SD, had been the foremost instrument for the persecution of the Jews. The Nazi regime was said to have considered the Jews the chief obstacle to the "Police State" by means of which it had intended to pursue its aim of aggressive war. The persecution and extermination of Jews is supposed to have served this aim too. The National Socialist leaders had regarded anti-Semitism as the psychological spark to inflame the populace. The anti-Jewish actions had led to the murder of an estimated 6 million human beings.

Truly a shattering accusation! What has been unveiled during this Trial, and confirmed by the witnesses Hoess and Ohlendorf, forms the basis of a guilt which, unfortunately, will forever adhere to Germany's name. Yet what must still be examined after these sad facts have been ascertained is the question as to the extent to which the Gestapo participated in the persecution and extermination of the Jews. An appreciation which will lead to correct results is only possible if a differentiation as regards time is made concerning the activity of the Gestapo.

After the seizure of power, the Hitler Government published a number of penal laws concerning the Jews. As far as these legal regulations contained penal clauses possibly necessitating the employment of force by the Police, the Gestapo may, under certain circumstances, have been connected with them. Infringements of such penal laws by Jews were comparatively few, and only the Nuremberg Laws announced in 1935 caused increasing police activity, in which however, during the first period, every case was handed to the proper courts for the passing of proper sentences. A change only occurred in the last years of the war. That the Gestapo began to act in these cases cannot be held against it; because it, too, had to comply with the existing laws of the State, that is to say, it had to obey the orders of the State just as the soldier must obey his orders.

Apart from that, other administrations, such as the Administration of the Interior of the Reich, the Finance Administration, and the Municipal Administration, to a much larger degree than the Gestapo, became active against the Jews, that is to say, regarding their personal legal status as well as their property, houses, and so forth—yet those administrations are not being accused here.

Through the excesses of November 1938, the Jewish problem became considerably more acute. It has been ascertained beyond doubt that this revolting action did not originate with the Gestapo.

In fact, the Prosecution implicates the Gestapo only to the extent that it did not intervene. Information on this point is contained in the testimony of the witness Vitzdamm, according to which during the conference on the evening of 9 November 1938 in Munich, with Gestapo chiefs present, Heydrich declared quite openly that this action did not have its origin in the Gestapo. Over and above this, he explicitly forbade the Gestapo to participate in the action, and gave instructions to the Gestapo chiefs present to return to their departments at once and take all steps to stop the action. The contradiction contained in this testimony and the contents of Heydrich's teletype letter sent to all Gestapo departments during that night (Document USA-240), can be explained by the fact that between this conference of Heydrich's with the Gestapo chiefs and the issuing of the order, a development had taken place which could only be restrained but no longer stopped. When the Gestapo offices received Heydrich's circular, the holocaust of senseless destruction had already swept over Germany. Nothing remained to be done but the prevention of further excesses; and that was done.

In this connection I refer also to Affidavit Number 5 which has also been submitted by counsel for the SS, stating that Himmler himself had dictated the order to the Gestapo offices and revealed his conversation with Hitler, from which one learned that Hitler had ordered the safekeeping of Jewish property and the protection of the Jews by the Gestapo. As shown by the evidence given by the witness Vitzdamm and as proved by numerous other affidavits, this order was carried out everywhere. I refer to Affidavits Number Gestapo-5, 6, 7, and 8.

The arrest of 20,000 Jews which followed the excesses was caused by Himmler (Document USA-240), and was as a rule carried out by the Kreis and local police authorities. The overwhelming majority of the Jews, however, were not transferred to concentration camps and were gradually released. This is proved by Affidavit Number Gestapo-8.

For the first time, the Gestapo was burdened with a task foreign to its nature by the arrest of the Jews in November 1938. The Gestapo—as shown by the evidence given by the witnesses Best and Hoffmann—would never have carried out or suggested these arrests, which were considered unnecessary from a police point of view. The fact that the arrested Jews were soon discharged justified the assumption of the Gestapo officials that it was but an isolated operation and not the symbol of worse things to come.

The Jewish question, which the National Socialist administration had made a point of its program, was originally to have been solved by the emigration of the Jews. For this reason, in 1938, there had been founded in Vienna the Central Office for Jewish

Emigration which succeeded in facilitating the emigration of a large number of Jews. During the war, too, emigration continued according to plan, as shown by Documents USA-304 and 410. In addition to that, evacuations of Jews carried out in accordance with a detailed decree of the Chief of the German Police were undertaken. On the basis of that decree the local Stapo offices had to prepare the evacuation and to co-operate with the Jewish communities. Their tasks included in particular the equipment of these evacuees with clothing, shoes, tools, *et cetera*. In most cases the transports were not accompanied by Gestapo officials, the personnel being composed of members of the Security Police, the Criminal Police, and Gendarmerie. The destination was not announced in most cases. The evacuations were carried out without friction and unnecessary harshness.

From a humanitarian point of view one might well regret those evacuations of Jews most profoundly; yet the part played by the Gestapo in them consisted in carrying out the decrees and orders originating from higher authorities. Actually, the competency of the Gestapo in regard to the Jewish question by no means had the importance generally attributed to it. In the Jewish department of the Gestapo, both in the RSHA and in the individual Gestapo offices, only a very few officials were employed.

In 1941 Himmler decreed that the Jews in Germany should be isolated in ghettos in Poland. This resettlement of the Jews was the task of the Higher SS and Police Leaders and was carried out by the Order Police.

If Hitler's policy regarding Jewry up to 1941 aimed only at the elimination of the Jews from Germany by emigration, and later by evacuation, it became increasingly harsh after America's entry into the war. In April 1942 Hitler ordered the "final solution of the Jewish question," that is, the physical extermination, the murder, of the Jews. The proceedings have shown in how terrible a manner this order was carried out. The tool which was used by Hitler and Himmler for the carrying out of that order was SS Obersturmbannführer Adolf Eichmann who with his department was attached to the organization of Amt IV of the RSHA; however, he actually had an entirely independent and autonomous position, which above all was wholly independent of the Gestapo. The preparation and carrying out of the order for the murder of the Jews was kept strictly secret. Only a few persons knew the order to its full extent. Even the members of Eichmann's office were left ignorant of the order and learned of it only gradually. The evacuation and transfer to the extermination camps was carried through by Eichmann's Sonderkommandos. They were composed of indigenous police and of almost exclusively Order Police. The Police

were not permitted to enter the camps but were relieved immediately upon arrival at the station of their destination. In the camps the circle of persons carrying out the murder orders was kept small. Everything was done to conceal the crimes. This description, based essentially on the evidence of the witnesses Knochen, Wisliceny, and Dr. Hoffmann, is supplemented in a surprising fashion by the evidence of Dr. Morgen. He declared that three persons were charged with the extermination of the Jews: Wirth, Hoess, and Eichmann.

Wirth, the former Criminal Commissioner of the Criminal Police in Stuttgart, known as "the murder commissioner with unscrupulous investigation methods," had, for his special task, his headquarters together with his staff in Hitler's Chancellery. His task was at first the mass extermination of insane persons in Germany, then, secondly, the extermination of Jews in the Eastern countries. The Kommando which was set up by Wirth himself for the purpose of exterminating Jews was known as "Aktion Reinhard," and was extremely small. Before the beginning of the action Himmler personally took the oath from the members and declared explicitly that anyone who should say anything about the action would be put to death. This Kommando Reinhard was independent of any police office. It did not belong to the Gestapo, and it wore the uniform and carried the credentials of the Security Police only in order to allow its members free circulation in the rear of the Armed Forces. The Kommando started its activities with the extermination of Jews in Poland and later extended its diabolical work over the other Eastern territories, by setting up special extermination camps in inconspicuous places. By a hitherto unknown system of deception it allowed these camps to be run by the Jews themselves. The fact must be stressed that it was the Security Police of Lublin which reported Wirth's misdeeds to the Reich Criminal Police Office and thus brought these hideous crimes to light. This fact corrects the testimony of Hoess, who declared that the extermination camps of Maidanek and Treblinka had been operating under the orders of the Security Police. In fact, they had been operating under Wirth.

According to Dr. Morgen's testimony, Auschwitz was made a center of mass extermination of Jews by Hoess at a later date. Because of his methods, he is said to have been called an untalented pupil by Wirth.

According to Dr. Morgen's testimony, the organization Eichmann was separate from these two Kommandos. Its task consisted in deporting the other European Jews to the concentration camps. According to witness Wisliceny, Eichmann, by reason of the full powers accorded to him personally, was also personally responsible

for the carrying out of the extermination order. He established special Kommandos in the occupied countries. Though economically under the Chief of the Security Police, they could not take any instruction or orders from him.

Both organizations, Eichmann's and Wirth's, were then amalgamated, but this was done in such a way that only very few people in Eichmann's immediate circle knew about it. In this way, and furthermore by the use of Jewish collaborators, the knowledge of these killings was restricted to a very few Germans and thus the secret was kept.

The declarations of witnesses and affidavits might diverge as to the details in the organization of the extermination program, but one thing is clear beyond any doubt: the Gestapo as a whole did not participate in this horrible mass murder and, with very few exceptions, could and did not know anything about it. The few leading persons who knew about it, such as Eichmann, Müller, Himmler, kept strictest silence about their tasks and intentions and they took their secret with them to the grave. This is confirmed most clearly by Dr. Morgen's testimony. For how could the limitation of knowledge to the above-mentioned group of persons be made more evident than by the fact that the Criminal Police itself started investigations and discovered the crimes, and that even the Chief of the Security Police and Nebe were greatly surprised, while Müller seemed to have known, as indicated by his behavior. This being the case, how can it be assumed that the minor Gestapo official knew about the secret?

With regard to the persecution of the Church and the shooting of hostages by the Gestapo, I ask you to take note of the statements in the plea.

Finally the Gestapo is accused together with the SD of having been leading bodies in the persecution of the Churches.

Here it must be said, first of all, that the Gestapo was not entitled to take the initiative in any discussions on matters of internal policy. It was confined exclusively to the carrying-out of existing legal provisions. These legal provisions do not proclaim that the Churches should be persecuted because of their religious undertakings, but that the abuse of the pulpit for attacks against the State should be stopped and that action should be taken against individuals.

These legal provisions were the so-called "Pulpit Paragraph", Number 130a of the Reich Criminal Code, which goes back to Bismarck, and a police decree of the Prussian Prime Minister, dated 1934, which forbids the Churches any political activity.

To enforce existing laws has hitherto never been made a reproach to police authorities of any country. The question is whether the average official of the Gestapo could realize that the policy of his government against the Churches pursued criminal aims.

I beg to refer to Affidavits Number Gestapo-43, 44, 57, 58, and 59 to show how far the charge against the Gestapo concerning the attacks on the Churches was unjustified. I refer also to Affidavits Number Gestapo-42, and 91 which describe how the so-called Crucifix Decree, that is a decree issued by a Provincial Government, was not only not supported by the Gestapo but on the contrary almost prevented by it.

In the procession of gloomy instances we saw also shooting of hostages. The whole of the Security Police, Gestapo included, had nothing to do with shooting of hostages. They were ordered by the Higher SS and Police Leader and executed by the Order Police.

Furthermore, it must be pointed out that here we are almost exclusively concerned with people who had already been sentenced to death by court-martial; I refer to Affidavits Number Gestapo-9, 71, and 90, and the testimonies of Dr. Knochen, Straub, Dr. Hoffmann, and the Defendant Seyss-Inquart. It is a matter of course that with reference to all executions undertaken on the basis of a court judgment the Gestapo indictment does not apply.

I have now dealt broadly with the individual crimes of which the Gestapo as a collective organization has been accused by the Prosecution. As to the question whether the crimes, as far as they were committed by men of the Gestapo, have to be imputed to the Gestapo as a whole, I finally come to the following conclusion, so far as it has not been arrived at before when dealing with the individual crimes:

The Gestapo was a public Reich authority bound in its aims and activity to the existing laws. The fact that the Gestapo officials, during the 12 years of the existence of that institution, essentially carried out quite normal police work is not sufficiently taken into consideration. The working day of most of the Gestapo officials was occupied with official business which had no connection with the crimes alleged here. Third-degree interrogations were only carried out by a small fraction of the officials; the decree concerning that was in the safe of the office chief and marked "Top Secret." However, sections of the Gestapo officials, by the exploitation of the traditional duty of obedience, were used by the highest government offices for measures which went beyond the actual aims of the Gestapo. And here it is of decisive importance that only a small part of the Gestapo officials participated in these tasks, which were alien to their police duties. As the most serious charges against the Gestapo are in connection with its activity in the occupied territories, it follows that only a comparatively small percentage, at most 15 percent, of the executive officials can be accused, but not the Gestapo as a whole.

Regarding this question, according to the general consensus of opinion it is of special importance to know whether the aims, tasks, and methods of the organization or group were public knowledge. Publicity, or in other words, general knowledge, must include two things: knowledge of the objective facts of the criminal action and knowledge of the illegal and criminal character. Judgment as to whether this dual knowledge existed must be based on common sense. What can be assumed if the individual members of the organization were told nothing of the criminal incidents?

I wish to make a few fundamental additions to what I have already said about the individual crimes. The reason why the

Gestapo as a whole had no knowledge of the capital crimes committed lies in the following: Hitler from the beginning knew how to surround himself with a veil of secrecy, to conceal his true intentions, to see to it that no minister and no department and no official learned too much from any other. The well-known Führer Order Number 1, which was submitted as Document Number Gestapo-25, is only the actual confirmation of a long-established practice.

Taking into consideration the demonic influence which emanated from Hitler, the feeling of inviolability of all his orders—explainable only by the demonic aspect of his character—and the fear of the serious consequences to life and limb in the event of failure to carry out a so-called Führer Order, is there any wonder that this secrecy order was scrupulously observed?

Thus, it is really not incredible that almost all defendants and witnesses examined here have actually only now learned of all these heinous crimes. It is significant that, for example, the driver of a special vehicle was condemned to death by the SS and Police Court in Minsk because in an intoxicated condition he had spoken about the purpose of the vehicle against his orders (Affidavit Gestapo-47). Even Dr. Gisevius had to admit that Heydrich endeavored to keep his actions secret, and the Defendant Jodl characterized the system of secrecy in the most striking manner when he said that secrecy was a masterpiece of Hitler's art of concealment and a masterpiece of deception by Himmler.

It is a recognized legal principle that ignorance through negligence is not sufficient in case of crime; therefore, in order to declare an organization criminal, it is necessary for the members of the organization actually to have known of and approved the criminal aims and methods. That, however, is not proved in our case, and cannot be assumed from all the facts established during the Trial, no matter how strange an assumption to the contrary may seem in retrospect today to one who cannot appreciate conditions in Germany. With regard to the question of whether the terrible crimes which actually were committed are to be imputed to the Gestapo as a whole, the further fact must not be disregarded that the members of this organization did not act on their own initiative but on orders.

Those concerned contend, and can prove by witnesses, that if they had refused to carry out orders received, they would have been threatened not only with disciplinary proceedings, loss of civil service rights, and so forth, but also with concentration camps, and, in case of war assignments, with court-martial and execution. Do they thereby invoke a reason for exemption from guilt?

This question must be examined with regard to the so-called "duress induced by official duties," which is not recognized in written law. On the other hand, it represents a concept which cannot be dispensed with in legal life. Where the written law is not adequate, as when a state of emergency exists, sensible and practical considerations must fill the gaps. Public opinion approves this, and legal administration and jurisprudence have recognized the so-called extra-legal state of emergency as a reason for exemption from guilt. It is true that cowardice is not a virtue; but it is equally true that heroism and martyrdom in the world of human beings are the exception. Should the Gestapo members form this exception? Could one, from a purely human point of view, really expect them to take upon themselves loss of livelihood, family suffering, concentration camp, and perhaps even a shameful death? Besides, the members of the resistance movement in the occupied territories, in their killing of members of the German occupation forces, again and again referred to orders from their superiors and to the duress imposed on the terrorists who came under these orders.

Therefore in our case, too, I would consider without hesitation that there was actual danger to life and limb for the perpetrator within the meaning of Article 54 of the German Criminal Code. Here there existed what Mr. Justice Jackson called "physical compulsion."

Moreover, in Germany every civil servant was and is trained in the conception of the strictest obedience to orders and instructions from higher authority. Perhaps more than anywhere else in the world the civil servant in Germany is imbued with the spirit of authority. He was trained in the attitude, correct in itself, that a state will break down if the orders issued by it are no longer obeyed, and that the denial of governmental authority has its logical result in anarchy.

Added to this deep-rooted attitude was the devilish atmosphere which by hypnotic power turned particularly the small officials into tools without a will of their own. All of these motives were added to the threat emanating from the very nature of the occupation and they all combined to create a duress so oppressive that the Gestapo official no longer retained the freedom of will to examine a criminal order as to its legal and moral value and to refuse obedience. Taking these considerations into account these proved crimes cannot be charged to the whole of the Gestapo in such a manner as to declare the Gestapo criminal.

The prosecutors state—and this is the very basis and aim of the Indictment—that the crimes were not isolated acts committed independently of each other, but rather parts or aspects of a criminal policy, either as part of a common plan or as a means

of carrying out that common plan. The contention is that this very plan was directed towards the unleashing and waging of an aggressive war which in its beginning had no definite aim, whereas later the aim of that war became the enslavement of Europe and the peoples of Europe in order to gain living space. Everything important that was carried on within that conspiracy, characterized as such by the Indictment, is described as having had only one aim and purpose, to secure for the Nazi State a place in the sun and to push all internal and external adversaries into the outer darkness. The essential point of the individual crimes was the intentional participation in the planning and carrying out of the plan. The crime of the individual consisted in his having joined the common plan of the conspiracy. It was claimed that plan and purpose of the conspiracy were generally known. Therefore, no one could claim that he acted without knowledge of the conspiracy.

These contentions of the Indictment aim above all at the individual defendants, but presumably they are also valid for the indicted organizations. It is claimed that the role played by the Gestapo within the conspiracy consisted in aiding the Nazi conspirators to create a police state set up to break all resistance and to exterminate Jews and faithful Christians, as well as politically undesirable persons, as the main elements of the resistance movement; furthermore, to enslave the employable inhabitants of foreign countries and to eliminate and suppress by cruelty and horror all those who might resist the German lust of conquest within the Reich or in the conquered territories.

If we examine again the individual crimes as to whether they are to be considered as having assisted the crime of conspiracy against world peace, it is desirable that the activity of the Gestapo before the war and during the war be studied concerning the characteristics mentioned. Without repeating myself unnecessarily, I believe I can state that the duties and methods of the Gestapo before the war were a manifestation of a State institution existing in all civilized countries which cannot be imagined apart from the State; its existence, therefore, in no way infers the planning of an aggressive war or any other conspiracy against world peace. The individual Gestapo official fulfilled his duty as he had learned to do as a civil servant. Equally, in the upper strata of the political police it is unlikely that any other thought would have prevailed than to guarantee peace and security within the State. One must not identify the Gestapo with such superiors as Himmler and Heydrich, whose knowledge and actions were alien to the Police. If these men acted only from the political point of view their subordinates cannot be blamed for it. Taking into account the

well-known system of secrecy, the individual Gestapo official and the overwhelming majority of all Gestapo members could not have had the least idea that their work was aimed at preparing a war of aggression and helping to create the basis for it. I believe that no Gestapo official hearing that contention or asked whether he had knowledge of the attack on world peace would even understand the question.

The Gestapo as a whole can only be charged with responsibility for the crimes committed by members of the Gestapo during the war when those crimes—apart from the general knowledge of them—were committed with the knowledge that they formed part of a plan to bring the war of aggression to a victorious end at all costs, and by using means which were criminal in themselves and which conflicted with international law. That cannot be proved either. The preliminary condition would again be that the Gestapo officials who participated in the crimes knew that the war which we waged was a war of aggression. Now, we all know that a perfectly-organized propaganda which reached even the remotest hamlets never spoke of the war except as something forced upon us criminally, and that Hitler himself always spoke of the war which others wanted and not we ourselves. It may have happened that some intelligent individuals who had not entirely lost their soundness of judgment did have their doubts and may have thought vaguely that our Government was not altogether blameless in regard to this war which had been forced upon us; but since the opposite is more likely, it is impossible to assume the existence of this suspicion or certainty to any appreciable degree in the minds of all the members of the Gestapo.

The Prosecution assumes—quite unjustly, in my opinion—that every activity of the Party, above all its fight against the Jews, against its political opponents, and against the Churches, arose out of the intention and plan to eliminate all tendencies standing in the way of the war of aggression it proposed to wage. The National Socialist struggle against Jewry sprang from the doctrine of anti-Semitism which had become part of the Party program and which saw in all Jews an element destructive to the State. Because this fight was an immoral one, the Christian Churches rightly protested against it. This again explains to a great extent the fight between Party and Church. The steps taken by the Party against its political opponents—especially against the Communists—were, in all probability, taken in the first place for the purpose of maintaining and protecting the State; in any case, that was the way in which the German people—and therefore the Gestapo officials—regarded the state of tension which existed. It did not occur to anyone to see in this the influence of a conspiracy against world peace.

One last point, however—perhaps the most profound—must not be overlooked in this connection. The German soldier, the German civil servant, the German working man, and every German man knew that the world had placed us in a situation which meant a life-and-death struggle. In the course of the war it gradually became appallingly clear that it was a question of existence or extermination. Indeed, you would be misjudging the soul of the German people if you overlooked the fact that every decent German, when he realized this horrible truth, felt himself under an obligation to do everything which was expected of him in order to save his country. And when we judge the behavior of the German people and its political police we must take these factors into consideration in order to do them justice.

The Prosecution have stated that the Court is in a position to restrict its decision with regard to the collective guilt of the organizations—both in regard to certain subgroups and in regard to time. The organizational structure, the variety of the groups of individuals active within the Gestapo, and the results of the evidence presented in reply to the Prosecution's assertions concerning the criminal activities of the Gestapo, form the basis for a possible limitation in regard either to persons or to time—which I should like to have taken into account, should the High Tribunal arrive at a verdict of "guilty." Criminal participation in the crimes listed under Article 6 of the Charter can certainly not be imputed to the following groups of persons, for they neither committed crimes themselves nor did they plan to commit them, much less actually commit them collectively, nor could they have had knowledge of criminal plans and activities—and they certainly never did have such knowledge.

(1) Administrative Officials. They did not receive their practical instructions from the office of the Secret State Police or from Amt IV of the RSHA, but from Ämter I and II of the RSHA whose members are not affected by the charges raised against the Gestapo. The rooms occupied by the administrative offices were never in the same place as those of the executive officials. Administrative officials had no insight into the activities of executive officials—partly because of the secrecy obligation which has been mentioned many times and which was observed particularly strictly in the Gestapo, partly because the administrative officials were looked upon by the executive officials as merely nominal members of the Gestapo and were treated with marked reserve.

The difference in designation, such as Police Inspector for police administrative officials and Criminal Inspector in the case of the executive service, must be pointed out in order to stress the fundamental difference between these two categories of officials.

When the Prosecution argues that the activities of the administrative officials constituted the prerequisite for the activities of the executive, this argument is as ineffective as though I were to argue that the activities of the officials of the Reich Finance Ministry, which secured funds for the salaries and other expenses of the Gestapo, was the cause of the activities of the executive officials.

(2) Employees and wage-earners. Mr. Justice Jackson, in his speech of 1 March 1946, excepted two groups of persons from the Indictment against the organizations; firstly, the SA Reserve and, secondly, the office employees, stenographers and servants of the Gestapo. A section of the groups of persons which I have dealt with are thereby already excepted from the Indictment, but I deem it nevertheless my duty to point out that this group of persons, both on account of their subordinate positions and the consequent impossibility of their acquiring detailed knowledge of the Gestapo's activities, has been very justly excepted in its entirety from the Indictment. It is my opinion that all employees and wage-earners, including, for instance, drivers, as far as they were not civil servants, teletypists, telephone operators, draftsmen, and interpreters, should be included in this excepted group, no matter whether their membership in the Gestapo was based on a free labor contract, or whether the labor office directives allowed them the choice of a different place of work.

(3) The witness Hedel has made a detailed statement on the activities of the staff which dealt with technical communications. These statements make it clear that they had nothing at all to do with executive work; that they were not in a position to have any knowledge of the activities of the executive staff, and that on the basis of their own activities, they did not necessarily realize that they belonged to an organization whose activities might be criminal. This group of persons, too, might justly be treated as exceptions.

(4) The same applies to groups of persons who in the years 1942 to 1945 were collectively transferred to the Secret State Police on orders from higher quarters. They are the 51 groups of the Secret Field Police and the Military Counter-Intelligence Service, including Foreign Censorship and Telegraph Censorship Offices, which were subordinated to the Gestapo by the Wehrmacht, and the Customs Frontier Service, which was subordinated to the Gestapo by the Reich Ministry of Finance.

THE PRESIDENT: Dr. Merkel, were you referring just now to 51 groups? Can you tell the Tribunal where those 51 groups are specified? In what document?

DR. MERKEL: The testimony of Krichbaum, who was examined before the Commission. With reference to these groups there

cannot be the slightest doubt that neither the fact of voluntary membership, nor the knowledge of criminal aims as alleged by the Prosecution, nor the fact of an alliance applies. The individual, no matter what rank or office he held, was powerless against collective transfer on the basis of an order emanating from the highest offices of the Wehrmacht and the State. Disobedience to this order would have been punished by death on the charge of desertion or military disobedience.

(5) There still remains the group consisting of the executive officials. The executive officials originated in the political department staffs of the police commissioners' offices prior to 1933. Those officials, who had been employed in part even before 1914 and currently up to the year 1933 in combating the various political opponents of the various governmental systems, and the governments which came into power through them, were almost without exception absorbed by the political police of the new regime. The only exceptions were those officials who had been particularly active as opponents of National Socialism. But even those were only dismissed in rare cases. For the most part they were transferred to the Criminal Police.

The staff of the Secret State Police was filled up by transferring officials and candidates to the Gestapo from other police departments without consulting them beforehand, except, of course, when they themselves made an application to that effect. In the same way municipal police officials with a long record of efficiency and who wished to remain in the police service, were transferred after 9 years' service to the Criminal or State Police. They had no influence as to which department they were employed in.

With reference to the Counter-Intelligence and Frontier Police, I can demonstrate that the members of these groups of persons who were included as officials of the Secret State Police executive could have had no part whatever in the crimes of which the Prosecution accuse the Gestapo. The Counter-Intelligence Police exercised their police activities in a manner common to every civilized state, as one of the most noble tasks of the Police or their affiliated institutions. It is clearly established through the testimony of Best and through Affidavits Number Gestapo-39, 56, and 89 that the staff of the Counter-Intelligence Police did not change very much; and in view of the special obligation to secrecy, and for the sake of the defense of the country, a transfer to other Gestapo or police departments was not permissible as a rule. The Counter-Intelligence Police was mostly isolated within the Gestapo offices and had no official contact with other departments. The cases handled by the Counter-Intelligence Police were always submitted to the regular courts for decision.

The functions of the Frontier Police from 1933 to 1945 were the same as in the preceding period, and the same as those carried out today by the officers of the new Frontier Police. The officers of the Frontier Police did not carry out third-degree interrogations, nor did they submit applications for commitment to a concentration camp, nor did they—and most of them had served for a long period in the Frontier Police—participate in any persecution of the Jews; nor could they on account of the nature of their employment have participated in any other crime with which the Gestapo is charged.

These two groups of the Gestapo numbered 5 or 6 thousand individuals. On the basis of the figures which I have previously submitted for the strength of the separate groups of the Gestapo, I estimate the number of its staff, during the period when it was numerically strongest, at approximately 75,000. The executive officials, numbering approximately 15,000 men, therefore constituted only 20 percent of the total strength. If we deduct from that the 5 or 6 thousand men belonging to the Counter-Intelligence and Frontier Police, there remain 9 or 10 thousand executives, or 12 to 13 percent of the total strength.

I believe I have already advanced sufficient reasons as to why the Gestapo, as a subordinate part of the State organism, cannot be sentenced at all, for reasons which are based both on natural law and on the general national law of all peoples. But even if those legal objections did not exist, no sentence could be pronounced, as the characteristics of criminality as defined by Mr. Justice Jackson on 28 February 1946 do not appear in the case of the Gestapo. And even if this argument were not valid, I ask: Is it possible that, simply because some of its members may possibly be held responsible for the commission of crimes, an organization as such can be declared criminal, including also those members who certainly did not act in a criminal manner and had no knowledge of the criminal acts of others?

I am referring to the summary of affidavits given by a large number of former members of the Gestapo who are at present in internment camps. I must also draw your attention to the numerous acts, sworn to in those affidavits, which aimed at sabotaging certain evil orders issued by the head of the State.

If I turn now, in anticipation of an argument, to the question of a limited period of time, I can be more brief. The Gestapo cannot be described as being under unified leadership throughout the Reich, and hence of having a unified will—at least up to the time of Himmler's appointment as Deputy Chief of the Prussian Secret State Police, that is, up to the spring of 1934.

In Prussia Ministerialrat Diels had acted, with one short interruption, as substitute head of the Secret State Police under Göring. It is impossible to connect Diels with the illegal tendencies which became apparent after the outbreak of the National Socialist Revolution. I can refrain—and owing to pressure of time I must refrain—from pointing to those who were really guilty of those excesses; compare Affidavit Number 41.

As a State institution the Gestapo had no part in the events of June 1934. In the following period up to 9 November 1938, the Gestapo did not play any role which could justify the charge of criminality. The arrest of 20,000 Jews which the Gestapo was ordered to carry out was, as the witness Best testified, a matter outside the competency of the Police. It is therefore impossible to fix that date as the beginning of the criminal activity of the Gestapo. It must be stated that up to the beginning of the war at least the criminal character of the Gestapo cannot be proven.

Does the basis of judgment change for the period covered by the war? I have already stated that the activities of the Einsatzgruppen and Sipo offices in the occupied territories cannot be charged to the Gestapo, since leadership, organization, personnel, and order of command of those offices do not permit discrimination against the Gestapo.

There is not the slightest doubt that if the Gestapo is found guilty, considerable restrictions as to period of time must be taken into account. I have indicated briefly the almost insurmountable nature of the difficulties in the way of a time limitation.

And with this, Gentlemen of the High Tribunal, I end my remarks on the Indictment of the Gestapo. I have not considered it my duty to excuse crimes and evil deeds or to whitewash those who disregarded the laws of humanity. But I desire to save those who are innocent; I desire to clear the way for a sentence which will dethrone the powers of darkness and reconstitute the moral order of the world. If we glance through the annals of European history in recent decades and centuries, we read again and again how might conquered right among the nations, and how the spirit of revenge beclouded the perceptions of mankind.

Peace was concluded only on paper; it was not accepted by the human heart. Solemn pacts were made—only to be broken. Promises were given and not kept. We read, in this book of revolutions among the nations, of economic need and of unspeakable sorrow. The last pages of this book, however, are written in blood—the blood of millions of innocent people. They portray unimaginable cruelties, utter disregard of the sacred laws of humanity, and mass murders which brought suffering to the peoples of Europe. With your judgment, Gentlemen of the High Tribunal, you will write

the last chapter of this book—a chapter which must be the end and the beginning; the end because it closes the gruesome battle fought by the powers of darkness against the moral order of the world—the beginning because it is to lead us to a new world of freedom and justice.

This justice, I hope, will inspire the judgment with the spirit of the words engraved in golden letters on the floor of the Palace of Peace in The Hague: *Sol justitiae illustra nos!* Do not, therefore, make your judgment merely with the cold logic of your keen mind, but also with the warm love of a seeing heart. This applies especially to the judgment against the organizations; for a condemnation must be unjust, since among the millions whom it affects there are millions who are guiltless. They would all become victims of desperation; they would all be despised and damned, and would perhaps even deem those happy who now rest in their graves as victims of National Socialism.

The present world needs peace—nothing but peace. To extend the consequences of a judgment to a large guiltless section of the German people would be to work against world peace, which, in any event, rests on an unstable basis, and would thereby *mutatis mutandis* repeat Hitler's idea of punishing a people—the Jewish people—collectively, and of exterminating them.

Out of this injustice against the laws of God and of Nature was born the indignation of the creature thus tortured, and the right to have the evildoers called to account. Hitler and his regime proved the truth of the words: *Hodie mihi, cras tibi*. From the history of the Jews in the Old Testament we know that God would not have destroyed the city of Sodom, had but one just man lived there. Is not God's truth contained in these words—that a group may not be punished if even one member of the group is not deserving of punishment?

Then, Gentlemen of the High Tribunal, place your signatures under a judgment which will bear the scrutiny of history and mankind; place your signature under a verdict which will be praised as the beginning of a new era of Justice and of Peace—and which will form a golden bridge leading to a better and a happier future!

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

TWO HUNDRED AND ELEVENTH DAY

Monday, 26 August 1946

Morning Session

COL. POKROVSKY: Mr. President, would you allow me to inform the Tribunal that in conformity with the ruling given by the Tribunal during the morning session of 12 August 1946 concerning the witness Schreiber, this witness has been brought to Nuremberg and is here and can be examined today or at any other time, as the Tribunal may decide.

THE PRESIDENT: Colonel Pokrovsky, could he be examined now, at once?

COL. POKROVSKY: He could be examined at once, Mr. President.

THE PRESIDENT: I think that would be the most convenient, before we go on with the organizations' speeches.

COL. POKROVSKY: Very well, Mr. President; General Alexandrov will therefore examine him at once.

DR. LATERNSEER: Mr. President, I object to the examination of this witness for the following reasons: for the trial of the organizations it was decided by the Court that all witnesses should first be examined before the Commission. What is valid for the Defense must, according to general legal principles, be valid for the Prosecution as well. For these reasons the examination of this witness is inadmissible.

THE PRESIDENT: I have before me the order of the Court of the 12th of August 1946, which is termed as follows:

"With reference to the objection of Dr. Laternser to the use of the statement made by Major General Walter Schreiber, the Tribunal is not inclined to admit any evidence so late as this, or to reopen questions which have been gone into fully before the Tribunal; but, on the other hand, in view of the importance of the statement of Major General Schreiber and its particular relevance, not only to the case of certain of the individual defendants but also to the case of the High Command, the Tribunal will allow Major General Schreiber to be heard as a witness if he is produced before the end of the

hearing of the case. Otherwise no use can be made of this statement."

Dr. Laternser's present objection is, therefore, overruled.

[The witness Schreiber took the stand.]

THE PRESIDENT: Will you state your full name, please?

WALTER SCHREIBER (Witness): Walter Schreiber.

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.

MAJOR GENERAL ALEXANDROV: Witness, will you kindly give the Tribunal some brief particulars about yourself, about your career, and about your scientific and educational activities?

SCHREIBER: I am 53 years of age. I was born in Berlin and am a Professor of Medicine. I studied medicine at the Universities of Berlin, Tübingen, and Greifswald. I passed the State medical examination at Greifswald in 1920. I received my degree and was made a Doctor of Medicine.

In 1940 I became teacher of Hygiene and Bacteriology at the University of Berlin and in 1942 Professor at the Military Medical Academy. I have been an active military physician since 1921. I have held various positions as a garrison physician, and have been a division physician since 1929, although I only did scientific work as a hygienist and bacteriologist.

I carried out my work as a scientist and a professor at the Universities of Berlin and Freiburg in Breisgau. After 1929 I was first in Freiburg, later hygienist at the Wehrkreiskommando in Berlin, and finally during the second World War hygienist and bacteriologist at the headquarters of the High Command of the Army. I then became section chief in the High Command of the Army and was in charge of the science and health departments in the Army Medical Inspectorate and finally head of the Scientific Department, Group C, of the Military Medical Academy. In this capacity I was in charge of the scientific institutes of the Academy in Berlin.

MAJOR GENERAL ALEXANDROV: What was the last military rank you held, and what position did you occupy in the German Army?

SCHREIBER: I was Generalarzt, that is Major General in the Medical Service. My last position was that of medical officer in charge of the military and civilian sector of Berlin, but only from 20 to 30 April 1945.

MAJOR GENERAL ALEXANDROV: When and in what circumstances were you taken prisoner by the Soviet Army?

SCHREIBER: On 30 April I was in the large hospital in the air-raid shelter of the Reichstag building in Berlin. Since most of the city of Berlin was already in the hands of the Russian troops, there was no more supervisory work for me to do. I therefore opened a large military hospital there and took care of several hundred wounded.

MAJOR GENERAL ALEXANDROV: You are now going to be shown your statement of 10 April 1946, which you addressed to the Soviet Government.

[A document was handed to the witness.]

MAJOR GENERAL ALEXANDROV: Do you remember that statement?

SCHREIBER: Yes; that is a report...

THE PRESIDENT *[Interposing]*: Wait a minute.

General Alexandrov, the Tribunal would prefer that you should get the evidence orally and not by a document. Therefore, if you question him upon the subjects which are contained in it...

MAJOR GENERAL ALEXANDROV: Mr. President, that is what...

THE PRESIDENT *[Interposing]*: Wait a moment.

MAJOR GENERAL ALEXANDROV: That is what I was going to do.

THE PRESIDENT: Yes, General, the Tribunal would prefer that you get the evidence from the witness and do not use the document. Go on.

MAJOR GENERAL ALEXANDROV: That is what I intend to do, Mr. President, but I wish to have the witness tell us about a few circumstances in connection with this document.

THE PRESIDENT: Very well.

MAJOR GENERAL ALEXANDROV: The substance will be obtained orally from the witness.

[Turning to the witness.] Do you confirm the facts set forth in that statement?

SCHREIBER: Yes, I confirm them.

MAJOR GENERAL ALEXANDROV: What was the reason for your making the statement to the Soviet Government?

SCHREIBER: In the second World War things occurred on the German side which were against the unchangeable laws of medical ethics. In the interests of the German people, of medical science in

Germany, and the training of the younger generation of physicians in the future, I consider it necessary that these things should be thoroughly cleared up. The matters in question are the preparations for bacteriological warfare, and they give rise to epidemics and experiments on human beings.

MAJOR GENERAL ALEXANDROV: Why did you make this statement only on 10 April 1946 and not before that date?

SCHREIBER: I had to wait and see whether this Court itself might not raise the question of bacteriological warfare. When I saw that it did not raise this question I decided in April to make this statement.

MAJOR GENERAL ALEXANDROV: Thus, as a prisoner of war, you had the opportunity of following the Trial at Nuremberg?

SCHREIBER: Yes, in the prison camp German newspapers were available in the club room. In addition, there was the Prisoner-of-War News printed in Soviet Russia, which reported regularly on the Trial.

MAJOR GENERAL ALEXANDROV: Witness, will you kindly tell us what you know about the preparations by the German High Command for bacteriological warfare?

SCHREIBER: In July 1943, the High Command of the Wehrmacht called a secret conference, in which I took part as representative of the Army Medical Inspectorate. This conference took place in the rooms of the General Wehrmacht Office in Berlin, in the Bendler Strasse, and was presided over by the Chief of Staff of the General Wehrmacht Office, a colonel. I do not remember the name of this colonel. The colonel said by way of introduction that as a result of the war situation the High Command authorities now had to take a different view of the question of the use of bacteria as a weapon in warfare from the one held up till now by the Army Medical Inspectorate. Consequently, the Führer, Adolf Hitler, had charged Reich Marshal Hermann Göring to direct the carrying out of all preparations for bacteriological warfare, and had given him the necessary powers.

A bacteriological warfare group was formed at this meeting. The members of this group were essentially the same gentlemen who had been taking part in the conference, that is, Ministerial Director Professor Schuhmann of the science section of the Army Armaments Office; Ministerial Councillor Stantin of the Army Armaments Office, Weapons Examination Section; Veterinary General Professor Richter, as representative of the Veterinary Inspectorate, and another younger veterinary officer of the Army Veterinary Inspectorate; and from the Army Medical Inspectorate, Chief Medical Officer Klieve; the latter only as an observer, however. In addition, there was a staff officer of the Luftwaffe as representative of the High Command of

the Luftwaffe, a staff officer of the Armaments Office as its representative, a well-known zoologist, and a botanist. But I do not know the names of these gentlemen.

At a secret conference it was decided that an institute should be created for the production of bacterial cultures on a large scale, and the carrying out of scientific experiments to examine the possibilities of using bacteria. The institute was also to be used for experimenting with pests which could be used against domestic animals and crops, and which were to be made available if they were found practicable. That is the substance of what was discussed at the conference in July 1943.

MAJOR GENERAL ALEXANDROV: And what was done after that? What do you know about that?

SCHREIBER: A few days later, I learned from the Chief of Staff of the Army Medical Inspectorate, Generalarzt Schmidt-Bruecken, who was my direct superior, that Reich Marshal Göring had appointed the Deputy Chief of the Reich Physicians' League, Blome, to carry out the work, and had told him to found the institute as quickly as possible in or near Posen. Among the people who worked at this institute in Posen were Ministerialdirektor Schuhmann, Ministerial Councillor Stantin, and a number of other doctors and scientists whom I do not know. I myself made a report of this secret conference on the same day to the Chief of Staff, and a few days later to the Army Medical Inspector, Generaloberstabsarzt Professor Handloser, since he was not in Berlin at the time.

MAJOR GENERAL ALEXANDROV: And what do you know about the experiments which were being carried out for the purpose of bacteriological warfare?

SCHREIBER: Experiments were carried out at the institute in Posen. I do not know any details about them. I only know that aircraft were used for spraying tests with bacteria emulsion, and that insects harmful to plants, such as beetles, were experimented with, but I cannot give any details. I did not make experiments myself and do not know any details.

MAJOR GENERAL ALEXANDROV: You testified that the first secret conference devoted to these questions was presided over by a colonel belonging to the General Staff of the OKW. In whose name did he do so?

SCHREIBER: In the name of Field Marshal Keitel and the chief of the General Wehrmacht Office, General Reinecke.

MAJOR GENERAL ALEXANDROV: Who ordered you to take part in this conference?

SCHREIBER: The Chief of Staff, Generalarzt Schmidt-Bruecken, commissioned me to attend.

MAJOR GENERAL ALEXANDROV: Was the Army High Command informed about it and did they know about the preparations for bacteriological warfare?

SCHREIBER: I assume so, for Generaloberstabsarzt Handloser, the medical chief, to whom I had reported the results of the conference was, in his capacity as army physician, that is, as Chief Medical Officer of the Army, directly subordinate to the Chief of the General Staff of the Field Army and had to report to him about it.

MAJOR GENERAL ALEXANDROV: What do you know about the participation of the Defendant Jodl in the carrying out of these measures?

SCHREIBER: I know nothing about any co-operation by Generaloberst Jodl.

MAJOR GENERAL ALEXANDROV: Will you kindly tell us precisely what the reason was for the decision of the OKW to prepare for bacteriological warfare?

SCHREIBER: That was implied by the words of the president of the secret conference. The defeat at Stalingrad which, in contrast to the heavy fighting around Moscow in the winter of 1941 to 1942, was a severe blow for Germany, inevitably led to a re-assessment of the situation, and consequently to new decisions. It was no doubt considered whether new weapons could be used which might still turn the tide of war in our favor.

MAJOR GENERAL ALEXANDROV: How do you explain that the German High Command did not put into effect these plans for the waging of bacteriological warfare?

SCHREIBER: The High Command probably did not carry out the plans for the following reasons: in March 1945, Professor Blome visited me at my office at the Military Medical Academy. He had come from Posen and was very excited. He asked me whether I could accommodate him and his men in the laboratories at Sachsenburg so that they could continue their work there; he had been forced out of his institute at Posen by the advance of the Red Army. He had had to flee from the institute and he had not even been able to blow it up. He was very worried at the fact that the installations for experiments on human beings at this institute, the purpose of which was obvious, might be easily recognized by the Russians for what they were. He had tried to have the institute destroyed by a Stuka bomb but that, too, was not possible. Therefore, he asked me to see to it that he be permitted to continue work at Sachsenburg on his plague cultures, which he had saved.

I told Herr Blome that Sachsenburg was no longer under my command and for that reason I could not give him my consent, and I referred him to the Chief of the Army Medical Service, Generaloberstabsarzt Handloser. The next day Generaloberstabsarzt Handloser called me up and said that Blome had come to him and that he had an order from the Commander of the Reserve Army, Heinrich Himmler, and that on the strength of this order he was unfortunately compelled to give Blome a place in which to work at Sachsenburg. I took note of this but I had nothing more to do with it. Thus Blome had had to leave the Posen Institute. It is difficult to imagine what the work of such an institute entails. If one wants to cultivate plague bacteria on a large scale, one must have an adequate laboratory with appropriate precautionary measures. The personnel must be trained, for no German, not even an expert bacteriologist, has any experience with plague cultures. That takes time, and after its founding had been decreed a considerable interval elapsed before the institute at Posen began its work. Now it had suffered a severe blow; it was to carry on at Sachsenburg. During his visit Blome told me that he could continue his work at an alternative laboratory in Thuringia, but that this was not yet completed. It would take a few days or even a few weeks to complete it, and that he had to have accommodation until then. He added that if the plague bacteria were to be used when the military operations were so near to the borders of Germany, when units of the Red Army were already on German soil, it would, of course, be necessary to provide special protection for the troops and the civilian population. A serum had to be produced. Here again time had been lost, and as a result of all these delays it had never been possible to put the idea into effect.

MAJOR GENERAL ALEXANDROV: Witness, will you kindly tell us now what you know about the illegal experiments carried out on human beings by German doctors? I would ask you to testify very briefly as to these questions, because they have already been sufficiently gone into in the Trial.

SCHREIBER: In the course of my duty I learned of a few things. In 1943, I believe it was in October, we had at the Military Medical Academy a scientific meeting of qualified doctors, so-called advisory doctors, and Obersturmbannführer Dr. Ding lectured to the bacteriology section, which comprised about 30 gentlemen, on tests with typhus vaccine. The lecture showed that this Dr. Ding had inoculated prisoners with vaccines against typhus in the Buchenwald concentration camp, and that some while after, I do not know how long it was, he had artificially infected them with typhus by typhus-infected lice, and that according to whether these people contracted typhus or not, he based his conclusions on the protection.

which the vaccine had or had not given to the people in question. Since vaccines of various qualities had been given there were cases of death to be deplored.

MAJOR GENERAL ALEXANDROV: Now, what was the scientific value of the experiments carried out by this Dr. Ding?

SCHREIBER: In my opinion they had no scientific value at all. In the course of the war, we had gained much knowledge in this field by empirical means and collected a great deal of experience. We knew our vaccines very well, and there was no need for these further tests. A number of the vaccines with which Ding experimented were not used at all in the Wehrmacht and were rejected.

MAJOR GENERAL ALEXANDROV: Please continue your statements regarding this question.

SCHREIBER: There was a second matter which came to my notice in the course of my duties: the head of the hospital in Hohenlychen, SS-Gruppenführer Professor Gebhardt, a talented surgeon, had carried out cranium operations on Russian prisoners of war and had killed the prisoners at certain intervals in order to observe the pathological changes, the progress of the bone changes on the basis of trepanation, the results of the operations, and so forth. And thirdly I attended, here in Nuremberg, a scientific meeting held by the High Command of the Luftwaffe.

MAJOR GENERAL ALEXANDROV: When did this take place?

SCHREIBER: The meeting was in 1943, I cannot say exactly when it was. I believe it was the autumn of 1943, but it may have been in the summer. At this meeting, which was held in the hotel near the station, two doctors, Dr. Kramer and Professor Holzlehner, director of the Psychological Institute at the University of Kiel, reported on experiments which they had carried out on behalf of the High Command of the Luftwaffe in Dachau on the inmates of the concentration camp. The purpose of the experiments had been to obtain data for the production of a new protective suit for airmen for use over the English Channel. Many German airmen had been shot down in the Channel and had, in a short time, met their death in the cold water before the rescue plane could reach them. Now, it was proposed to make a suit which would have some kind of insulating effect and protect the body against cold. For this purpose the persons on whom the experiments were carried out had to be placed in water of varying low temperatures—ice cold water, water at zero, water of more than five degrees—I do not know exactly what all the temperatures were; and measurements were taken showing the decline of body temperature; they indicated the falling-off of body temperature by a graph—the temperature

at the point between life and death. The subjects of the experiments were various suits, the ordinary ones which were worn at that time, and others. I recall one special suit which developed a foam between the suit and the skin, that is, a layer of air which had an immediate insulating effect, and death from freezing could be postponed for a considerable time by this suit. Of course, these experiments, which were undertaken under anaesthetics, cost a number of subjects their lives.

MAJOR GENERAL ALEXANDROV: Please tell us what the Defendant Göring had to do with the experiments carried out at Dachau?

SCHREIBER: Stabsarzt Kramer said at the beginning of his lecture that the Defendant Göring had ordered these experiments, and that the Reichsführer SS Himmler had kindly made available the subjects for the experiments.

MAJOR GENERAL ALEXANDROV: Do you yourself admit the possibility that similar experiments could have been carried out without the knowledge of the Defendant Göring?

SCHREIBER: I cannot imagine that.

MAJOR GENERAL ALEXANDROV: Mr. President, I have no further questions to put to this witness.

DR. LATERNSEER: Witness, you are in a Russian prisoner-of-war camp?

SCHREIBER: Yes.

DR. LATERNSEER: Where?

SCHREIBER: Near Moscow.

DR. LATERNSEER: Do you hold any office in this camp?

SCHREIBER: No. I hold no office in the prisoner-of-war camp.

DR. LATERNSEER: How did it come about that you made your statement on 10 April? Did you yourself take the initiative or were you asked to do so?

SCHREIBER: I myself took the initiative. When I heard the report of Dr. Kramer and Professor Holzlehner here in Nuremberg I was deeply shocked at the obviously perverted conceptions of some of the German doctors. Even at that time I already spoke about it to the Chief of the Army Medical Service, Generaloberstabsarzt Handloser, who shared my opinion; and when more and more such things were reported in the papers, I considered it my duty—I refer to what I said before—in the interest of the future of the German medical profession, and future generations, to clear these things up once and for all.

DR. LATERNSEER: What did you learn about such things?

SCHREIBER: What I said before.

DR. LATERNSEER: No, I mean what you learned in the prisoner-of-war camp.

SCHREIBER: From the papers which we received.

DR. LATERNSEER: Well, what did you learn from the papers?

SCHREIBER: I learned...

DR. LATERNSEER: One moment, Witness. Have you a piece of paper before you?

SCHREIBER: Yes.

DR. LATERNSEER: What does it say?

SCHREIBER: "You can speak faster."

DR. LATERNSEER: One question: Your testimony in answer to the questions of the Russian Prosecutor today—was it prepared?

SCHREIBER: I was interrogated, and what I said is in this statement.

DR. LATERNSEER: I ask you, Witness, whether before the examination today, you were informed by the Russian Prosecutor on what you were to testify about? Was your testimony previously determined?

SCHREIBER: No, my statement was not previously determined, but I knew that I would be asked about bacteriological warfare and experiments on human beings.

DR. LATERNSEER: Now, as to the statement: you have the statement before you?

SCHREIBER: Yes, here it is.

DR. LATERNSEER: At the end of that statement there is a note. Would you please look at it?

SCHREIBER: Yes.

DR. LATERNSEER: Was this note put on this document in your presence?

SCHREIBER: No, I received this document here in this room a little while ago.

DR. LATERNSEER: I mean something else; was your signature certified on the original? Or did you send off the original before this note, which now appears at the end, was added?

SCHREIBER: I made my statement. No note was written on it in my presence.

DR. LATERNSEER: Was any advantage promised to you for making this report?

SCHREIBER: No, nothing was promised me. I would refuse to allow anybody to hold out advantages to me.

DR. LATERNSEER: I do not know. That is why I asked you. Was the German Army Medical Service at any time afraid that the Soviet Union might use bacteria as a means of combat?

SCHREIBER: Not the Army Medical Inspectorate, but the General Staff. In 1942 the General Staff inquired of the Army Medical Inspectorate whether the enemy in the East might be expected to use bacteria as a weapon. I, myself, wrote the answer. On the basis of intelligence reports and reports of the army physicians on the Eastern front, and in view of the situation regarding epidemics among our troops, we were able to say that this fear was not justified. That opinion was given by me in 1942. It was a comprehensive opinion and was prepared by me and signed by Generaloberstabsarzt Handloser. Already in 1939 an opinion about the same matter had been asked for, and was drawn up on similar lines and signed by Generaloberstabsarzt Dr. Waldmann.

DR. LATERNSEER: You stated that in 1943, after Stalingrad, an order to make preparations for this bacteriological warfare against Russia was issued. Do you know who issued the order to prepare for this warfare?

SCHREIBER: Well, I...

DR. LATERNSEER: I ask you, do you know who issued this order? It is a clear question. I ask you to answer it equally clearly.

SCHREIBER: It was not said at the conference who issued it.

DR. LATERNSEER: You do not know who issued the order?

SCHREIBER: No.

DR. LATERNSEER: Then, you do not know—or do you know the exact contents of the order?

SCHREIBER: No. I did not receive any written order. The Chief of Staff of the General Wehrmacht Office said that the Führer had given the Reichsmarschall full powers, and so forth, for carrying out all the preparations.

DR. LATERNSEER: So what you said about it is hearsay? You do not know it yourself?

SCHREIBER: I was told so officially at the conference. Therefore, I did not learn it from hearsay, but officially, at an official conference; we who were assembled there were told that.

DR. LATERNSEER: When you were told that at this conference, what was your capacity?

SCHREIBER: As I said before, I was a representative of the Army Medical Inspectorate.

DR. LATERNSEER: When this proposal was made known, what did you do—you yourself?

SCHREIBER: I pointed out that bacteria were an unreliable and dangerous weapon. I did nothing else.

DR. LATERNSEER: You were an expert. Since 1942 you had been a professor?

SCHREIBER: Yes.

DR. LATERNSEER: And you said nothing else?

SCHREIBER: No, nothing else.

DR. LATERNSEER: Why did you not say anything else?

SCHREIBER: Because we were confronted with a *fait accompli*.

DR. LATERNSEER: A *fait accompli*? But you say the matter was to be discussed.

SCHREIBER: We were told it. It was not discussed. We were told, "This decision has been taken."

DR. LATERNSEER: But it was a *fait accompli* only if these bacteria were actually to be used. It was only proposed to start the preparations. A strong objection by a professor in such a high position might have had some effect. You should at least have tried it. Might it not have changed this opinion?

SCHREIBER: According to our experience, nothing could be done against such a decision. As an expert I pointed out that it was a dangerous and unreliable weapon.

DR. LATERNSEER: You could have got up and left the room or made some strong protest.

SCHREIBER: It would have been better if I had done it.

DR. LATERNSEER: That is enough on that point. The working group was to meet once a month in the rooms of the General Wehrmacht Office in Berlin. Do you know how many meetings took place?

SCHREIBER: No. I cannot tell you.

DR. LATERNSEER: Do you know when the last meeting was?

SCHREIBER: I cannot say that either.

DR. LATERNSEER: Were any meetings held?

SCHREIBER: Yes. Meetings were held.

DR. LATERNSEER: Do you know whether there are records of these meetings?

SCHREIBER: I assume so, certainly. Professor Klieve informed me from time to time.

DR. LATERNSEER: Did you yourself belong to this working group?

SCHREIBER: No.

DR. LATERNSEER: When and in what way did Professor Blome receive powers from Göring to make immediate arrangements for the medical and technical side of these preparations?

SCHREIBER: Immediately after this conference, perhaps on the very same day or even previously, because Blome's name was mentioned at the conference. At least, it was said he had been proposed, and two days later Herr Schmidt-Bruecken told me "Blome is the man."

DR. LATERNSEER: And how do you know that?

SCHREIBER: From my immediate superior, Generalarzt Schmidt-Bruecken.

DR. LATERNSEER: At what time did the spraying experiments from airplanes take place?

SCHREIBER: I cannot tell you.

DR. LATERNSEER: What do you know about these spraying experiments?

SCHREIBER: The following: Bacterial emulsions with non-pathogenic bacteria which could be easily traced again—easily determined culturally—were sprayed from planes on an experimental field near the institute at Posen.

DR. LATERNSEER: Did you yourself see such experiments?

SCHREIBER: No.

DR. LATERNSEER: How do you know that these experiments took place?

SCHREIBER: Klieve spoke to me about these spraying experiments and said that first a dye stuff was used which had more or less the same specific density as a bacterial emulsion. This had been poured over the land, and then experiments were made on models.

DR. LATERNSEER: Did Klieve see these experiments himself?

SCHREIBER: I believe so.

DR. LATERNSEER: You cannot say for sure?

SCHREIBER: I would not like to swear to it, but it is extremely probable.

DR. LATERNSEER: You say that at this conference in July 1943 the colonel was acting for Field Marshal Keitel and General Reinecke?

SCHREIBER: Yes.

DR. LATERNSEER: How do you know that?

SCHREIBER: First of all, the meeting took place in General Reinecke's office. The colonel who was presiding was his chief of staff, and we had been ordered to come to a meeting at the General Wehrmacht Office at such and such a time, and the colonel also mentioned Field Marshal Keitel's name.

DR. LATERNSEER: But you cannot say whether it was actually ordered by him?

SCHREIBER: No, I did not see the order.

DR. LATERNSEER: Well, then you do not know it?

SCHREIBER: No, I only know what the colonel told us officially.

DR. LATERNSEER: You also said you supposed the High Command of the Army had been informed, namely, by Professor Handloser.

SCHREIBER: Yes.

DR. LATERNSEER: What facts made you assume this?

SCHREIBER: I personally made a report to Generaloberstabsarzt Handloser, and Handloser expressed his opinion about the matter to me. It was an extremely serious matter for us physicians, for if there really should be a plague epidemic it was clear that it would not stop at the fronts, but would come over to us too. We had to bear a very grave responsibility.

DR. LATERNSEER: You have deviated a little. We will come back to this point. I wanted to know whether you can give any facts to prove that the High Command of the Army was informed?

SCHREIBER: No. I cannot.

DR. LATERNSEER: It is a pure assumption, then?

SCHREIBER: Yes. But it is quite obvious...

DR. LATERNSEER: Never mind if it is obvious or not, I want to know whether you know of any facts.

SCHREIBER: No, I cannot give any facts.

DR. LATERNSEER: Do you know to whom Professor Handloser was subordinate?

SCHREIBER: His subordination was threefold. He was Chief of the Wehrmacht Medical Department, and in that capacity was under Field Marshal Keitel of the OKW. He was Army Medical Inspector, and in that capacity was under the Commander of the Reserve Army, Generaloberst Fromm, and later Reichsführer SS Himmler and Jüttner; thirdly, he was Army Physician, that is, Chief Medical Officer of the Field Army, and in this capacity was subordinate to the Chief of the General Staff of the Field Army.

DR. LATERNSEER: You were also questioned about the reasons why this bacteriological warfare was not carried out. What actual reasons are known to you?

SCHREIBER: The head of the institute at Posen, Professor Blome, reported the destruction and total loss of the Posen Institute to me when he visited me. He told me of his plight.

DR. LATERNSEER: Do you yourself know whether a military command authority gave the positive order that this bacteriological warfare was not only to be prepared but was also to be carried out?

SCHREIBER: No, I did not see any order.

DR. LATERNSEER: Then these were merely preparations?

SCHREIBER: Preparations for bacteriological warfare was what I said.

DR. LATERNSEER: With which high-ranking general did you yourself speak about this bacteriological warfare?

SCHREIBER: I did not speak to any general.

DR. LATERNSEER: Do you know from your own knowledge whether any high-ranking general was informed of these intentions? I am asking you whether you know it?

SCHREIBER: I was not present when a general was informed about them.

DR. LATERNSEER: Then you do not know it?

SCHREIBER: No.

DR. LATERNSEER: Do you know how far apart the enemy troops and our troops usually were at the front?

SCHREIBER: That differed a great deal.

DR. LATERNSEER: What was the normal distance?

SCHREIBER: I am not a front-line soldier. I would not like to speak of a subject of which I know nothing.

DR. LATERNSEER: We will assume that the enemy troops were normally at a distance of 600 to 1,000 meters from our own troops. Would you, as a physician, consider the use of plague bacteria safe and not dangerous for our own troops?

SCHREIBER: I would always consider the use of plague bacteria as dangerous, no matter what the distance was.

DR. LATERNSEER: Well, let us assume that such a devilish idea as actually to use bacteria did exist. Would that not have involved our troops in serious danger?

SCHREIBER: Not only our troops, but the whole German people; for the refugees were moving from East to West. The plague would have spread very swiftly to Germany.

THE PRESIDENT: Dr. Laternser, it is useless to ask the same question over again. The witness has already said so.

DR. LATERNSER: May that not have been one of the reasons why this warfare was not used?

SCHREIBER: According to the statements made to me by Herr Blome, who was head of the institute and who had been appointed by the Reichsmarschall, no. He was using all his efforts trying to cultivate his cultures somewhere else.

DR. LATERNSER: Mr. President, may I ask for the recess now and ask a few more questions of the witness later?

THE PRESIDENT: No, Dr. Laternser, the Tribunal thinks you should finish now.

DR. LATERNSER: You say, on Page 7 of your written statement, that in Norway 400 Yugoslav prisoners of war were shot out of hand because an epidemic had broken out among them. You say that this was a labor camp of the Waffen-SS . . .

THE PRESIDENT: Go on.

DR. LATERNSER: This incident was reported to you?

SCHREIBER: Yes.

DR. LATERNSER: Did you report it to your superior?

SCHREIBER: Yes.

DR. LATERNSER: What was done?

SCHREIBER: A letter was immediately sent to the Chief Medical Officer of the SS and Police, Professor Grawitz, and through these official channels the affair was reported to the office which was the supervisory agency for this camp.

DR. LATERNSER: Do you know whether any legal steps were taken?

SCHREIBER: I do not know how the SS courts work. I do not know.

DR. LATERNSER: Then you write on Page 7: "Specially cruel treatment was meted out to the Russian prisoners of war by the High Command of the Wehrmacht."

SCHREIBER: Yes.

DR. LATERNSER: Then you write that the Russian prisoners of war were given inadequate food.

SCHREIBER: Yes.

DR. LATERNSER: Now I ask you, when were those observations made concerning the inadequate food? Immediately after capture in the reception camps behind the front, or in prisoner-of-war camps in Germany?

SCHREIBER: I am not speaking of what happened in the reception camps immediately after the fighting. There, even with the best intentions, the state which has taken the prisoners is not always able to care for them as might be necessary. I am speaking of a later period when the prisoners had been in the hands of the Germans for weeks, and I am speaking of camps which were in the Baltic countries. They were not taken to Germany. The Russian prisoners were brought to Germany only later. The conditions in these camps were extremely poor.

DR. LATERNSEER: Were these bad conditions due to bad intentions?

SCHREIBER: I assume that these bad conditions were due to basic ideological problems...

THE PRESIDENT: Dr. Laternser, the Tribunal did not allow the statement to be put in and you are now cross-examining upon a subject which is totally distinct from the subjects upon which the witness has given evidence.

DR. LATERNSEER: These statements are in the written statement of the witness.

THE PRESIDENT: Well, you must have heard that we did not allow the written statement to be put in evidence. We asked that the witness should be examined orally and he was examined orally and the written statement is not yet in evidence.

DR. LATERNSEER: I have one more question, Witness. Did you ever write down your objections to this bacteriological warfare?

SCHREIBER: Yes, in the memorandum which I mentioned before.

DR. LATERNSEER: When did you submit that memorandum?

SCHREIBER: In 1942; may I now...

DR. LATERNSEER: That is enough. The conference took place in July 1943. Afterwards did you put your divergent views on this point into writing?

SCHREIBER: No, I did not put anything into writing.

DR. LATERNSEER: After you reported to him, did your superior put his objections in writing?

SCHREIBER: Not that I know of. Generaloberstabsarzt Handloser was at headquarters and I in Berlin. He came once a week or once every fortnight. We reported to him and then he went back to headquarters.

DR. LATERNSEER: I have no further questions.

THE PRESIDENT: The Tribunal will adjourn.

[A recess was taken.]

THE PRESIDENT: Before we continue I will deal with three applications. First of all, the application of Dr. Kauffmann of the 20th of August, 1946. It appears originally to have been dated the 15th of August. That application will be granted, and an affidavit by the witness Panzinger may be put in evidence, provided it is put in evidence before the end of the Trial.

With reference to the application by Dr. Pelckmann, dated originally the 22d of August, 1946, the application is denied.

The two applications by Dr. Dix dated the 20th and the 21st of August; both applications are denied.

Now, is there any further cross-examination on behalf of the Defense?

Does the Soviet Prosecution desire to re-examine?

COL. POKROVSKY: The questioning by the Soviet Prosecution is finished, Mr. President. We have no more questions.

THE PRESIDENT: The witness may retire.

Now, Dr. Pelckmann.

HERR PELCKMANN: First, I should like to refer to two points. In my letter of 23 August I announced that my final speech cannot be translated. Secondly, I should like to remind the Tribunal that the ...

THE PRESIDENT: Dr. Pelckmann, 60 pages of it have already been translated, I understand.

HERR PELCKMANN: Yes. The French translation, however, has not been made yet. Furthermore, I beg to point out to the Tribunal that the answers to the interrogatory which I sent to the witness Rauschnig have apparently not been received yet.

Your Lordship, Gentlemen of the Tribunal: when on 27 February 1933 the German Reichstag was destroyed by fire, the Nazis willed that out of those flames the Third Reich, to last a thousand years, should be born. When, a little more than twelve years later, the whole of Germany was engulfed in a sea of flames, that Reich went down in rubble and ruins.

Both of those historic events were followed by trials. Their meaning was and is to determine who was responsible for those two crimes of human history.

The German Supreme Court did not solve that task. It is true that it acquitted with remarkable courage, as Mr. Jackson has stated, the indicted Communists, but it failed to determine and certainly to sentence those who were really guilty, who hired the unfortunate tool, Van der Lubbe, and who performed the deed with him. Thus, under the impact of public opinion, the truth has been muzzled and has been concealed by the Nazi Government. Formal justice has

been satisfied. The culprit had been sentenced, but Truth, that divine power and profoundest human insight, remained hidden. It alone would have been able to open the eyes of the German people at that time and have had the power to hold it back from the abyss.

Now this High Tribunal, this Court of the World, faces the task of passing judgment. Whose guilt was that world conflagration? Who was responsible for the destruction of foreign lands, and finally for the infernal downfall of our German Fatherland? And again there exists the danger that this Court too might pass merely a formal verdict naming guilty men, while the deepest and final truth would remain unfound by the influence of a psychosis which, in accordance with the laws of psychology and psychoanalysis, is the natural consequence of the many years of struggle between the Hitler regime and the free peoples of the world. Will this Tribunal be in a position to save, by its verdict, Germany and all the world from an abyss deeper and more horrible than anything experienced before?

This Trial is a criminal trial. It is truly the greatest as far as the number of defendants and people concerned goes, and above all, the most important which ever was recorded by legal history—but still, in all its characteristics, it remains a typical criminal trial. Therefore, it follows the Anglo-Saxon legal principle governing the Charter, which was reaffirmed during these public proceedings, namely, that the Prosecution must collect and present only those factors which could incriminate the accused, never those that could excuse them. The Prosecution is being effectively supported by the mass psychosis to which all the witnesses of the greatest *causes célèbres* of world history are subject, for reasons which international scientists, particularly Le Bon, have given in detail. Openly and gladly do I proclaim that in the course of the defense which I have conducted, I did not use the principle of painting everything in black and white. I, too, was endangered by the possible mass suggestion exerted by those hundreds of thousands of voices which reached me from the internment camps, and I was tempted to defend at any price—thereby losing the sound basis of facts as they actually were. This effect in itself shows the dangerous reaction brought about by such a mass accusation and its political consequences.

I am most thoroughly convinced that by such black and white painting the High Tribunal would have been led astray in its search for the real truth. I did not conceive this to be my task, although the principles of the Charter would have given me the right to do so. In such a trial, concerned with the very basis of humanity, with the fate of the German people and the future of the world, it cannot be left to the cleverness of methods in voicing the conflicting conceptions of Prosecution and Defense to bring the Tribunal to consider that the truth must lie halfway between. It is not the task

of the Defense to gain tactical successes by emphasizing the one and suppressing the other argument. Incorruptibly we have to find clarity—*Clarté*, as demanded by that fanatic seeker of truth, Henry Barbusse. That is the rule in accordance with which I selected my witnesses. I particularly remind you of Reinecke and Morgen, whose evidence I shall evaluate later.

It was my endeavor to assist the Tribunal in ascertaining the historic truth.

In doing so I was inspired by the simple and therefore all the more beautiful German medieval proverb, "Geschehenes hat kein Umkehr," that is to say, "What is done cannot be undone." Those words imply not only all the tragedy of the fact that there is no undoing what is done; those words have a deeper meaning: Past events do not permit or tolerate a retrospective study; this means that no deed can be correctly grasped and understood if speculated upon *ex post*. No, one must look at it as it appeared to the contemporaries at the time of its performance, from the beginning to the end.

One must examine all the circumstances surrounding the deed and the person who performed it, as well as his psychological situation at the time of its performance. The judges must familiarize themselves most thoroughly with the personality of the perpetrator to measure the extent of his guilt.

This is equally true of this Trial. One nation judges another nation; the family of peoples judges one people which has brought deep suffering to the world, a State which has committed crimes against humanity. In the organizations there have been indicted huge formations; large sectors of the German people have been put in the dock and, therefore, it seems necessary that the judges of these millions of people should acquaint themselves most thoroughly with the lives, the knowledge, the hopes, and the beliefs of these masses as they were at the moment when the ideas and accomplishments of National Socialism were becoming effective, and its criminal excesses were beginning. Hence, the judges of the four largest and, for the outcome of this World War, most important nations of all the world, will have to make the endeavor to decide—just as in a case before any normal jury—"How did the deed come about?" In what situation did the defendant find himself at that time? What speculations and sentiments drove him to commit the act? Did he have any intention of doing anything illegal? Is it possible that he himself was deceived? Was he at all able to recognize the illegal nature of his doing, and if he learned of it only gradually, was he in a position to adjust his action in accordance with that insight? It is extremely difficult for the judge even in normal criminal proceedings to free himself from the *ex post* reflection and to evaluate correctly the circumstances of the deed, the *milieu* of the deed, and

the personality of the one who performed it. How exorbitant are the demands for justice upon the judge when he has to pass sentence on a man who has transgressed against a member of his, the judge's, family! Every one of the four nations sitting in this Court has suffered tremendous damage by the crimes of the Nazi regime, for which millions of members of the organizations have to account now. But in accordance with the statements made by Justice Jackson in his opening speech, I venture to hope that you, High Tribunal, will succeed in this titanic undertaking in being free of feelings of revenge, and will seek justice and nothing but justice. Will you, as non-Germans, who have not yourselves lived through the unique historic phenomenon of a mass psychosis and a tyranny of continental proportions—will you indeed be able to grasp and to picture to yourselves how such things could happen? Can you conceive that crimes were not committed by the bulk of the members, that they were not consciously organized by them—that they were not even known to them?

The Charter rightly states, and the Tribunal has acted accordingly, that it is not the task of this Court to ascertain what inner causes—whether justified or not—led to this war. The decisive question is only: was it an aggressive war? Nevertheless, already in the cases of the individual defendants evidence was allowed to be admitted as to how the historical development psychologically conducted them from the first World War to this new murder of nations. How infinitely more is one justified, when endeavoring to establish the guilt and the crime of the organizations in their very incipiency, in examining the historical background, the political situation as a whole, in and around Germany. The masses have no clear thoughts or sentiments. They are moved by vague emotions, emanations of a phenomenon which the scientists have called "mass soul." They are moulded by the pictures and promises offered by their leaders.

One of the prosecutors in his final speech against the individual defendants stressed how enormous was their guilt and how disastrous the consequences of their acts because of the clever use made of the masses, the seducing of the soul of the people by the glittering magic of slogans and the promise of Utopian development. Do not these very words give the best proof that the bulk of the members desired only the good and the noncriminal?

Already in its very beginnings, even before 1933, the principles of the SS were identical with the program of the NSDAP. Not only before this Tribunal has the question been discussed whether that program and the means and methods of its realization were criminal. This question stirred the public, the authorities of the German Republic, and the best heads and hearts of our people for many years before 1933. Were the motives criminal if the masses followed

a politician who did not promise them easy predatory incursions at home and abroad, but rather work and bread; when he rallied them to national unity as contrasted to the *pêle-mêle* of a parliamentary system turned to ridicule by 41 parties, and a democracy which brought about its own death by weakness and half measures?

It is the German people's deep tragedy that it could not turn its efforts, having come too late when the material riches of the world were distributed, towards strengthening and improving its recognized position in the world of intellect and applied sciences. Germans are romantics—particularly in the field of politics. This romanticism circles around vague concepts of fate and doom and the dream of power once held in the "Holy Roman Empire of the German Nation" of a thousand years ago. This belief in destiny has been fostered by an absolutely incorrect presentation of German history for more than a hundred years, so that it needed only a skilful sorcerer to send once more millions of German youth to death and destruction by suppressing the real facts.

But the great seducer, Hitler, had not yet reached that point. The protestations of peaceful intentions towards the opponents among his own people were as yet more important than those towards foreign countries, which did not yet enter into the picture. As a result of shortcomings of all the large political parties and their formations and because of the weakness of the republican government, the issues of domestic politics were more and more being decided by street brawls. Nevertheless, the secret parliamentary elections were carried through without terror or deceit. Through these elections the citizen could observe a steady increase of strength of the extreme parties of the Right and of the Left. He could not consider it a crime to join the extreme party of the Right, the NSDAP, or its SS, which in contrast to the SA, which ruled the streets, was mainly concerned with the protection of the speakers during the guerilla warfare among the political adversaries of those days.

Every German who lived through those days knows with what tension the question was discussed whether the NSDAP and its formations were planning undertakings which signified high treason or aimed at overthrowing the Government by force. In 1923, in the early days of the Party, Hitler had attempted a *coup d'état* which had failed. Now, for many years he had been advocating "legality." When in September 1930, three young officers of the 100,000-man Army were indicted before the German Supreme Court for high treason for having attempted to found National Socialist cells in the Army, Hitler as a witness testified under oath his revolution was one of the spirit and that his aim was to come to power by legal

means. This appeared in all the papers in huge headlines and impressed itself on the enemies and the followers of Hitler alike. Professor Dr. Kempner, then Oberregierungsrat in the Prussian Ministry of the Interior, now a member of the American Prosecution, was one of the few who considered that oath perjury. He submitted to his Ministry a detailed report which ended with the conclusion that the NSDAP was guilty of high treason. But even that seeker after truth had to admit in his description of the situation as it existed then (Volume XIII, Number 2, June 1945, *Research Studies of the State College of Washington*, Page 120) that even ministerial officials of the German Republic did not consider Hitler a liar at that time, 1930. That was how Hitler's clever propaganda influenced such critical and hostile circles. Should one be surprised that the masses of the SS put their trust in him? Incidentally, at that time they numbered only a few thousand. Well, matters went even farther. When Dr. Kempner denounced the Nazi Party in 1930, after a thorough investigation before the Supreme Court, the Chief Public Prosecutor ruled in August 1932 that there existed no reason to prosecute or dissolve it. (Compare Kempner's study, Page 133.) What other effect could such statements, voiced by the highest authorities of the Republic, have had on the masses? The effects were reflected in ever-increasing election returns for the Nazis.

But the most striking feature is—and that is of decisive importance for the inner attitude of those thousands who joined the SS immediately after 30 January 1933—that Hitler actually did not break his oath. Although it is quite true that Dr. Kempner's prophecies in regard to the further development were correct in general—this was not recognized until much later—he was mistaken in his early predictions. The Nazi Party in fact remained a legal one; it did not seize power by a *coup d'état*, but Hitler was asked by Hindenburg to form a cabinet in accordance with parliamentary rules.

What is it that those ministerial officials who had refused to believe the pessimist, Dr. Kempner, were able to say? Is it not likely that they could triumph at the fact that they had been right? Was their conscience not set at rest? After all, that man Hitler was not as bad as people had said. Now that he had entered the Government he would become a moderate—like every opposition after gaining power. And was it not true, too, that the bulk of Hitler's followers were proud that they had succeeded in coming to power by peaceful means after an election fight whose propaganda machine was almost of American proportions?

In viewing that period of time one question inevitably arises: were the mass of Hitler's followers, the mass of SS men, at that time able to recognize that that point of the Party Program which

probably was the most clear-cut, namely, anti-Semitism, contained a criminal element?

Anti-Semitism is not a new phenomenon; neither is it, if one studies its spiritual basis, something typically German. In my opinion it is based on the inferiority complex of the average man, on his mistrust of the Jews' superiority in certain intellectual fields. Neither is the refutation of anti-Semitism by all civilized nations and individuals anything new. It culminates in the Pope's statement, "He who discriminates between Jews and other human beings does not believe in God and is in conflict with the divine commands." But the enigma which we cannot pass by when discussing the question of criminality is that there should exist at all a Jewish problem which is not based on religious differences, but on race. The enigma is that there still exists a race problem which leads continuously to conflicts in our modern world which has grown so small. Is it not puzzling that the Polish Cardinal Hlond, who went through all the horrors of the Nazi regime, only a few weeks ago tried to justify to some extent Polish anti-Semitism by referring to the leading role played by Jews in the Polish Government? Is it not puzzling that even today, after the horrible experiences of the Hitler regime, the Arabs take action against the Jews in their traditional homeland, Palestine, and particularly against their influx, and that mutual acts of violence are committed? The situation is similar in Europe. Race problems, not only anti-Semitism, still exist in all other corners of the globe.

All of them cry out for a just solution, and that can be found only in the granting of equal rights to all races. Some progressive nations have made anti-Semitism a criminal offense. But was it criminal when society, the State, under the influence of those false ideas, sought the solution by prohibiting the races from mixing and influencing public life? Here again much can be explained by what was happening in those days. The bad example of a few Jewish immigrants from Eastern European countries, such as the notorious swindlers Barmat and Kutisker, was in sharp contrast to that of the great German Jew and unforgettable statesman, Walter Rathenau, who long ago had appealed to his brethren for a reawakening of their moral consciousness. This situation offered the basis for a collective attitude, for a mass psychosis against the Jews, aided by external economic distress, as always happens in the course of great political and social upheavals, just as in this present Trial it is about to happen again by creating collective injustice against certain categories of people. The demand to put this anti-Semitic principle into practice by legal means could not have been a crime, because the State appeared to be the guarantor that the principle would be applied without hatred and personal revenge. In a way

it was merely another version and anachronistic aggravation of the American legal principle of . . .

THE PRESIDENT: Dr. Pelckmann, I do not want to interrupt you, but you will not lose sight of the fact that you are only going to be allowed half a day for the speech, and I observe that it is said to occupy 100 pages; and I only interrupt you at the present stage to point out to you that the matters which you are dealing with now are matters of a general nature, to which our attention has been drawn throughout the course of this Trial, and it may be in your interest to shorten this part of your speech rather than other parts of it. That's the only reason why I interrupt you now.

HERR PELCKMANN: Yes, Your Lordship, I have already considered abbreviating the speech.

The demand to put this anti-Semitic principle into practice by legal means could not have been a crime, because the State appeared to be the guarantor that the principle would be applied without hatred and revenge. That in all this Hitler was inwardly moved by hatred—this is revealed by his most trusted mouthpiece, Rauschning, in his book *Hitler Speaks*, Page 91—was not known to the masses. That hatred which sprang from the feeling of inferiority of him who recognized the superiority of the penetrating intellect over dark impulses remained concealed; for anti-Semitism was preached to the SS men merely as the other side of race eugenics on which emphasis was laid. By skilful use of those race emotions which spring from a country's history, so difficult for the non-European to understand, and which were bound up with such conceptions as "Ordensprinzip," "Männerbünde," and "Sippengemeinschaft"—I refer to Documents Numbers SS-1, 2, and 3 with all their twisted romanticism dressed up in modern clothes—Hitler endeavored to create in the SS a breed of men who by their bearing and self-discipline would represent an élite for purposes of raising his own people to a high level. This tendency, though very alien to modern Europeans or cosmopolitans, can hardly be called criminal—I am referring to the pertinent questions asked by the High Tribunal—and it did exclude automatically an anti-Semitic tendency of the nature of the *Stürmer*, or even of the brand of the less vulgar *SA-Mann*. It is also significant that the Prosecution has not charged the SS with one single case of brutality towards Jews before 1933. The *Leithefte*, the monthly publication of the SS, and the evidence given before the Commission by the witness Schwalm concerning the training of the SS, testify to the reserved attitude of the SS towards the Jewish question. Later it was reaffirmed by the nonparticipation of the SS in the anti-Jewish pogroms of 1938, which I shall describe in another connection. I shall also demonstrate how the atrocities committed during the war against Jews, and the mass killings, were in conflict with the original tendency of the SS and how they were made possible by direct

secret orders from Hitler and Himmler through criminal individuals and groups, and how they were kept secret from the masses of SS members.

Of the many points of the Party Program, which the SS accepted as a matter of course, I would like to pick out only the rejection of the Versailles Treaty and the demand for living space, because those two things might be important factors for the alleged preparation of an aggressive war. Nowhere has the Prosecution said how at that stage the bulk of SS members could assume that those demands were criminal, that is, that they should be accomplished by an aggressive war.

I have shown how Hitler by his legal assumption of power not only strengthened the confidence of his SS men, but how he gained the trust of new men who never would have started with him on the road to crime. May I respectfully request the High Tribunal to read the testimony of State Secretary Grauert before the Commission and learn how a man with the best intentions entered the Hitler administration and the SS, and did not leave it until 1936 when he, an experienced legal administrator, realized that the suspension of the historic principle of the separation of powers . . .

THE PRESIDENT: Will you spell the name?

HERR PELCKMANN: G-r-a-u-e-r-t, Grauert.

THE PRESIDENT: All right.

HERR PELCKMANN: . . . which he, an expert, realized only in 1936—remained hidden from the masses. In this connection I ask you to read the summary of approximately 136,000 affidavits which show why the membership of the General SS increased within a few months from 50,000 on 30 January 1933 to approximately 300,000.

Hitler's great gamble for power, and with it the tremendous betrayal of the German people, only begins—however paradoxical that may sound—after the so-called seizure of power. After one month of triumph over the Chancellery and this parliamentary revolution, in the course of which, no doubt, the Right did commit excesses, which cannot, however, be laid to the charge of the masses as premeditated planning, the pretext was created for the final elimination of all opponents, the burning of the German Reichstag. The Prosecution does not assert that the German people, the members of the organizations, the SS men, knew or even suspected that this fire had been planned by the Nazis and carried through by the Brown Shirts by using the tool Van der Lubbe. Such an assertion would, of course, be absurd.

In order to understand the mentality of the SS men who after January 1933 filled the ranks of the SS and formed four-fifths of their strength, one must recall Hitler's Reichstag speech of 17 March

1933. When the new Reichstag was elected, a large part of the opposition was eliminated after the fire by the banning of the Communist Party and the arrest of many of their members, and this with the approbation of the enraged population, because they had committed high treason by their alleged participation in the crime of arson.

When Hitler, while observing all parliamentary forms, asked for an Enabling Law, the Social Democrat members of the Reichstag asserted that this law would undermine legal security.

In view of the true background as portrayed above, it could only be the act of a daring trickster when Hitler answered in reply: "I really must say that had we not had an understanding of what is legal, then we would not be sitting here and you would not be sitting here—Gentlemen, it would not have been necessary for us to embark on this election or summon the Reichstag." (*Reichstag Records*, 1933, Pages 65 and 66.)

But who, Gentlemen of the Tribunal, among the mass of the people, among the old and new members of the General SS, knew at the time how audaciously Hitler was lying? These men were misled by the cloak of legality under which Hitler concealed his true self. And this speech is not all. Just consider how the Supreme Court, made up of old experienced former Republican judges, with scrupulous precision during many months of the trial until 1934, sought to establish who was guilty of the Reichstag fire. They acquitted the Communists Torgler, Dimitroff, and others, but sentenced the Communist Van der Lubbe and established publicly the complicity of Communist circles who remained unknown. Must not the mass of SS members, as well as the rank and file of the German people, have thought that Hitler had really saved the people and the State from a violent revolution for which the Communists were blamed at that time? Who, at that time, knew—as I knew, being a defense counsel—that the charge which had been prepared for months, even years, against Thälmann had to be withdrawn because of insufficient evidence? These few who then, or soon after, learned or guessed the truth and who, in spite of the ever-increasing danger of being arrested, in discussions with friends and acquaintances expressed doubts regarding the authenticity of the official and popular thesis, these few knew that, as against the semblance of legality supported by unceasing propaganda, they would not be believed by the masses.

The masses appreciated that in view of this threat to the State the so-called "enemies of the State" were to be rendered harmless in time. Seen from this angle, even the concentration camps appeared justified. But I shall come back to that later. All these were harsh and in many cases even criminal measures which partly also incriminate SS members, but not the entire mass of the SS.

However, we must not lose sight of one thing. There was no use of force, such as occurs in a revolution, until after Hitler had assumed power. The cunning thing about it was that these excesses, such as arrests and bodily injuries, which were committed by members of Nazi formations—in very few cases by members of the SS—were committed in the belief, created through deceiving the masses, that they were necessary in order to safeguard and defend the power, which was legally acquired, against attacks or threats.

Coming after the acquisition of power, this revolutionary attitude, created by the deception of the masses regarding the true events, a unique phenomenon in history, is typical of all revolutionary excesses: under cover of factual or alleged idealistic motives, such as love of the Fatherland, love of humanity, crimes were committed. Just consider, Gentlemen of the Tribunal—since we have not yet sufficient perspective of the many revolutions of the modern age—just consider the French Revolution: what crimes were committed under the slogan of “Equality, Liberty, and Fraternity.” In the light of the experience of modern psychology it seems to me to be quite out of the question that mass movements can be unleashed or incited by inferior moral aims. The masses cannot consciously be led to crime. Gustave Le Bon also inclines to this opinion. In the shadow of the high ideals of the masses it frequently happens that crimes are committed; but then they are only instigated or perpetrated by the few who deceive the masses about the true reasons and events. This thought seems to me to be a decisive factor when dealing later with the question of concentration camps and the atrocities committed there, and establishing whether the mass of the SS were responsible or not for these.

The concept of loyalty, too, belongs to those ideals which inspire the masses. One must be acquainted with the German mentality in order to be able to gauge what immense possibilities this concept afforded the psychopathological seducer of a people, Adolf Hitler, ignominiously to deceive hundreds of thousands. We know how much the word “loyalty” means to a German, educated as he is, and influenced by romantic and retrospective contemplation of history. Even Tacitus praised these qualities in the ancestors of the Germans. Hitler exploited this weakness of the Germans, and in that way was able to cause hundreds of thousands, even millions, to link themselves with him and his destiny. We know that what is permissible and understandable in private life is fundamentally wrong for the State. By that I mean unconditional devotion to a human being. In his work, *The Question of Guilt*, the Heidelberg philosopher Karl Jaspers says in regard to this question:

“The loyalty of followers in narrow circles and in primitive conditions is a feeling which has nothing to do with politics. In a free State all people are subject to control and change.”

The German Socialist Bebel once expressed it in the following manner:

“Mistrust is a virtue of Democracy.”

These views are taken for granted by the free peoples of the world. But for a people who wanted to create a modern state according to retrospective historical dreams they are a new revelation. Quite justifiably Jaspers sees a twofold guilt.

“First, because of the very fact of submitting oneself politically and without reservation to a leader, and secondly, the esteem of the leader to whom one subjects oneself. Even the atmosphere created by such subjection is a collective guilt.”

Actually Jaspers means by that a moral and political, but not a criminal guilt.

In certain individual cases, however, this loyalty can render the individual perpetrator criminally guilty. That becomes clear when we listen to the secret speech of Himmler at Posen, when he addressed SS Obergruppenführer of the home country and of the rear army area. That was late in the war—October 1943 (1919-PS, Document SS-98). After various statements concerning obedience and the possibility of refusing to execute orders, he says quite clearly:

“But he who proves unfaithful, be it only in his thoughts, will be thrown out of the SS and I, Himmler, would see to it that he disappears from among the living.”

This, Gentlemen of the Tribunal, is an important fact when considering the question of guilt in the individual case and the question as to the extent to which coercion and obedience to order during the war eliminate the guilt and thereby the criminality of certain individual persons or subordinated groups. This is supplementary to the question of refusal of military service and its consequences according to military law.

The supernatural, and I can even say devilish, power of this bond of loyalty was exemplified by Himmler himself in his relations to Hitler during the last days of the war.

The Swede, Count Bernadotte, describes, from his own experience, in his book, *The Curtain Falls*, how Himmler could not make the decision to save the German people from destruction by calling a halt to hostilities, in spite of his very clear realization of the consequences, because—and Bernadotte admits this—even in this hopeless situation he dared not violate his loyalty to Hitler. We also know how in all times and with all peoples it has always been this loyalty that made soldiers fight to the last drop of blood in the gravest battles, just as the Waffen-SS did, and in so doing won the respect of their opponents in this war. And from these two examples

we see how this hypnotic word, "loyalty," embraces alike criminal madness and the highest virtue of the soldier.

So much for the question of how far the SS man had knowledge of the points of the Party Program—if indeed he knew them sufficiently, which from the affidavits of 136,000 SS men is doubtful—and how he viewed the ideals of his organization. But did not the Nazi leaders plot war from the very beginning? Mr. Justice Jackson asserts this, and I answer: According to the knowledge that we have today, I admit it, yes. But how could the SS man know it?

The Prosecution does not say why the conversion of an army of professional soldiers into a people's army should signify the planning of an aggressive war. Switzerland, the best example of a country with a people's army, has not been engaged in a war for a long time. Was the sponsoring of physical training and sports activities of youth a camouflaged plan for military training? In my opinion Mr. Justice Jackson failed to give us the proof for that assertion. The training of the General SS was nonmilitary. Field sports as practiced by the SA were completely lacking, and—a typical example—the cavalry units of the SS which were numerically smaller than those of the SA, did not even give their members the right to hold a horsemanship certificate, as was the case with the SA. (Compare the testimony of Weikowsky-Biedau before the Commission.)

We know today that Hitler wanted war; it is particularly clear from the intimate conversations with Rauschnig and when we consider the events as a whole. But, Gentlemen of the Tribunal, please note: it is *ex post*.

It would have been a fruitless undertaking, especially in view of the position in which the German people found themselves after the first World War, to present a new war as less shocking or bad, or even as a noble and necessary undertaking, to use Justice Jackson's own expression. Hitler, whom one can accuse of anything else, but certainly not of not knowing the facts of mass psychology, stressed again and again before and after 1933 that he wanted peace, peace, and nothing but peace. He pointed out that he had experienced the horrors of war on his own body, that war always meant a selection detrimental to the most valuable elements in any nation. And only by these means was he able to win over ever-increasing numbers of the German people to himself and to his ideas. With propaganda for war, however carefully conducted, he would never have achieved it.

Rearmament was represented to the German people as being merely a confirmation of the will for peace, as a defensive measure against the nondisarmament of other nations, and to counter any

attempts to interfere with the peaceful rebuilding of Germany. The building of the West Wall confirms it, and so do many utterances of foreign military experts. The high-ranking major defendants and many witnesses, including such a reliable witness as Gisevius, have confirmed that not even in the leading circles was any planning of aggressive war discussed. This applies to the SS to an even greater degree. The entire training with the organizations always centered around the idea that the Party Program would be carried through in a legal and peaceful manner, that peace was absolutely necessary and should be preserved at all costs. Not only was there no psychological preparation for war in all the SS organizations, but on the contrary, the peaceful aims of the Reich were continually stressed.

In this connection, I would like to ask the High Tribunal to read Documents SS-70, 71, 73, 75, 76, 77, 78, 79, 80, 81, 82 from the years 1933 to 1935, particularly an article from the *Schwarzes Korps* entitled "The SS Does Not Like War," written in 1937, and other documents which I am not quoting. That psychological preparations for war were lacking among the German people, and also among the SS, was never more clearly demonstrated to observers at home and abroad than by the reaction of the masses to the Munich Pact in 1938. The jubilation of the masses, including the SS who formed the cordons, was not meant for the Adolf Hitler who had enforced the cession of the Sudetenland, but rather the Hitler, and to an even greater degree those foreign statesmen, who had saved the peace.

For the German people and the soldiers did not want war and—this must be stated in this historical place for the sake of historical truth—when war came in 1939 they accepted this fate not with loud rejoicing as in 1914, but in solemn silence, most of them in the erroneous belief that their leaders did not desire this war, that it was not a war of aggression.

However, it would be unworthy of me and I should lose face if I attempted to deny that the young Germans, particularly in the SS, saw their ideals in the manly virtues, those same virtues of self-assertion and refusal to take it lying down as are cherished by other nations too. It may be that the SS men overemphasized those virtues in a manner which was not always good or wise. But none of the old soldiers, students, and farmers who had joined the SS imagined that war was for a purpose even remotely akin to what Hitler had in mind. If Hitler had ever dared to speak to those men of attacks on other peoples with whom he had just concluded solemn pacts of friendship, or of Einsatzkommandos in foreign lands, he would never have found any followers, apart from a handful of desperadoes. The war which the tall, blond, and

perhaps intellectually not always very alert, typical SS man imagined—and I must admit that he did not shrink from it—was the kind of war which his ancestors before him had waged during many centuries and which, in the last resort, always amounted to an appeal to destiny, the great gamble of the gods. It is true that we have to wean the Germans, and particularly the younger Germans, from this atavistic longing—and in this respect I am now more optimistic for my fellow countrymen than for many other peoples. But war, which at present it does not appear possible to extirpate—the Kellogg Pact and modern international law do not ban war as a means of defense and self-preservation—is essentially different from that high treason, that betrayal of world peace, that attack and robbery for the purpose of extermination, which was invented by Hitler.

In addition to its general aims and tendencies with which the Prosecution charges the SS since the very beginning of its activities, and on the basis of which it seeks to declare it to be a criminal organization, there is one outstanding event which, it is alleged, discloses its criminal character in a striking manner—the killings which took place on 30 June 1934.

Owing to lack of time, Your Lordship, I shall have to skip three pages dealing with the evidence in connection with these events.

In regard to the happenings which took place in Germany on June 30, 1934, and the following days, the taking of evidence has rounded out the following picture (witnesses Hinderfeld, Grauert, Jöhnk, Reinecke, Eberstein; Affidavit SS-70, Kampp-Franz, Affidavit SS-3, Schmalfeld, and Affidavits SS-119 to 122; summary of the mass declarations): In the morning of 30 June, the General SS was alerted practically everywhere in the Reich. Wherever there were police or army barracks they were assembled there or in other buildings such as schools, et cetera, on 30 June, and sometimes even 1 July. In most cases, they remained entirely inactive; only in some places the Police used them to assist in the confiscation of arms in SA offices. In Berlin this task was carried through by the Police Division for Special Purposes Wecke by itself, while the majority of the General SS, which was concentrated in the barracks of the Leibstandarte at Lichterfelde, was used during the course of 30 June to form cordons at the Tempelhof Airfield. For that purpose, the General SS, which as a rule was unarmed, was furnished weapons by the Police or Army. After Hitler's arrival by plane from Munich the units of the General SS marched back to the barracks and immediately had to surrender their arms (Affidavit SS-3, Schmalfeld).

Nowhere were arrests or executions carried out by units of the General SS (witness Eberstein). In Munich, one of the hot spots of the so-called Röhm-Putsch, Hitler himself arrested the participating SA leaders. In the same manner he arrested Röhm and his inner circle at Wiessee on the Tegernsee. Röhm and the other SA leaders subsequently were transferred to the Stadelheim Prison and were executed there the same day by members of the Leibstandarte (witness Jöhnk).

The arrests in Berlin, the other center of the revolt, were carried out in accordance with orders given by Göring through the Gestapo. To sentence the arrestees there was formed a court martial in which the Reichswehr was also represented through the Wehrkreisbefehlshaber or the Stadtkommandant. Before the execution was performed through a Kommando of the Leibstandarte, the verdict of the court martial was rendered. The executions were performed on the grounds of the barracks of the Leibstandarte at Lichterfelde. From the apartments on the Finckensteinallee one could view the execution grounds. Not all

members of the SA who came before the court martial were executed. However, a number of SS members who had maltreated arrestees were shot (witness Jöhnk, Affidavit SS-3 by Schmalfeld). The members of the General SS were only subsequently acquainted with the reasons for their being called out. The same applied to the members of the Leibstandarte. During the days before 30 June, however, there were various rumors circulating which largely dealt with the attitude of the SA. But the mass of the SS was only informed through the announcements of the press and radio on 30 June. They thereby received the same official picture as the German people and the whole world (witness Hinderfeld).

Doubt as to the accuracy of this description could not arise in the General SS then or in the following years. Even highly placed SS leaders, as the testimony under oath of SS Obergruppenführer Von Eberstein and of SS Brigadeführer Grauert proved, were informed by Himmler or Göring himself to the effect that Röhm had made an attempt of a putsch with the SA. The just mentioned manner of the commitment of the General SS on 30 June further excludes the possibility that the SS participated in the violations which were carried through outside the judicial framework.

As to the forming of opinion of the mass of members of the SS, apart from their knowledge regarding the complete insignificance of their own commitment, the telegram of thanks of Reich President Von Hindenburg (Document SS-74), and Hitler's statement before the Reichstag on 13 July 1934, were of decisive importance. There the Chancellor of the German Reich gave a justification for the declaration of the state of emergency and determined numerically the circle of conspirators executed. In particular, it is essential to point out Hitler's statement where he says that the excesses committed, going beyond the necessary measures for the squashing of the revolt, would be sentenced by regular courts. No misgivings regarding the legality of the executions could arise with the members of the SS and the men of the Leibstandarte, nor any doubts about the seriousness of the announcement that illegal violations were to be punished by the courts. The details which Hitler issued regarding this alleged high and state treason, especially the description of the conspirators' connection with foreign countries and the attempts against his own life, were absolutely astonishing (Document SS-106). They were not senseless at all, since it is a historical fact, even valid in modern times, that new governments before their consolidation are often vitally threatened, especially by opponents and counterrevolutionaries who might even come from the rank of their old friends; and therefore have to safeguard themselves by brutal action.

The fact that as little as possible was talked among the SS regarding the events of 30 June, as Himmler stated in Posen, cannot be considered as a sign of bad conscience. It was a question of fact that one did not unnecessarily speak of happenings in one's own house, that is, quarrels between Party formations—which might have a defamatory effect on one part—so as not to break open an old wound.

Finally, as far as the gaining of independence of the SS and their separation from the SA is concerned, one can only see therein an appreciation of the loyal attitude of the SS and their uncompromising rejection of Röhm's plans, and, at the same time, an intended weakening of the position of power to be given to the Chief of Staff of the SA.

The events of 30 June, according to my presentation of the facts, are by no means as significant as the Prosecution would seek to assert. The members of the SS did not see in them the beginnings of a criminal development.

I have reached a point in my review of the ideas held by the SS and its activities where we should pause to consider what the other factors were which led to the holding of these opinions. We must look the true facts in the face. The SS man, unlike an opponent or an intellectual of our kind, so ridiculed at that time, did not examine with a critical eye everything that was said about

his Führer, about his country. He felt the need to believe in something—I will give proof of this—his belief was not shaken by what was being said in the world around him. Unfortunately, the world around him did nothing to shake his belief.

Your Lordship, I have just come to the end of a chapter. Would it be in order to adjourn now?

[A recess was taken until 1400 hours.]

Afternoon Session

HERR PELCKMANN: I have said, Your Honor, that the surrounding world, unfortunately, did nothing to shake this belief in Hitler.

What I shall now discuss shall not serve to declare others guilty, or to detract from personal guilt if it exists. No; these statements are intended to clarify how we all, the whole world—in part likewise deceived about the true danger, in part hoping thus to avert this danger—did something which, in its effects on the whole German people, on Hitler's followers, and on his SS men, had to be interpreted as confirmation of the correctness and legality of his intentions and deeds.

I can understand that this evidence was declared irrelevant for the defense of the individual defendants, for they are being charged precisely with having consciously deceived the world. In that case one cannot take the conduct of the world as an index for its credulity. In the case of the organizations this problem is different.

The Prosecution will not seriously charge the bulk of their members, even the bulk of their leaders, with having known of the criminal aims and intentions of Hitler; still less will they be able to prove it. I have just shown how the events up to about 1934-35 had to appear to the SS man. Thus the objection of the Prosecution that they could not have become confirmed in their error, which is worthy of consideration in the case of the principal defendants, does not apply to the organization which I am defending.

What was the situation at that time? I shall quote essentially from Jasper's *The Question of Guilt*, Pages 82-83.

In the early summer of 1933 the Vatican concluded a Concordat with Hitler. Papen conducted the negotiations. It was the first great confirmation of the Hitler regime; a mighty gain in prestige for Hitler.

All states recognized the Hitler regime. Voices of admiration were heard. In 1935 Britain concluded the Naval Agreement with Hitler through Ribbentrop. In 1936 the Olympic Games were held in Berlin. The whole world flocked there. In 1936 the Rhineland was occupied by Hitler. France tolerated it. In the spring of 1938 Hitler moved into Austria amidst the acclamation—undeniable even today—of the overwhelming majority of the population. In 1938 an open letter from Churchill to Hitler was published in *The Times*, in which there occurred sentences like this one:

"Should England be overcome by a national misfortune comparable to the misfortune of Germany in 1918, I would pray to God to send us a man of your strength of will and spirit."

How is it possible that in all these years foreign diplomats and leading men—accompanied respectfully by SS men with whom they

had confidential conversations—at Party rallies, in the Reich Chancellery, and in the Ministries, shook hands with men who were guilty of murder and arson? What effect did that necessarily have on the SS men, who considered these hands pure and clean?

The general situation in the years 1933 to 1939 is characterized by Röpke in his book, *The German Question*, which was published in Switzerland. Owing to pressure of time I shall refrain from giving the quotation and would request the High Tribunal to give it due consideration.

"The present world catastrophe is the gigantic price which the world must pay for having been deaf to all alarm signals which, from 1930 to 1939, in increasingly shrill tones, proclaimed the hell which the satanic forces of National Socialism were to unleash, at first against Germany itself, and then against the rest of the world. The horrors of this war correspond exactly to the others which the world let pass in Germany while it even maintained normal relations with the National Socialists and organized international celebrations and congresses with them."

At that time the world still considered what happened in another state to be an affair which did not concern them. Only as a result of the experience with the Hitler regime and the second world conflagration does the solidarity of the great states and, we hope, one day that of the United Nations, see to it that dictatorship and undemocratic methods in all countries do not lay the foundation for new world conflicts. I cite the remonstrances of the United States because of the internal government conditions in Argentina a few months ago.

Now, before I turn to the special criminal activities of the SS which the Prosecution have listed, I should like to interrupt the consideration and evaluation of material with a few statements on the law of the Charter and on the rules of procedure. I did not want to tire the Tribunal with this at the beginning, but wished first to create a factual atmosphere in which the legal argument would gain strength. My arguments will be as brief as possible, for much has already been said in this connection by my colleagues, and I fear that more will be said; and the Tribunal is also acquainted with the memorandum of my colleague Klefisch. I hope that my statements may clarify what I have already discussed, and I hope that they may afford insight into the underbrush of the small section of the voluminous factual material which I can offer in the remaining period of the three hours which were granted me for my speech.

The legal nature of the Indictment against the organizations and of the possible declaration of an organization as criminal must be determined. The general statements of the Defense regarding the possibility of the organizations' committing offenses are known to the Tribunal. I consider them fitting and correct. And yet one must ask the question: Who is really indicted according to Article 9 of the Charter? Is it really the formations as former legal entities, or are

not rather in reality the millions of individual members, merely represented by one of the principal defendants or the extinct formations, sitting in the dock? It is, after all, the individual members who are accused. This follows from a thorough consideration of the whole complex of questions. The Trial will not decide the fate of the former organizations, which are no longer alive and can never again become dangerous, but merely the fate of the many members. A glance at Law Number 10 and the disastrous consequences of the declarations of criminality confirms this. Declaration of criminality constitutes an unassailable establishment of guilt in advance for possible charges under Law Number 10. It is true that for subsequent proceedings it will be for the Prosecution to decide whether they consider it expedient to indict the individual member. But this does not change the basic idea.

The declaration of criminality thus bears the character of a declaration of guilt in advance for each individual member of the organization. If the individual is not indicted later, he will receive no punishment, it is true; but he is nevertheless a criminal according to legal decision. The character of criminality does not affect the organization as such, but in reality—since the organization as such no longer exists—exclusively its former members. Your Honors, the main trial against each individual one of these members is taking place before you now. The issue is the establishment of his punishable action consisting of "membership." The most important declaration of guilt is made against each individual. The concept of guilt, however, in all civilized states of the world is always, within the meaning of the law, connected with the individual deed of a person. There has never been any guilt of organization. No one could object to declaring the aims and purposes of an organization criminal if individuals were not thereby affected. But as soon as the declaration of criminality of the organizations is to amount to the indirect condemnation of individuals, one must conscientiously examine and establish the personal guilt of each individual.

This may be concluded for another reason as well: What does the concept of organization include? That an organization is a union of people is clear. That this union, at least in general outlines, pursues unified aims and purposes, and has a corresponding constitution, should also be clear. Whether it includes the characteristic of voluntary adherence is, on the other hand, extremely doubtful. No one will deny that the German Wehrmacht was an organization, although there can be no question of voluntary adherence, not even in the majority of cases. One may think further of occupational groups, schools, or even compulsory guilds, in which there is no voluntary membership, but which are certainly organizations. The Klefisch Memorandum as well as the basic ruling of the Tribunal of 13 March 1946 (Paragraph 6, Number 2) introduced the characteristic

of voluntary adherence into the terminology; in my opinion, quite correctly. But why? Fundamentally only because otherwise the act of declaring the organizations criminal would appear unjust in view of the consequences for the individual members. What follows from this? A great deal. One sees here quite clearly that in reality what is involved is not the organization, but the members. The ruling of 13 March 1946 considers relevant only the question of whether membership was in general voluntary; it therefore takes into consideration that involuntary members will be affected. In view of the consequences of Law Number 10, this is irreconcilable with the idea of justice.

Constitution, aims or purposes, and activities of the organization—whether on a voluntary basis or not—are criminal if they fulfill the conditions of Article 6; that is, if they were aimed at crimes against peace, war crimes, or crimes against humanity. In connection with Number 6 of the ruling of 13 March 1946 the individual characteristics of Article 6 of the Charter shall be carefully examined here. One should ask, for example: were the constitution, purposes, or activity of the SS aimed at the planning, preparation, initiation, or execution of a war of aggression, at the violation of the rules of warfare, or at murder, extermination, enslavement, and so forth?

These latter crimes of Paragraph 10 of Article 6 of the Charter, however, are punishable only if they were committed in the execution of or in connection with another crime punishable under the Charter; that is, in connection with crimes against peace or war crimes. This is how the author of the Charter, Justice Jackson, explained it in his statement, which is added to the text of the Charter in the *Department of State Bulletin* of 12 August 1945, on Page 228.

I ask you to read the English text:

“We have taken another step forward in recognizing an international accountability for persecutions, exterminations, and crimes against humanity when associated with attacks on the peace of the international order.”

I have already explicitly shown that in the examination of the charges of the Prosecution in connection with Article 6 of the Charter, the judgment must adapt itself to the time of the program point in question or of the allegedly criminal act.

After establishing that the crimes were without doubt committed, the question of whether the organization as such is to be designated as criminal will depend on how many or—in proportion to the millions of members—how few SS members took part in these crimes. Did an organization really act, or did only relatively few members act, who perhaps—paradoxically—frequently had not even joined the SS voluntarily?

That it must not be overlooked at what period the individual crimes took place, the High Tribunal has already affirmed in its ruling of 14 January 1946. If the organization or a part of it was at all criminal, then it would only be for certain periods of time. Designs and plans once made could perhaps appear criminal only through later misuse, although they were originally not calculated to be so. An axe when forged never knows upon leaving the anvil whether it will perform useful service for humanity or whether it, or even the wooden handle, let us say, will not one day be misused as an instrument of murder.

That such limitations in regard to time and personnel are necessary is shown by the following example: the Indictment says on Page 5 that between 1933 and 1935 unsuitable members were expelled. I may add that these were about 50,000 or one-sixth of the membership; people who—this is shown by the most varied testimony and affidavits—on the basis of their previous political attitude had only sought camouflage, including previously convicted persons and other unreliable elements. Even these persons would not be excepted from the Indictment and the consequences of the declaration. Such a grotesque result cannot possibly be desired.

Finally, according to Number 6 a (3) of the ruling of 13 March 1946, the evidence will have to be examined to discover the extent of the individual member's knowledge. This question will be decisive for the judgment on the masses of the SS.

I said before that even if the SS organization, which no longer exists, is formally indicted, the Indictment is nevertheless, in effect, directed against each individual member. Now, if the criminal character of the organization is to be proved through criminal acts of the members, then the member who is supposed to have committed this specific crime must have an opportunity to answer to you, Your Honors.

If he cannot do this, then the Court will not be in a position to know whether the accusations are true. How then will the proceedings be carried out according to the Anglo-Saxon corporate penal law? The leaders and the members are heard in detail on the specific accusations made against them—the Court does not judge on the basis of unfavorable testimony of witnesses without giving the leaders and members of the organization who are personally affected by this testimony an opportunity to comment on it.

How little the Court—this High Court—can base its judgment only on the testimony of witnesses, without hearing the accused person or persons, is shown by the astonishing experiment which I undertook with the witness Izrael Eizenberg on 7 August 1946. I showed him two pictures from a Prosecution Document 867-PS in Polish, Exhibits Number SS-2 and 3, from which I cut off the

captions under the pictures. The witness identified the two men pictured as SS men and named their SS ranks. He deduced these ranks exclusively on the grounds of the shoulder straps and an insignia on the sleeves.

The witness Morgen, whom I examined on 8 August 1946, immediately recognized as an expert that the men pictured were not wearing SS uniforms, and were not SS men. He pointed out that these photographs showed the shoulder straps of the Police, and on the sleeve the insignia of the Police. In the photograph, Exhibit Number SS-3, which is in the hands of the Tribunal, the police insignia can also be clearly seen on the cap: the eagle completely enclosed in an oval wreath of oak leaves. Nowhere, Your Honors, is the SS insignia to be seen. All other photos in this book also show only police uniforms and police insignia. But all of this did not strike the witness; he considered these men "SS men." That was only a minor example of the power of observation of the witnesses with regard to uniforms.

Please consider further how slight the difference is between the uniform of the SD and that of the SS—only a small "SD" lozenge on the sleeve—and that nonmembers of the SS wore this uniform (compare the testimony of Dr. Best and Reinecke before the Commission); that precisely in the rear army area it was the Police who were employed, while the SS were at the front; that the mass suggestion of the guilt of the SS distorts the memory of the witnesses. Then, Your Honors, you will be able to realize the true value of the testimony of non-German witnesses who arbitrarily designate "the SS" as the perpetrators of any crimes committed in the occupied countries.

The incompleteness of a collective indictment, which is raised here for the first time in the long history of law, is based particularly on the difficulty of taking testimony for the accused organization in a fair manner. This difficulty arises of necessity from the peculiar nature of the proceedings, particularly from the fact that it is technically hardly possible, unless through proceedings going on for years, to clear up every concrete charge in a satisfactory manner by hearing the members of the organization specifically affected, and to establish whether each charge is justified or not.

As long as in such a trial it is impossible for the Defense to produce at once each individual member of the organization impeached by Prosecution witnesses or documents, and to have him make a concrete statement, as well as to hear further witnesses on this case, this trial remains incomplete and unsuited to render true justice.

It follows of necessity that to a large extent the cases of the Prosecution and the Defense by-passed each other without being able to give the Court a picture of the true state of affairs in large

parts of the Indictment. Only thus could the grotesque picture arise which we experienced repeatedly during the Defense case, that is, a Defense witness describing his activity and the units and SS men under his command. This covered sectors and periods as large as possible, since the Court permitted only an infinitesimal number of witnesses in proportion to the total membership, and any individual testimony of a little man was inadmissible according to the ruling of 13 March 1946. The Prosecution would now have had to attempt to break down the testimony of the witness in cross-examination. The surest and simplest method for this would have been to throw doubt on the credibility of the witness by showing, for example, that he himself had committed a crime, or that something of the sort had been done by people under his command.

Although the Prosecution had many weeks to examine its records and those of all the Allies, which records had existed for months, or even years, and although these 29 witnesses before the Commission and before the Tribunal had held medium, high, and supreme positions, the Prosecution could not prove any such thing against them. Is not this fact alone the best refutation of the contention of the criminal character of the SS? Is it not symptomatic that the Prosecution did not succeed in convicting of crime one of the highest generals of the fighting Waffen-SS, a very high officer of the General SS, at the same time Higher SS and Police Leader and Police Commissioner—an extremely rare case—of the third-largest German city, a staff officer of the administration of the Waffen-SS who was repeatedly in service at the front, and two high SS judges? Later on I shall discuss the case of the witness Sievers, the only case which was different. Thus the Prosecution had only one recourse: it deliberately brought forward documents or affidavits which were to prove that crimes had been committed, with which, however, even in the opinion of the Prosecution, these SS witnesses themselves had had nothing to do. Nevertheless, the Prosecution asked the witnesses whether they knew of the events described therein. Were they thus seeking to discover the truth for which this taking of evidence was intended, or was further evidence for the Prosecution merely to be introduced at a time when the case of the Prosecution had already been closed? These documents are for the most part Government reports on investigations which have not yet led to any trial or judgment—particularly in the partisan territory in Yugoslavia, which is very difficult to judge. Their evidential value should be very slight.

Can the new documents and affidavits thus introduced in enormous numbers make it possible for the Court to answer objectively the question of whether the deeds actually took place, and thus as to whether the SS is criminal? Would not the Court have

to hear the accused, that is, the SS men who were mentioned by name in the documents, or members or officers of the accused SS units? After the experience with the ability of the witness Eizenberg to distinguish uniforms, I ask: is it convincing when these people say, "They were SS men"? Or were they Police or SD and Gestapo members? In part such errors obviously arise from the documents. But I cannot and do not wish to deny that according to a few documents terrible crimes have been established, and that they are numerous. Should not the Defense have an ample opportunity to comment on these documents and affidavits with as much preparation as was expended on the evidence which the Prosecution presented in November, December, and January? Should it not be given a few months' time? I do not fail to realize that my demand would mean a prolongation of the trial for months, insofar as the case against the organizations is concerned. But if for any reason...

THE PRESIDENT: Dr. Pelckmann, the Tribunal has already ruled again that the Trial has got to conclude now, and therefore any argument that you would have three more months is entirely irrelevant and can't be listened to. The Charter lays it down. It is for the Tribunal to say how the individual is to be represented, and we have laid it down to the best of our ability.

HERR PELCKMANN: If for these reasons judgment cannot be delayed so long, then it must be passed now; but since in my opinion the new evidence of the Prosecution can only be used with this reservation, decision can consist only in the rejection of the application of the Prosecution.

I must add something. I asked myself whether I should deal at all with the Erhardt affidavit, D-973, from the Neuengamme Camp. But it is necessary because it is typical of the evidence of the Prosecution in this last stage of the Trial. It is necessary at this last minute when it is no longer possible for the Defense to carry on investigations on the spot. I refer you to the ruling of the Court of 1 August 1946, which does not permit visiting camps, in contrast to the Prosecution. Their administrative machine...

THE PRESIDENT: Dr. Pelckmann, if you are proposing to deal with the rules which the Tribunal has made with reference to the hearing of individuals, the Tribunal will not hear that. The Tribunal has done the best it can to enable individuals to be heard, and the Tribunal does not propose to listen to you criticizing what the Tribunal has done.

HERR PELCKMANN: I believe there is a misunderstanding, Your Lordship. I am not criticizing. I am dealing with the Erhardt affidavit, with the evaluation of this testimony.

THE PRESIDENT: Very well. Go on.

HERR PELCKMANN: This affidavit cannot affect the value of the affidavits of the SS members. It refers only to the interrogatory, which does not come from me, and the answers—there are altogether only 40,000—which I did not utilize.

I submitted 135,000 detailed affidavits to the Tribunal, and I summarized them. The methods described by Erhardt cannot have been used in them. As evidence of this, I should like to ask you not only to read the summary but also a few of the very conscientious and descriptive affidavits themselves.

The Erhardt affidavit itself is full of contradictions, improbabilities, and exaggerations. Erhardt was an SS man and is now in the service of the British authorities. Of course, he does not want to lose his position. Therefore, he has every reason to make himself popular.

Can a single affidavit on the ostensible conditions in only one camp, the actual and psychological reasons for which are so doubtful, shake the value of 135,000 detailed statements? No, Your Honors. This attempt of the Prosecution to shake the value of the whole legal hearing guaranteed by the Charter can remain only an attempt. The Defense in this Trial is in the unfortunate position of not being able to ascertain the source of such mistakes in the mass material presented by the Prosecution, and of criticizing it.

I am of the opinion that the result of the Prosecution's evidence, insofar as it can be considered in view of what has just been said, forces the Defense to the conclusion that crimes in considerable extent were committed by members of the SS, but not that the whole SS organization is criminal.

Is it not striking—I should like to deal with one point of the Indictment immediately in this discussion of procedural and evidential questions—that there are only two judgments concerning the inhumane fighting methods of the SS, including for example the shooting of prisoners, one against SS General Kurt Meyer on the Normandy front, and the other against SS General Sepp Dietrich and 73 officers and men of his army. That, Gentlemen of the Tribunal, is the result of the most painstaking efforts of the Prosecution, on the part of all the Allies, for more than a year. Must one not conclude therefrom that in spite of this long period it has not been possible for the Allied Prosecution to pass judgment on more crimes? The death sentence against Meyer, with which I am acquainted, was reprieved. The trial of Sepp Dietrich and his men, the record of which I was not able to obtain, ended with 43 death sentences, but it is striking that the highest leaders did not receive this punishment. This must force us to the conclusion that no such criminal orders were given by them, and consequently there was no criminal system. The Defense brings forward some-

noteworthy objections against the methods of investigation and of accumulating evidence.

I should ask you to note the following, High Tribunal: these happenings occurred in the final six months during the most violent part of the war, and concerned only very few members of the Waffen-SS. At the same time please remember the extensive counter-evidence given by witnesses and affidavits, which the Defense also procured for this particular point of the Indictment: the training for and the waging of fair warfare, and excesses committed by the enemy, which were only meant to prove that from such occasional excesses in battle one cannot conclude the existence of a criminal system.

In this connection allow me to develop another principle governing the evidence which to my mind must serve as the basis for the proper evaluation of the evidence in these proceedings: where any doubts may arise as to whether the individual charges are proven by the evidence, the weakness of which I have just made apparent, particularly also where doubts arise as to whether proved individual crimes may be said to be typical so that the entire organization, that is, all its members, can be considered criminal; where one counter-proof or one piece of circumstantial evidence is given as against ten or a hundred proofs of circumstantial evidence of the Prosecution, I believe that the Tribunal cannot draw any conclusions which are sufficient to warrant a condemnation in the meaning of the Indictment.

This is a fair and logical conclusion arising from the nature of these proceedings. From the huge mass of evidence at their disposal, the Prosecution have chosen some incriminating facts, and then made the assertion that these were typical cases, that they were the same everywhere, that these actions were typical of the SS, *et cetera*. As already stated, it is the sole responsibility of the Defense to furnish exonerating evidence. And this is where the difficulties for the defense of the organizations, particularly of the SS, begin. The organizations have been dissolved; they no longer exist. When we accumulated the evidence most of the members of the organizations, and all their leaders, were in custody, and many of them still are.

The occupational authorities have secured the entire written evidence, all personal files, correspondence, decrees, and orders. It is true that we have been able to speak to most of the prisoners; but after so many years, and particularly on questions of detail, the information was bound to be incomplete, and was not given until April or May, since it depended on the progress of the Trial. We could not always reach the competent persons. In connection with the question of the legal hearing, I would ask you to consider that

we have no evidence at all from SS men from Austria and the Soviet-Russian Zone of Germany. For reasons of security we could not be granted permission to conduct a research in the Allied document centers in which the confiscated documents are classified according to subject matter, and thus we were not able to obtain some valuable documentary information. We could not counter this deficiency by an approximate indication of the documents based upon certain assumptions, because a specified indication was demanded. As things stand, the counter-proof must be considered successful if the Defense succeeds in establishing but a shadow of a proof for their counter-evidence.

And now for lack of time I shall skip two pages, Your Honors, for the interpreters 32 and 33, and I shall deal with the charge of the participation of the SS in the pogrom of 9 November 1938. The next four pages deal with that, which I must also skip for lack of time, Pages 33 to 36. I ask you to read them.

Before I began with my considerations upon the Charter and the law of procedure, I endeavored to refute the charge of the Prosecution that the members of the SS were incriminated by the happenings of 30 June 1934. Not even the few members of the Leibstandarte directly concerned could have felt that they were committing a crime in killing men who were presumably guilty of high treason. That was how it appeared to the Germans and the bulk of SS men, who had been fooled in such a masterly manner. A further and final confirmation of the legality of his intentions came when Hitler, after the elections in the summer of 1934 (nobody knew then that they had been falsified), declared that the struggle for power had now come to an end (Document SS-106). And it really seemed to be so. Even the issuing of the Nürnberg Laws, which came as a surprise to the SS as well as to most Germans, seemed to be merely a confirmation of the Party Program, branded above as absurd, though not as criminal in the sense of the Charter; in particular, a confirmation of the policy which Frick had declared publicly already in 1934, and which formally denied the idea of compulsory transfer of population (Document SS-93).

It is significant that, apart from the concentration camp system until 1938—that is, 3 to 4 years—the Prosecution cannot raise any concrete charges against the General SS. The underhand anti-Semitic measures taken by the Party itself, or by other organizations, found no echo in the General SS. Only in November 1938 did anti-Semitism receive new official criminal impulse.

The Prosecution charges the SS with having taken part in the planning and execution of the measures against the Jews in the Reich on 9 and 10 November 1938. This charge is based upon Documents US-240, 3051-PS, and 374-PS, which, however, if they are brought into connection with the evidence of the witnesses, prove the contrary. Many Germans who were indignant witnesses of those happenings know that other Party organizations—partly in civilian clothes—took part in these excesses. That is why I am concerned with establishing historical truth: on the evening of 9 November 1938, Goebbels made a speech in the Ceremonial Hall of the old Munich Townhall, following upon the murder of the German Legation Secretary Vom Rath. It was an aggressive speech against the Jews, which led to anti-Jewish demonstrations and excesses throughout the entire Reich that same night, obviously not only spontaneously but through preparatory measures of the Reich Propaganda Minister, as has been shown in the course of the Trial. According to Affidavit Number SS-5 by Schallermeier, together with the testimony of Von Eberstein, neither Hitler nor Himmler heard Goebbels' speech. Hitler retired early to his apartments, Himmler was with him. Considering the evidence it does not seem impossible to me that Himmler at least was surprised by this action. The testimony of Eberstein and Schallermeier, Affidavit Number SS-5, makes clear beyond doubt that Heydrich was informed of the action already taking place in Munich only towards 11:15 p. m. by the office of the

Gestapo in Munich; that Himmler could be informed only shortly before the beginning of the swearing-in ceremony at midnight; and that Himmler could come, and indeed did come, to some decision only after this ceremony, towards one o'clock.

What was the situation at this time? After the ceremony in Munich and other places where the swearing-in of the SS men had taken place, the SS marched off, and had—as every year—general orders to return directly to their homes in view of the special solemnity of the preceding ceremony. In the meantime the action against the Jews had been afoot for several hours. We know from Document US-332, the report of the Party judge Buch, that this action was started by oral instructions of the Reich Propaganda Chief, which were given by telephone immediately, that is, sometime before the first telegram of the Gestapo, by a large part of the Party members present to the agencies of their Gaue.

The Party leaders present understood Goebbels' instructions to mean that the Party should not appear as the instigator of these demonstrations, but in reality should organize and carry them out. It is clear beyond doubt that purely for reasons of time the SS until then could not have taken part in these horrible happenings. In the meantime Himmler had arrived towards one o'clock at the Hotel Vier Jahreszeiten in Munich. According to the aforementioned affidavit of Schallermeier, the truth of which is established by other evidence, such as Affidavit Von Bassewitz-Behr, Number SS-9, and the testimony of the witness Von Eberstein, Himmler gave two orders. The first was transmitted at 1:20 a.m. by Heydrich to all Gestapo agencies. This order was issued after the disaster had already occurred. For reasons of security it demanded that political agencies be contacted concerning the carrying out of the demonstrations, ordered unconditional protection for German property and life, and furthermore, made provisions for the taking into custody of Jews. The contents of this order, and the agencies to which it was given, clearly established that these were merely police measures.

The SS organizations which I am defending are certainly not incriminated in connection with these police instructions, since Heydrich, who held no office either in the General SS or the Verfügungstruppe, could not give them any order (Witness Norbert Pohl). Himmler's second order was given orally to the leaders of the chief sections of the General SS who were assembled at the Hotel Vier Jahreszeiten. It contained definite instructions to the agencies of the General SS to help, if necessary, the Gestapo in safeguarding Jewish property against all manner of plundering. He was obviously taking into consideration the opinion that this was an unworthy and despicable action from which the SS should on principle stay away upon the definite instructions of Hitler. The task of the General SS was only to alleviate the consequences of this action if this should become necessary. This order was immediately telegraphed by the Oberabschnittsführer from Munich to their local agencies.

This is established without doubt in Affidavit Number SS-5, Schallermeier. The contents of the notes which, according to Schallermeier's affidavit, Himmler made of this occurrence, gain in credibility if considered from this aspect. In no event can the assertion of the Prosecution, that Himmler and Heydrich had deliberately assigned the SS for the action of 9 and 10 November 1938, be considered proven. The contrary would seem to me more probable.

In this connection let us consider the actual participation of the SS in the Reich. The witness Von Eberstein has described the occurrences in the Munich district. Throughout the Reich the SS was never ordered to participate in the excesses, nor did units of the General SS participate out of their own initiative. Their nonparticipation has been proved by numerous affidavits for all parts of the Reich (for instance, Von Roedern, Kaufmann, Lott, Enzner, Eschholdt, Fischer, and Kampp-Franz, Numbers 7, 8, 104, 6, 105, 10, 70). According to the affidavit of Kampp-Franz, approximately 200 affidavits have been submitted in proof of the nonparticipation of the SS in the whole Reich territory in Camp 73.

According to these affidavits the units of the General SS, and most members of the SS in barracks, had come to be sworn in in Munich, as everywhere in Germany. They all agree in saying that after the ceremony the members of the SS returned to their homes, without knowing anything about this action. Also, according to the affidavit of Kampp-Franz, participation was strictly forbidden as far as this action became known during the swearing-in. Most of the SS members only heard of this action on the morning of 10 November 1938,

on their way to work or through an alarm given. Those units of the General SS who had been alerted upon the order of Himmler to the Oberabschnittsführer were assigned, in several places in the course of 10 November to safeguard synagogues, for instance at Offenburg in Baden (Affidavit SS-104, Lott); see also 4407 affidavits summarized and collected in Affidavits Number SS-119-122.

These affidavits prove that the General SS in many cases prevented further excesses, and that within the SS this disgraceful action was disapproved of from the very beginning. Document USA-332, a report upon the juridical party proceedings, in which four or six SS men are named, does not contradict this, for in such excesses, committed by the masses throughout the whole Reich, the participation of individuals against express supreme orders cannot be avoided entirely. But that cannot be considered as symptomatic for the criminal nature of the SS without further proofs.

THE PRESIDENT: Dr. Pelckmann, you say that you have only got to Pages 32 and 33?

HERR PELCKMANN: I want to start on Page 36 now. But as far as I am informed, Your Lordship's copy is longer. I am farther on.

THE PRESIDENT: I do not have a copy at all; but I do not understand how you are proposing to finish your speech, if your speech is, as I am told, about 100 pages long.

I tried to point out to you at an earlier stage that the sort of general topics which are very familiar to us were topics which you might just as well pass over, and you said "Very well; I am going to shorten my speech. I have taken steps to shorten it."

Now we find that when you have been speaking for nearly two hours, you have not got any farther than Page 33. All I want you to understand is that you will not be allowed more than a half day.

Now will you go on, please?

HERR PELCKMANN: In the pages which I am skipping I have dealt with the events of November 1938. I will add that if in connection with the arrests, which were purely a political matter and were up to the Gestapo, some officials may have worn black uniforms, this did not make it an SS action. Gestapo officials also wore black uniforms. This would be a typical erroneous generalization which can be traced back to the fascination of the black uniform and of the SS insignia, and its misleading influence upon truth and recollection must not be underestimated for the entire proceedings against the SS.

This insignia, in its insolent aggressiveness, flaunted by visual and auditory means, was not only dangerous in the past because through its doubling of a Germanic rune it awoke romantic historical feelings in the German, but even today after the destruction of all the myths surrounding it, it has the peculiar power of preventing any clear conception as to its nature. This word "SS" is so easily pronounced without being accompanied by a clear conception as to its real meaning.

There is a danger of a historical myth being born which, like any other such myth, is based upon ignorance of the facts, or, even

worse, upon partial knowledge of the facts. We, who combat the Hitler myth wherever we can—we have done so in the evidence before the Tribunal—do not wish to see a myth form around a group of people under the slogan “SS,” around the guilty and innocent alike. We do not want to help to create so-called “martyrs” in the interests of neo-Fascist propaganda.

That is why we must ask a definite question and give the answer: What is really to be understood by SS?

The decisive error in the Indictment is that all, or at least all essential, spheres of activity of Himmler's are considered as activities of the SS. Without inquiring into the origin or tasks of the many agencies and units under Himmler's command, without inquiring as to whether there ever existed any organized ties or links, the Indictment assembles the General SS, Waffen-SS, the SD, the Police, the concentration camp system, the affairs of the Reich Commissar for the Consolidation of German Nationalism, the activity of the Chief of the Prisoner-of-War Organization, and others, in one great imaginary unit, the SS. The Indictment must proceed from such a unity in order to create a basis for the evidence that, within the framework of an alleged conspiracy, all sectors of the public life in the State, the Party, and the Wehrmacht were permeated with this SS, a monster which had spread its tentacles over Germany and Europe.

That Himmler's activity was identical with the activity of the SS is only true for the period up to 1933 or 1934. Only until then did an organized unity in the SS exist; and the Prosecution has taken over this idea of the unity of everything which they call SS from this time, thus falsely interpreting the actual developments. The SS was a part of the SA and therefore a section of the NSDAP.

The seizure of power opened an era in which a great part of all supreme and superior State positions were filled with Party Leaders. From this time on, Himmler went his own way alongside the SS. At first—by comparison with other high Party members—extremely cautiously, later more and more determinedly and arbitrarily.

It was mainly Heydrich who awakened Himmler's interest for State affairs, for power politics. Himmler, like many of the SA leaders, had become Police Commissioner, namely, in Munich in 1933. Soon he was made Chief of the Political Police in Bavaria, and then in the other states of Germany, with the exception of Prussia. Here Göring was still Chief of the Gestapo. But soon Himmler became his deputy and Heydrich the leader of the Secret State Police Office in Berlin. Himmler's ambition for the widening of his power in the State, which the SS could not offer him, now became ever more obvious. His goal was the Ministry of the Interior. Already in 1936 he took over the entire police power of the Reich, which until then

had been the affair of each land, in the capacity of Chief of the German Police. Thus he had become the highest superior not only of the Secret State Police and of the Criminal Police, which were jointly named the Security Police, but also of the entire Regular Police in Germany. Only then did he hold a position of power which was of the greatest importance, and it was given to him by Hitler, and not by the SS, or through the SS, or for the SS. I ask the Tribunal to consider that these police organizations existed independently alongside the SS before Himmler became their chief. In 1939, he was made Reich Commissioner for the Consolidation of German Nationalism and was thus assigned a new task, the re-transfer of populations, *et cetera*. Finally, in 1943, he was actually nominated Reich Minister of the Interior. Through his personal allegiance to Hitler, and through his acceptance of any and every new task, he gained the personal confidence of Hitler and thus continually extended his personal position of power within the Reich. It was peculiar to this Reich that Hitler should have united so many offices and tasks in one single person who had his confidence. As an example, I would point to Göring. In the measure that Göring continued to lose Hitler's confidence, Himmler's power rose like a meteor. He had gained this position of power for himself alone and without the help of his SS, and quite independently from the fact that he was their Reichsführer. The witnesses Grauert, Reinecke, and Pohl have amply testified to this effect. The SS, formerly so closely connected with Himmler, had, in the course of time, followed an individual and quite independent line of development, owing to the great number of the entirely different sections which began to take shape. Unfortunately, the short time at my disposal does not permit me to describe here this development in detail, although it is of the greatest importance to the entire defense.

To prove the unity they have asserted, the Prosecution say that the General SS was the basis upon which all the other organizations have been established. The fact alone that almost a million men have at one time been in the Waffen-SS, whereas the General SS had only numbered 250,000 members, refutes this statement. In the aforementioned appendix I have shown how the individual organizations were built up, augmented, and developed according to their own intrinsic nature. The General SS is not the source of life for the other organizations, but an ancient vestige which at first managed to keep alive, but which during the war was forced to disappear altogether for lack of any special task. (Witnesses Eberstein, Hinderfeld, Jüttner, Pohl.)

The Indictment did not, however, mention the most important aspect. To my mind this is an aspect which is particularly suited to shed light upon the question of the imaginary unity of the SS:

where lay the executive power in the State? For an alleged conspiracy only such an instrument could have been suitable, which controlled some means of the State authority, which had executive power in the State. Neither the General SS nor the Waffen-SS was such an organization. At no time in its existence did a leader or a simple member of the General SS have more rights in public and especially police matters than any other German citizen. He could not and did not at any time carry out arrests or house searches with impunity. (Witnesses Reinecke, Eberstein.)

The fact that revolutionary excesses were committed immediately after the seizure of power does not alter this fact. They were at once successfully combated, as testified by the witness Grauert. No member of the Waffen-SS ever had more rights than any members of the Wehrmacht (Witness Hausser). Indeed the executive power in the State was solely in the hands of the Police: the Gestapo and Criminal Police combined as Security Police, and the Regular Police. A policy of power in the sense of an alleged conspiracy could logically have found support only through them.

The testimony of the witness Grothmann, who belonged to the closest circle around Himmler, is particularly revealing for the question as to which activities of the SS are to be considered as connected with the executive power. This testimony is nothing special inasmuch as he tells us that Himmler was informed of the affairs of the Waffen-SS by the adjutant of the Waffen-SS, and of police affairs by the Police Adjutant, while the General Secretariat had to inform him of the other affairs of the General SS. Thus the sharp separation existing among the various fields again becomes very clear.

The essential point, however, is that all matters concerning the concentration camp system and the totally different sphere of the SD were not dealt with and reported on by the SS Adjutant, but rather by Himmler's own Police Adjutant. In this way the testimony given by the witness Reinecke, who testified as to the judicial basis for the separation into five independent spheres of influence under Himmler in the sense of the Indictment, into General SS, Waffen-SS, SD, Concentration Camps, and Police, is again reaffirmed.

Executive power is indeed the key to full understanding of the charges raised under the Indictment, and for a just evaluation of this case. In the beginning, Himmler was on the side of his SS and was entirely absorbed by it. After the police power of the entire Reich had been transferred to him alone, the only thing he concerned himself with was this one sphere, the sphere of executive power. He played the leading role in the rapid development of Germany into a police state. Very soon he let every vestige of regard for any legal consideration go by the board. Moreover he continued

to follow the path he had chosen for his organizations General SS and Waffen-SS, and withdrew behind a heavy curtain of secrecy, hiding himself and the excesses of his police activity from these organizations as well as from the entire nation. It is quite impossible to understand all of this if one does not appreciate the fact that Himmler had a "Jekyll and Hyde" personality. On the one hand he preached and fostered ethical values, such as decency, manliness, and courtesy. Here he used the instrument of his organizations, the General SS and the Waffen-SS. On the other hand he exploited his tremendous power by issuing the most uncompromising orders and measures of a police state nature. I would only refer to concentration camps, mass executions without trial, and the Einsatzgruppen.

Here, and here alone, he used the instrument of the executive power in the Reich. A deep abyss opens up between these two. It was not surprising, therefore, that in the few speeches he made during the war, in which he showed his obsession with his State Police troops of the future, that he met with opposition among the leaders and the troops of the Waffen-SS; for these men were soldiers and were fighting the enemy. It is quite understandable that the Prosecution considers this first side of Himmler's nature to be but a whitewash for the second. But nothing could be more erroneous than an assumption of this sort. It is no coincidence either that the Defendant Seyss-Inquart from his complete knowledge of developments, and the witnesses Hausser and Reinecke, who because of their former high positions and their present knowledge have an over-all picture of events, describe Himmler as a man who had two totally different faces. And when they say that, they are in good company; for on the strength of his many conferences with Himmler, Count Bernadotte says exactly the same thing in his book *The Curtain Falls*, which has been frequently quoted.

Himmler, therefore, is not the SS. The fact that he is referred to as the "Reichsführer SS" in all laws and directives which gave him new missions to accomplish does not alter this situation in the least. As the witnesses Reinecke and Kubitz have stated quite correctly in this regard, his official position and title, to all practical purposes, had replaced his name in public life. Specialized departments like the Police and the Reich Commissioner for the Consolidation of German Nationalism, or the position of Commander-in-Chief of the Reserve Army, and of Chief of the Prisoner-of-War Organization, did not become concerns of the SS just because they were transferred to the person of the "Reichsführer SS," that is, Himmler.

However, that is something asserted by the Prosecution, and in order to support their position they state further that as soon as

Himmler took over new offices he immediately started to infiltrate them with members of the SS. That is equally wrong. The witnesses Zupke and Bader have confirmed the fact that a number of members of the Regular Police were taken over into the General SS, and not vice versa. An infiltration of the Police therefore never took place. As far as the Security Police is concerned, we can see from Himmler's decree of 23 June 1938 (Document 1637-PS) that the civil servants and employees of the Security Police were taken over by the SD and received SS ranks commensurate with their police ranks, and not vice versa. They never served in the General SS for even one day.

The testimony of the witness Zupke, who was interrogated before the Commission on 20 May 1946, and Affidavit SS-82, prove that roughly 20 different categories of members of the Regular Police became formal members of the SS when on the strength of ministerial directives they were granted ranks in the SS commensurate with their police rank. This so-called "Co-ordination of Rank," however, did not establish true membership, for the police officials involved did not take the SS oath, did not pay dues, did not perform SS functions, did not serve in the SS, had no privileges or advantages of any kind because of their rank, and did not even wear SS uniform. Their police service remained constant and unchanged.

Everywhere else in public life the same procedure was followed. It was not the case that the SS filled key and other essential positions, but rather that the men holding such positions were taken over into the SS as honorary leaders by Himmler.

The affidavits deposed by Herr Führer, SS-63, and Herr Wunder, SS-42, give striking examples of the appointment of honorary leaders; SS-49, and Bethke, Number 48, show that the Kreis- and Ortsbauernführer were taken over as a group by the SS in that way, and Affidavits SS-97 and SS-98 describe the taking over of the leaders of the Reich Veterans' Society.

Therefore it was not true that the SS infiltrated into the State; on the contrary, elements foreign to the SS were taken over by its organizations. The bulk of the membership remained what it was, a unit of farmers, mechanics, students, workers, and representatives of all the professions. The tasks of the General SS were not changed in any way because of this process.

After studying this matter, we can see how little basis in fact there is for the assertion made by some of the defense counsel on behalf of individual defendants and organizations to the effect that during the war the SS exercised all the powers of government in Germany. Many witnesses and affidavits prove that the activity of the General SS, which must be described as typical club life, began

to decrease at the beginning of the war and disappeared altogether during the course of the war. The Waffen-SS was fighting at the different fronts, receiving more and more draftees into its ranks. It was under the supreme command of the Wehrmacht. These two branches of the SS therefore could not rule Germany during the war. As I shall demonstrate later, the WVHA, which concerned itself with concentration camps, belonged to the SS only nominally, and had no administrative authority over any other institutions in Germany.

A reign of terror may well have been exercised through arrests and the putting of individuals in concentration camps, but that was not a function of any branch of the SS organization, but rather of the Ministry of the Interior, of the Police, and the RSHA (Gestapo).

The setting up of Higher SS and Police Leaders does not alter these facts either, for the name is in fact misleading. They had no authority of command over the Police and the Waffen-SS. Only rarely, when like the Reichsführer SS, who held both State and Police positions—as for instance Police Commissioner—were they authorized to give orders to the Police, but only because of their State position, not because of their position as SS Leaders. This may be seen even more plainly in the Occupied Eastern Territories, for there was no General SS there. The Higher SS and Police Leaders there did not have any authority of command in the Waffen-SS, so that the Higher SS and Police Leaders exercised only public police functions. I am referring to the testimony given by the witness Von Eberstein, and to Affidavits SS-86 and 87.

Then we see the following: Himmler's power increased tremendously during the war, but the power of the SS was not increased. He did not receive this power because of his position as Reichsführer SS, and he could not exercise this power through the SS but solely through State organs, that is, through the various police organizations.

Competing with Himmler's authority were other power factors, not of the State, but exercised by the Party (Reichs-, Gau-, and Kreisleitung). All branches of the SS were outside this struggle for power between Himmler and Bormann.

From the description presented by me we can conclude the following: First, we cannot consider the organizations comprising the SS to be a unified instrument of a conspiracy. Secondly, the Court can only examine separately the question of the criminal character of each branch of the organization.

The accusations raised under the Indictment which I shall have to deal with after these detailed statements—because of lack of time I can cover only the most important aspects—become weightier the closer we approach the period of the war, and finally the collapse.

A very serious and comprehensive pattern of accusations against the SS has been included in the term "Germanization."

With this, Gentlemen of the Tribunal, I am dealing on the next five pages, 46 to 50, and I shall skip the heading "Enslavement"; the next four pages, 50 to 53, deal with the "Compulsory Transportation for Slave Labor"; a further page and a half, 54 to 55, with the Einsatzgruppen, and finally three pages, 55 to 57, with "Anti-Partisan Combat." Owing to pressure of time I am unable to present them and would ask the Tribunal to give them due consideration.

By "Germanization" we certainly cannot understand the resettling of entire sections of a population and transplanting them from their native soil to a new locality, for the same thing is taking place today in those regions between the Oder and the Vistula in Silesia and Czechoslovakia, in areas which were formerly German but have now been given to Poland. In order to arrive at criminal circumstances several vital points must accrue; namely, planning, methods of execution, and their connection with a war of aggression.

The contradictory yet determining points in Hitler's orders never appear more sharply than in that pattern which the Indictment understands by the term "Germanization." One thing, however, is clearly evident; these orders, some of which were issued in the form of laws, were not addressed to the SS. The decree of 7 October 1939, Document Number 686-PS, which has been quoted frequently, is of basic importance here. But a jurist can understand this decree only as a law to establish a new public authority to be known as the Reich Commissioner for the Consolidation of German Nationalism. Out of the many who competed for this position, Himmler succeeded in coming out ahead, for he was made Reichskommissar. In this decree, which was not issued by Party authorities but was signed by the Reich Cabinet, Himmler is also referred to by his other title of Reichsführer SS. If he had been a general in the Wehrmacht, then perhaps he would have also been referred to as Lieutenant General; if he had been a civil servant, he probably would have also been referred to as Minister. From this, no instructions to the SS as an organization can be deduced.

This new office was paid for by the Reich. The men working there were officials who were taken from the various other offices and agencies, not only from the SS.

Of course SS members participated, but they were not predominant and they were not in the most important positions. Please refer to Affidavits SS-113, 110, 111, 43, 73, and 75. The Reichskommissariat for the Consolidation of German Nationalism belonged to the sphere of Himmler's personal authority, but no executive official of the Kommissariat had the power of command over SS offices or SS members except when subordinate to him as his officials.

Under the Reichskommissar for the Consolidation of German Nationalism there was the Volksdeutsche Mittelstelle, with which the Prosecution have dealt repeatedly. It was the task of the VDM to repatriate Germans who up to that time were not German citizens, and to bring them back into Germany from the countries where they had been living. The VDM furnished the means (Mittel) for this task. That is the real significance of the title used in contrast to incorrect translations. "Means" (Mittel) signifies money or objects which had the value of money. The Mittelstelle procured and cashed the necessary foreign exchange. The VDM was not concerned with the other tasks assigned to the Reichskommissar for the Consolidation of German Nationalism, which are characterized in the decree mentioned as "elimination of the harmful influence of alien minorities." These tasks were taken over as police tasks by Heydrich and by the police departments of the RSHA. They were handled in the same way as the deporting of Jews to the East; for example, into labor camps or to Theresienstadt. For these matters also Heydrich and the police departments of the RSHA were exclusively responsible.

These accusations are dealt with in detail by the statements given by the witness Kubitz before the Commission, and the affidavits of Creutz, Greifelt, and Golling (SS-115, 72, 79, 80, 71, 112, 113, 114, 77, 73, and 76).

As has been abundantly demonstrated before this Tribunal, only Göring with the Four Year Plan had influence over the exploitation of the productive resources, and by no means the Reichskommissar for the Consolidation of German Nationalism or the SS (Golling, Affidavit SS-73). The voluntary resettlement of Germans from abroad carried through by the Volksdeutsche Mittelstelle, particularly from the Soviet Union on the basis of the treaty with the Soviet Union, cannot be considered as deportations or evacuations in the sense of the Indictment (Greifelt II, SS-76). The Prosecution concluded the participation of the SS in that activity from the fact that many men in SS uniform had a share in it. The evidence given by Kubitz demonstrated that those people were not SS men and did not carry out SS tasks.

The evacuation of Poles from the former German Eastern Provinces had been almost concluded already before the creation of the Reichskommissar for the Consolidation of German Nationalism (Creutz, SS-72; Golling, SS-71). They had been previously carried out by the chief of the civil administration, not by the SS.

In the Government General there existed special legal conditions, so that the office of the Stabshauptamt and the Volksdeutsche Mittelstelle were not able to interfere and cannot be held responsible for the conditions that existed there.

The evacuations in the West were performed by the chiefs of the civil administration as the agencies exclusively competent for them (evidence Kubitz, Affidavit Brückner, SS-74; Edgar Hoffmann, SS-75; Creutz II, SS-80). The members of the former German minority in the former Polish provinces were given German citizenship not by the Reichskommissar for the Consolidation of German Nationalism, but by the Reich Ministry of the Interior and its subordinate office at a time when Himmler not yet held that ministerial office. The procedure of the Volksliste, which erroneously has been translated "Race Register," was carried through by the Reich Ministry of the Interior. This shows that that list had nothing to do with the Reichskommissar for the Consolidation of German Nationalism or the race ideology of the SS (Golling I, SS-71).

The confiscation of the agricultural property by the Reichskommissar for the Consolidation of German Nationalism was based on a decree by the Reich Government of 8 October 1939, in accordance with which the incorporated Eastern territories were declared Reich territory, as well as on those decrees concerning confiscation which in the framework of valid law had been properly promulgated and were not even co-signed by the Reichskommissar for the Consolidation of German Nationalism (SS Document Book, Number 13).

A thorough examination of that decree will show that the confiscations ordered actually had already been pronounced before the Reichskommissar for the Consolidation of German Nationalism had taken office. He did nothing but register and re-examine the confiscations which had already taken place (Creutz, SS-72; Golling, SS-71).

It would be entirely fallacious to speak of a confiscation through the Reichskommissar for the Consolidation of German Nationalism, much less the SS, for the purpose of settling racial Germans or rewarding deserving Nazis, since the confiscations carried out by the Reichskommissar for the Consolidation of German Nationalism were not qualified to furnish land for settlement or to drive away farmers from their estates (Golling, SS-71; Greifelt I, SS-73, 76, 78; Creutz, SS-79).

For that reason the Reichskommissar refrained from any settlements involving a transfer of property. The only thing which happened was that the trustees on the ownerless estates were replaced by trustees taken from the ranks of the resettled ones.

The opinion of the Prosecution, which is in conflict with this description (1352-PS), is based on the unauthorized acts and proposals made by some subordinate official, Kusche, who did not even belong to the SS and whose errors—as shown by the document itself and Affidavit Golling SS-7—were corrected. The case of Kusche is characteristic of the Reichskommissar for the Consolidation of German Nationalism inasmuch as this man was relieved of his office because of his entirely erroneous conceptions (Golling SS-71). No uniform plan is apparent in the so-called Germanization. The chiefs of the civil administration had their districts evacuated, and according to other motives.

and orders (Brückner, SS-2; Edgar Hoffmann, SS-75), the agencies of the Reichskommissar for the Consolidation of German Nationalism and the Chief Staff Office did not approve these evacuations. They could not, however, stop them, although they obstructed them as far as possible and practically put an end to them altogether (Testimony of Kubitz, Affidavit Brückner, Edgar Hoffmann). Himmler, for instance, did not know anything about the plans of Bürckel or Hitler. The Polish population in Posen and West Prussia was evacuated; in Upper Silesia it was not evacuated. The transfer of the Germans living in the Baltic countries was decided within a very few hours, but absolutely nothing was known as to the carrying out of their resettlement (Kubitz). The Reichskommissar for the Consolidation of German Nationalism transferred racial Germans from Lublin to Posen, the Governor General again settled Germans in Lublin (2916-PS, 910-PS; Creutz, SS-72). Continuous retransfers of Germans from abroad brought hundreds of thousands into the Reich, despite the fact that for years more than half a million had been waiting in camps for some kind of resettlement (Kubitz).

Polish property was confiscated by the Four Year Plan, the Haupttreuhandstelle East, and the Reich Ministry for Food (Reich Law Gazette, 1940, Page 353, 1270).

From this brief picture of the confusion existing one cannot speak of a premeditated plan for Germanization on the part of the Reichskommissariat, or on the part of the SS.

The deportation of civilians for slave labor, particularly into Germany, takes an important position in the Indictment amongst the crimes committed in occupied territory against the civilian population, and is directed above all against the Defendant Sauckel. His defense counsel, Dr. Servatius, has dwelt on the taking of evidence and on the legal evaluation of the concept of slave labor, and we will simply refer to that.

The Prosecution, and to some extent Dr. Servatius too, however, are of the opinion that the SS shared the guilt for those crimes. As far as the General SS and the Waffen-SS are concerned, this point of view cannot be adopted.

As shown before, the General SS practically had concluded its activity at the beginning of the war. There is not a single piece of evidence which would show that any unit of the General SS had anything to do with the deportation of civilians for labor service.

The same is true in regard to the Waffen-SS, which never had any influence on the labor program of Sauckel and which also was never employed for the execution of his measures. The recruiting of foreign laborers for their employment in the Reich was, as a matter of principle, a task of the administration. For making manpower available to Sauckel's organization, the Reich Commissioners in the occupied areas were used, and they employed their executive staff, as for instance the General Commissioners, and so on. They in turn, as prescribed by the laws of the administration, made use, as far as necessary, of the Regular and Security Police; the SS, particularly the Waffen-SS, was not available to the General Commissioners and had nothing to do at all with the labor program (Affidavit Von Bomhard, SS-108).

In special fields this system was not changed either. The Waffen-SS and the General SS did not give any assistance in the transfer of arrestees to concentration camps and their employment for slave labor there. As is well known, the only authority in charge of assignments to concentration camps was the Gestapo, which was also in charge of the bringing-in of new arrestees. This has been stated already by Mr. Farr of the British Prosecution (Volume IV, Page 194). This is shown also by individual pieces of evidence, such as Document L-61, which speaks of the assignment of criminal and asocial Poles to concentration camps by the Chief of the Security Police and SD. It also proves that the exchange of Jewish against Polish workers in the Reich was based exclusively on an agreement between the office of Sauckel and the Chief of the Security Police. Thus the SS, both Waffen and General SS, had nothing to do with it, as was wrongly assumed (Volume III, Page 413). This is equally true for the transfer of other groups to concentration camps, and their employment in armament plants there. Without exception these assignments were handled by the Gestapo. This is true both for the assignments of Frenchmen (compare Servatius' plea) and that of partisans (744-PS, USA Exhibit 445). Again these cases therefore are eliminated from the material charging the General or Waffen-SS, because the arrests and assignments to a concentration camp of these

groups were performed not as measures for securing manpower, but on the basis of Gestapo considerations. Himmler's order, 744-PS, furthermore is based on a decree by the OKW (Keitel), ordering that those prisoners who were taken in warfare against the partisans were to be looked upon as prisoners of war, put into camps, and referred to Sauckel through the labor offices. This was therefore a group of persons who ought to have been referred to courts-martial as snipers and whose assignments to a concentration camp constituted only an improvement. If the General SS and the Waffen-SS had nothing to do with the assignments to concentration camps, it is impossible to charge them with the crime of dragging people away to slave labor simply because the prisoners later worked in concentration camps. The following must be said in this connection.

(1) As I shall explain later, the concentration camps were not an institution of the General SS and Waffen-SS. They were a State institution of their own (Affidavit SS-100, Fanslau).

(2) The Chief of the WVHA, Pohl, was in charge only of the administration of the concentration camps. The products of the prisoners, just as those produced by the prisoners of the general Administration of Justice, were administered by a Reich Finance Office which existed in each concentration camp. Just like any other fiscal office of the Reich, they were examined and supervised by the Court of Accounts of the Reich (Affidavit Frank, Number 99).

(3) In the main, the prisoners were made available to armament plants of a public or private nature, as well as to the economic enterprises of Himmler (Affidavit SS-9, Frank; and SS-100, Fanslau). Their position was exactly the same as that of other armament plants which received Eastern or other foreign laborers through the office of Sauckel.

Nothing against the General SS or the Waffen-SS can be concluded from the employment of those prisoners in the interest and for the benefit of the Reich. The evidence given by Jüttner and the Affidavits SS-99, Frank, and SS-100, Fanslau, show that the products of their labor did not accrue to the Waffen-SS, as the Prosecution has charged.

In the battle in the East the activity of the Einsatzgruppen A, B, C, and D of the Security Police and the SD appeared for the first time. They were formations of a special type, of a Security Police character—that is, of the executive of the Reich. I need not go into the other tasks of these units. Here it is a question only of that horrible activity to which the witness Ohlendorf testified; particularly, the part played by the Waffen-SS.

The testimony of Rode and Ohlendorf has proved that the Einsatzgruppen were tactically never under any command posts of the Waffen-SS. It is shown, rather, that these units were tactically subordinate to the army groups of the Wehrmacht. There were never any army groups of the Waffen-SS.

Against the Waffen-SS there is the fact, it is true, that three or four Waffen-SS companies—a total of one battalion—had to be assigned to these units without the appropriate battalion staff. I said, "had to," because the instructions from Himmler were direct (witnesses Jüttner and Ruoff). Document L-180 proves that, for example in Einsatzgruppe A, 340 out of 999 men were soldiers of the Waffen-SS. The total strength of SS men assigned to these units was 600 to 700 men.

The fact that men of the Waffen-SS were used for Security Police tasks seems to contradict the fact, which has been proved by me, that the Security Police and the Waffen-SS were two completely different organizations. But that is not the case: The testimony of Jüttner shows that the assignment of three or four companies was ordered by Himmler with the express provision that these men should serve as protection and guard units of mobile police details which were to follow the fighting troops. That police details were necessary in the occupied territory was clear.

That they needed military protection, if they followed the fighting troops immediately, was not surprising. It was never mentioned that the Einsatzgruppen were to carry out exterminations of human beings on a large scale and that men of the Waffen-SS should be called upon to participate in these actions against their express orders to maintain and afford protection. No suspicious doubts could arise in this connection (witness Jüttner), nor did it become known at any later time in the leading agencies of the Waffen-SS that these SS men had been wrongly used for such tasks (witness Ruoff). The witness Blume, of the organization section of the Waffen-SS, had stated that these three or four companies,

in contrast to all other units of the Waffen-SS, had never submitted any reports of the true state of affairs to the Führungshauptamt. Practically they were not even part of the Waffen-SS. This also explains that none of the leading or less important witnesses for the Waffen-SS ever gained any knowledge of the activity of the Einsatzgruppen, which had been held strictly secret, or of the specific participation of any SS men.

The assignment of not quite one thousand men, which was so much talked about, has not changed anything in the nature and the task of the Waffen-SS, an organization including millions.

When there was any talk of Einsatzkommandos the Prosecutors generally mentioned the so-called special Kommandos of the East in the evidence. Since these were merely concerns of the Security Police, in which members of the General SS or the Waffen-SS were never used, I need not dwell on these matters.

Due to the statement of the witness Von dem Bach-Zelewski, and a statement in the affidavit of the witness Rode, which was submitted by the Prosecution, the idea of partisan warfare in Russia had been quite erroneously connected with the idea of the systematic extermination of Jews. Both witnesses declared that upon looking back they had come to the conclusion that partisan warfare in Russia was merely a pretext for the extermination of the civilian population. In the meantime, this incredible assertion was rectified by the witness Rode in cross-examination before the Commission. As Rode's testimony shows, his interrogator discussed the compilation of the affidavits referring to partisan fighting and at the same time to the aforementioned Einsatzgruppen and Einsatzkommandos of the Security Police. Rode's statements referred only to the activity of the Einsatzgruppen, whose activity the interrogating officer often erroneously connected with partisan activities by calling them "partisan combat groups."

In reality, partisan fighting was an intensified guerrilla warfare which was developed, especially by the Soviets, behind the front. It was intended to cause difficulties to the fighting troops by interfering with their maintenance channels, and it also took direct action against units in the rear. This type of warfare was all the harsher since the partisans knew that according to international law they could be considered as *franc tireurs*, and accordingly fought a bitter war.

Because of the division of the hinterland behind the front into the rear army area and the area of the civil administration, the task of combating partisans became either the responsibility of the Wehrmacht, or that of the Police. The witness Hausser said, on 6 August 1946, at the beginning of his interrogation: "That was a military-police task." (Not "military-political task," as was erroneously translated into English.) Therefore, those who possessed police powers in the occupied area, that is, the Higher SS and Police Leader and the chief of the anti-partisan unit, had to carry out their task in collaboration with one another. The fact that occasionally units of the Wehrmacht, and only once a unit of the Waffen-SS, a cavalry brigade, were committed for that purpose, changed nothing in the manner of the activity, nor can one conclude therefrom that there was any organizational connection between partisan combat and the Waffen-SS in the rear police area (Witnesses Jüttner, Ruoff, Grothmann).

From his statement that inferior troops had been chosen for partisan warfare one can see how the testimony of the witness Von dem Bach-Zelewski must be judged, a witness whose testimony contains several discrepancies (witnesses Grothmann, Reinecke, Jüttner, Ohlendorf). According to the testimony of the witness Hausser, there were never any inferior units in the Waffen-SS; on the contrary one cannot establish a connection between the testimony of Bach with the Waffen-SS. According to the explanation of the witness Grothmann, the unit Dirlwanger was a probation troop of prisoners, such as are used in all armies of the world. It is an essential fact, there, that it was never a unit of the Waffen-SS, or even, as Bach states contrary to the real facts, a unit of the General SS (witness Grothmann). Apart from anything else, it would never have been adequate for the war against the partisans.

Thus the charge that partisan warfare was a pretext for the extermination of the civilian population is disproved, and furthermore, any special participation of the Waffen-SS is also disproved.

Concentration camps existed from the very beginning of the Hitler regime on. Without them the Hitler State was inconceivable. Hundreds of thousands went through these camps, were

degraded and ill-treated there; more than a hundred thousand died or were killed there.

It cannot be denied that the name of the SS is connected with these murders and misdeeds. In the face of all the world this confession must be made in this Trial. And just as every German must be ashamed that such horrible and inhuman things occurred in his country, even more should every SS man search himself and examine to what extent he is politically or morally guilty for these happenings. He should be concerned not only with the defense against the accusation of the Prosecution that every SS man has become a criminal through these crimes, but he should again look back upon his whole life and study when, where, and how he might have deviated from the road of true humanity—perhaps only in heart and mind. This he can do and must do—even if he denies his criminal guilt and maintains that he was for four years in the front lines engaged in hardest fighting, believing in Germany and her just cause. And if he feels shame, genuine shame—if only a little of it—then his reflections, then this Trial, will not have been in vain. Then that purifying feeling of guilt is present to which Pastor Niemöller has referred, a man who has been misunderstood so profoundly.

But even if that SS man should persist in his inner obstinacy, even if all those SS men should remain unrepentant—though from my visits to the camps I know that this is not the case—even then we would have to continue to serve earthly justice, we would have to examine whether, due to the concentration camps and other atrocities, the SS is to be considered a criminal organization, whether all SS men by those acts became criminals.

We therefore have to deal with the details of those matters, even though millions of people mourn the victims of the concentration camps, hundreds of thousands of the surviving inmates suffer from the aftermath, and even though the world accuses the SS in one single outcry of revenge.

When, in the beginning of March, I was charged with the defense of the SS, I found a considerable amount of material of the Prosecution, evidence taken in the main proceedings, and many documents which were assembled in the Document Book "Concentration Camps." But on the other hand, upon calm consideration—and that, in spite of everything, is essential—it is clear that if during the entire period before and during the war conditions in concentration camps were actually as represented, for instance in the picture "Concentration Camps," then it could not have been possible that hundreds and thousands were discharged, that work could have been carried on during the war as it was, and that finally, those

things could have remained unknown to the masses of people and to the mass of the detained SS men whom I now interrogated.

There were contradictions which could not be eliminated; in the American report on the development of the Buchenwald Camp from 1937 to 1943, the basis of which I do not know, the following, which is taken from a letter of the WVHA of 28 December 1942, is attached as an appendix: 136,000 people were brought into all concentration camps within a half year. During the same time 70,000 died. Though it is obvious that not just half of those new inmates died, but that 70,000 out of a total population of some hundred thousand inmates passed away in six months, the mortality rate is still frightfully high. Thus the Prosecution seemed to be right in affirming that the detainees were systematically exterminated, or at least killed through overwork. However, this was not in accordance with the order issued in a circular of 28 December 1942 by the WVHA, according to which the physicians in the camps were to take all measures to insure lower death rates and to maintain working capacity as high as possible, by adequate supervision of food and working conditions and by suggesting practical ameliorations which should not merely remain theoretical. Neither was this in accordance with the fact testified to by witnesses over and over again, that foreign and German commissions inspecting the camps, and even SS Führer themselves, gained a very good impression of the administration and the prisoners.

I have been, and am still, of the opinion that for me as lawyer and defense counsel the fact cannot be sufficient that the number of victims was huge and that the whole world said that they had been murdered and ill-treated by the SS system. In this decisive question, which is produced by the mass effect of a mutually-conditioned formation of opinions, in other words, a typical case of mass-suggestion of public opinion, there can be no "legally notorious facts"; there can be only clear facts which must be established without prejudice and bias. This is important for the following questions: who were the authors of each of these crimes which became the enormous number of anonymous concentration camp atrocities? Did they do it on their personal initiative or on order? Do they belong to a typical criminal group, and if so, to which one, in order to discover a collective guilt? In what relation do they stand to the organization of the SS, that is, to the tens and hundreds of thousands of members who had not been active in the concentration camps and who insist that they knew nothing of these crimes?

THE PRESIDENT: The Tribunal will recess.

[A recess was taken.]

THE PRESIDENT: Dr. Pelckmann, you have now been speaking for 2 hours and 28 minutes, so that, strictly speaking, you have got 22 minutes more.

HERR PELCKMANN: I had just put the questions which seemed important to me for the clarification of the connection between the SS and the crimes committed in concentration camps. I hoped that these questions, the elucidation of which might contribute to the speedier sentencing of all the criminals, would have been answered by the Allied courts which had been sitting on concentration camp trials since last year.

That is the reason why, Your Honors, I made an application to place at my disposal the records of all these trials for consideration. From them I might have discovered many facts which have come to my knowledge and that of the public only during these last weeks.

I have nevertheless left nothing undone to discover the truth. My application aiming at placing at my disposal the concentration camps' administrative files of the WVHA was handed in at a rather late date and I did not follow it up. I did not need to follow it up because I succeeded at last, in the beginning of July, in finding a witness whose testimony is, I believe, decisive in many respects for the discovery of the truth, that is, for the historical and, in this Trial, relevant truth. This witness is Dr. Morgen.

We are indebted to this witness for the discovery of three primary facts. First, the basic and profoundest reason for the killings in the concentration camps was the outlawry of the detainees, the omnipotence of the Police (Gestapo), and the weakness of justice. Secondly, the ordering of and organization of mass exterminations of Jews in special so-called extermination camps were undertaken by Hitler directly. Knowledge and execution of these orders were confined to a few initiated. Thirdly, an absolute sphere of secrecy, together with a diabolic system of deception, was designed to keep knowledge of the happenings in the concentration and extermination camps from the public and the prosecuting authorities.

I shall never forget my first meeting with this witness, Dr. Morgen. The entire nature and soul of this gigantic man bent forward in his chair seemed eager to communicate what he had known for about two years, and what he had viewed and experienced for months while living with detainees and personnel in these places of horror.

I shall skip the next sentences.

He had twice reported in detail, once to the highest competent German authorities, so that they might improve conditions; a second time in 1945 to the American investigating authorities for concentration camp atrocities. Both times his revelations were unanswered.

With flagging hope Dr. Morgen made his report for the third time, with which, as before, he wanted to help find the guilty, protect the innocent, and show the German people and the world the final guilt of the criminal leadership in the most horrible murders in world history. In this he succeeded.

I shall skip the next paragraph, which describes the concentration camp system and the participation of the SS.

The beginnings of the concentration camps are characterized by absolute illegality. It began with arrest without legal grounds. There were purely considerations of political expediency. But these have always characterized this means of power, which has been employed from the beginning of this century up to the present by many civilized states, particularly in times of great political tension, under various names. Although according to international practice there is nothing illegal in the establishment of such camps and the confinement of prisoners, it must be admitted that immediately after the seizure of power, and in the years 1933 and 1934, the execution of this arrest was accompanied by numerous atrocities and murders. Documents 1216-PS and D-926 speak a terrible language. There is sufficient proof that members of the SS were also responsible for this.

But soon the establishment and guarding of concentration camps were legalized. From 1933 or 1934 on they were financed from the budgets of the individual German Länder and administered by the Political Police. As head of the Political Police of all Länder except Prussia, Himmler in 1934 uniformly regulated the guard and administrative conditions. By taking over a part of the previous guard personnel, SA and SS men, he created the Death's Head formations and supplemented them with volunteers from all sections of the population, without consideration of membership in the Party and the SS. They were now intended exclusively for guarding concentration camps and comprised, in 1936, 400 men for the Kommandantur and 3,600 men for guard duties. They guarded about 10,000 to 12,000 prisoners in five concentration camps throughout Germany. I ask you to compare the then unusually large membership of the General SS with these figures.

In 1936 the concentration camps and their guard personnel were taken over to the Reich budget, and separated according to Kommandantur and guard personnel. At the beginning of the war the Kommandantur personnel consisted of 600 men; the guard personnel amounted to about 7,400 men. There were only six concentration camps in all of Germany, containing 21,300 prisoners, and as yet no labor or subsidiary camps existed. At that time there were about 240,000 members of the General SS. The Waffen-SS did not yet exist.

In my explanation of the question of the organizations I have proved that the "Totenkopf Verbände" (Death's Head Units), created in 1934 as special troops of the State, were not paid by the Party but by the Reich, and that they had in common with the General SS only a part of their name "SS" and the chief Himmler. (This follows in particular from Hitler's Secret Edict of 17 August 1938, and from Document SS-84.)

The following change after the beginning of the war, when the wave of destruction began to mount slowly in the concentration camps, appears to be important.

6,500 men of guard personnel were sent to the front with a newly activated division. Thus they were eliminated entirely from the concentration camp system. During the course of the entire war about 30,000 men were employed in the concentration camp system, as can be seen from the testimony of Brill and from Affidavit SS-68 (Kaindl). These included new arrivals and men departing. They comprised about 1,500 men of the original cadre of the Totenkopf Units, and 4,500 men originally from the General SS.

These 4,500 men were a part of altogether 36,000 members of the General SS who had been called up by 1940 under the emergency service decree and had become members of the Waffen-SS. The remaining 24,000 men of the concentration camp personnel—that is, 80 percent—originally had no nominal connection with the SS. These were 7,000 persons of German descent or extraction who had been called up, 10,000 German nationals who had volunteered to go to the front in the Waffen-SS, and 7,000 soldiers subordinate either to the Army or the Air Force. Many of the volunteers came from the SA, the Reichskriegerbund, the Party, and other organizations. All, with the exception of the original personnel of 1,500 men, had been assigned the task of guarding the concentration camps against their will upon the order of Himmler, and without having any connection with the Kommandoamt of the Waffen-SS. Only in the course of the war were these guarding and administrative units of Himmler's nominally taken over into the Waffen-SS; Himmler thus transgressed his powers. This was done in order to avoid continually having to free the personnel of the concentration camps from military service, that is to say, for reasons which were practically to eliminate the regulations of military supervision. After the unequivocal evidence given by the witnesses Reinecke, Jüttner, Ruoff, Brill, and many others, there can be no more doubt that the Gestapo tasks of the concentration camp system did not change for all of that, and that in particular the concentration camp system did not become a matter of concern for the Waffen-SS. Indeed, the entire concentration camp system, even after the formal transfer of the guard personnel into the Waffen-SS, was not directed and administered by the leading agencies of these organizations but by a special office, the well-known Amtsgruppe D in the chief office of the Economic and Administrative Main Office (witness Stein; Affidavits Fanslau, SS-41 and 100; Frank, SS-99).

I ask the High Tribunal to read the following three pages which deal in detail with the closely defined activities of Amtsgruppe D,

and also the actual part of Dr. Morgen's testimony on the extermination camps, dealing especially with the camps run by Wirth and Hoess.

This Amtsgruppe D, which was entirely separated not only from the other SS agencies, but also from the remaining departments of the WVHA, in regard to organization, personnel and also location, as shown in Affidavits SS-66, Kaindl, and SS-99, Frank, gave orders to the military personnel and Kommandantur personnel. All income from concentration camps, especially from work done by the prisoners, was credited to WVHA Amtsgruppe D, and was only temporary income for the Reich, which therefore did not benefit the Waffen-SS. The budget of the Waffen-SS was treated in exactly the same way as that of the Army. It was not connected with that of the Army, but established in the same way, adapted to that of the Army and brought into correlation by the same officials of the Ministry of the Interior.

Never—I should like to emphasize this—was a complete unit of the Waffen-SS assigned to guard concentration camps.

Thus, Your Honors, I have explained to you the jurisdiction of Kommandantur and Guard personnel and the administration of the camps, and have limited it as regards the General SS and the Waffen-SS.

Still more marked is the limitation of jurisdiction in the question of who had to decide on the admission and release or on the execution of prisoners. That was exclusively the Gestapo.

In this state of affairs there is no doubt that those responsible, directly or indirectly, for all atrocities and murders which occurred in the concentration camps are to be found at the head, in these two offices, and among the concentration camp personnel.

The witness Dr. Morgen, and many affidavits on concentration camps, emphasized however—I must point this out now for the purpose of further limitation—that the guards on principle had nothing to do with the internal administration of the camps, and that it was forbidden and impossible for them to enter the camps proper. Executions and shootings by order of the RSHA, and certainly those on the basis of the assumed right of the Commandant, were carried out by a detail of the Kommandantur staff, not by the guards.

As distinct from the concentration camps we have the extermination camps. They were established after 1942, after Hitler had declared war on the United States and now wanted to take his most-bloody revenge for this development of the war, for which he held the Jews throughout the world responsible. From the terrible descriptions of the witnesses Hoess and Morgen we still recall the technique of these mass killings.

From the testimony and affidavits of Hoess and Morgen and the examination of Wisliceny before the Tribunal and the Commission, we have now obtained a comprehensive picture of this whole murder system. Hitler and certain offices of the Chancellery of the Führer—with practice in murder from the extermination of the insane—employed the services of two experts, Reichsarzt (Reich Physician) of the SS Dr. Grawitz and Kriminalkommissar Wirth. The one developed medically the best methods for killing, the other, the best technique of execution in deceiving the victims and the surrounding world.

Aside from Wirth, the head of the extermination camp near Lublin, there was Hoess, the head of the extermination camp in Auschwitz, or rather Monowitz, who was at the same time head of the concentration camp at Auschwitz.

One of the persons who brought in these victims was Eichmann, who was incorporated in the Gestapo, and up to Hitler's order for the "final solution," that is, killing, deported the Jews to camps in the East.

The transports—as Wisliceny testified before the Commission on 5, 6, and 7 June—were accompanied only by police, including Slovakian and Hungarian police, and only in a single instance by SS men who had been drafted in Hungary as racial Germans.

All these extermination installations and details can be traced back to special orders of Hitler, or the Chancellery of the Führer, and were outside the framework of the normal concentration

camp system. For that reason, they did not have the normal chain of command and organizational form. Wirth was Criminal Commissioner without being an SS member. Hoess received extermination orders, aside from Himmler, only from Eichmann personally, without being allowed to inform his immediate superior, Glücks, the Inspector of Concentration Camps, of them. So Hoess testified on 15 April.

Now what follows from all these terrible events—from concentration camp atrocities through the Einsatzgruppen to mass gassings—for the charge against the SS?

The Prosecution says that all the crimes charged have been committed to such a great extent and in such vast proportions, that they and the criminal aims and methods must have been known to every member. The Prosecution thus says that knowledge of the criminal nature of these tasks is a preliminary condition for the judgment, and the ruling of the Court of 13 March 1946 is in agreement. The assertion of the Prosecution is based upon the following arguments:

Before, and particularly during the war, the press and the wireless, statements of official personalities and all manner of publications in the Allied countries widely informed the public of these states about the atrocities committed in the concentration camps and other crimes. Under these circumstances it would seem obvious to conclude that if in these countries such crimes were almost universally known, this must have been even more so the case in Germany, and particularly in the SS. The collective affidavits which have been submitted, and which are partly extensively proven, show that the majority of SS members deny any such knowledge. But, in addition, the defense has countered the charge with a comprehensive statement: the crimes committed within the limits of the German sphere of power were carried out under a minutely planned system of secrecy, so that the bulk of SS members not only did not know anything about them, but indeed could not possibly have done so. Whereas the charge of the Prosecution can only be made credible by the legally very doubtful use of deductions, the argument of the defense is proven by the facts. And such proof, Gentlemen of the Tribunal, has, in my opinion, been furnished by the defense.

Let us start with the concentration camps.

On the next pages—and I would ask the Tribunal to read them—I have described the veil of secrecy with all its regulations and circumstances preventing any publicity of the facts towards the outside world.

On looking back we can easily detect the close veil of secrecy and deliberate deceit. In all this time only five or six camps were existent in Germany, with about 12,000 prisoners in 1936 and 21,000 in 1939. It is obvious that for this period

the charge of the Prosecution is not valid, which maintains that on every one of his journeys every German passed many concentration camps on his way. But the relatively small number of concentration camp personnel, a few thousand, also makes a spread of information about circumstances in the concentration camps seem unlikely. The majority of this personnel—the guards—were not allowed to enter the camp proper.

Characteristic of the deception of the public are the statements of Himmler made at an inspection of a concentration camp by Wehrmacht officers, which are contained in the collection "National Political Course of Instruction" (Document 1992A-PS).

The prisoners consisted of Communists and criminals, who were in part assigned to the camp only for a few months, in part for a longer time. He mentions the cleanliness in the camp, the frequent washings and change of linen, and the use of toothbrushes. Thus the impression had to be given to the visitors that the criminals were really an anti-social element of the lowest grade who had a bearable life in the camp. Numerous affidavits declare that visitors, precisely from SS circles, for example in visits of Junker schools, found orderly conditions and the prisoners in a satisfactory state of nutrition.

The greatest secrecy prevailed in these camps. Not only the official execution of death sentences of courts, but also the execution instructions of the RSHA, which began only at the beginning of the war, and certainly the murders resulting from the lust for power of the commandants, were not undertaken publicly. Dr. Morgen describes this in detail in his Affidavit Number SS-66. In his examination he described all the clever methods to disguise murders as natural deaths, and thus to deceive the civil courts and, from 1940 on, the SS courts.

I ask the Tribunal to consider in these questions for once, that the deaths and mistreatments began on a larger scale only with the beginning of the war.

The obligation to absolute secrecy was incumbent not only upon the personnel but also upon released prisoners. The affidavits of prisoners, which the Prosecution has submitted, frequently emphasize this order for secrecy, but it is striking that they themselves do not claim to have violated this order (Document 2334-PS). According to our professional experience these orders of secrecy had a very strong effect even where a condition of great confidence existed. The fear of being returned to the camp for any indiscretion was too great.

Since the use, in 1934, of the Death's Head Units as camp personnel, the General SS, and later the Waffen-SS, no longer had anything to do with the concentration camp affairs and certainly not with the Kommandantur personnel in personnel or legal questions. The Amtsgroupe D of the WVHA, with their small group of 30,000 men of the above-mentioned nominal Waffen-SS, had become an independent and separate system with their own telephone and teletype net and their own couriers to the concentration camps. Only the Gestapo had a channel into the concentration camp, into the so-called political department, which was subordinate to it and usually run by an investigation secretary. Here also there was no connection with the rest of the SS.

It is important for the question of secrecy that, as Kaindl explains in Affidavit SS-68, the staffs of the Kommandanturen were until the middle of 1942 made up of the same personnel which they had had at the beginning of the war. Thus, too, knowledge of the

conditions and events could not be spread before 1942. From a psychological point of view one must consider that the persons responsible for orders issued or received did not have the slightest reason to talk about their sinister acts.

Owing to lack of time I shall have to skip the next pages and would ask the Tribunal to take notice of them. They deal in detail with the counter-propaganda deliberately undertaken by the German side, and provide a large quantity of evidence from affidavits and testimonies before the Commission. The same is true of the mass extermination camps at Auschwitz, Monowitz, Treblinka, and so forth.

In my opinion, the witness Dr. Morgen has described authentically by vivid examples how difficult it was to look behind the scenes. He has explained in detail how, through the co-operation of commandant, physician, and prison director, often together with devoted "Kapos," any crime could be concealed in such a way that neither the judicial authorities up to 1939, nor later the SS courts, nor the other prisoners, noticed anything.

These conditions led to terrible murders and mistreatments. But in the interest of objective determination of the truth, and to evaluate these events in the light of the collective guilt question, I must emphasize Dr. Morgen's statement that we encountered camp commandants and physicians who did everything humanly possible for the prisoners. And I may recall the answer of the President to Mr. Dubost in the session of 18 January 1946, that prisoners of all camps would have to be examined if he wished to prove that things had been so murderous and inhuman everywhere.

I do not intend to defend the SS courts here. Their fate is not an issue at the moment. But does it not give cause for reflection if even they recognized only in 1943—and that by accident—that the so carefully camouflaged deaths were in reality murder? Does it not give cause for reflection if one sees the resistance of influential people—Pohl, Kaltenbrunner, Müller—which went so far that Pohl, during the investigations, issued an order to all commandants that SS judges were to be permitted to enter the concentration camps only with his express approval?

The Prosecution have not attempted to shake the testimony of Dr. Morgen on this essential point of secrecy. It appears to be unable to do so—although it apparently is in the possession of all files of the WVHA, and probably also those of the Main Office SS Courts since it published in a pamphlet the text of the testimony of Mrs. Eleonore Hodis, which she gave to the former investigation judge Dr. Morgen against Hoess in the autumn of 1944. That the Prosecution has absolutely no possibility of refuting the testimony of Dr. Morgen, I should like to conclude from the fact that it attempted at one time to end my examination of the witness by saying that I was acting in this examination only in favor of the Prosecution, whereupon, in contradiction to this, the Prosecution did not care to proceed to a cross-examination of the witness, stating that his evidence had been refuted by all evidence taken before.

No, I do not have the least doubt that the men in charge tried with all the means at their command to shroud the crimes in the concentration camps with ever-increasing secrecy—and I believe to be in a position to prove that they succeeded in doing so.

In the case of the mass killings particular caution is required. On this point the evidence given by the witnesses Hoess, Wisliceny, and Morgen is practically in agreement. There did exist special channels of command from the Reich Chancellery to Wirth, or from Himmler to Eichmann and Hoess. All those witnesses agreed that only a very few were employed and initiated. For the case of Auschwitz, Hoess speaks of about 60 men; for the entire process of extermination Dr. Morgen, in Affidavit SS-65, speaks of only a few hundred. Wisliceny also affirms a number of about 100 for the Eichmann case. The pretense of a mere deportation, which was kept up among the Jews and the personnel accompanying them from the beginning until the horrible end, and

the fact that confidence men from among the victims themselves were used, made possible the inconceivable fact that hundreds of thousands were murdered without the outside world knowing anything of it. All witnesses stated that the landscape there is deserted and bleak, with occasional chimneys of factories. I shall not re-enumerate the devilish tricks by which primarily the victims themselves, but at the same time the external world and the German people, were deceived.

May I also refer to the evidence given by the witness Von Thadden, who, upon command of the German Foreign Office, visited camps accompanied by numerous foreigners so that they and he himself might become convinced that there was no truth to the rumors about the complaints. Theresienstadt was also visited as an example of one planned separate Jewish settlement and, as the witness Hoess said, conditions there were found to be satisfactory. In 1942 there was published, in the so-called Protectorate, a law concerning the formation of a closed settlement at Theresienstadt (Document SS-95). Thus all the world had to assume that the claims concerning deportation were correct. Why should the SS men, too, who had nothing to do officially with these matters and did not know more than others, fail to believe this? Whether the so-called "Umsiedlung," that is, the deportation, constituted a crime as defined by the Charter, that is another question which will be dealt with later.

Above all, one should not forget that all this happened during the war. The bulk of the SS men were continually employed at the front. The witnesses Brill and Blume gave their total strength at the end of the war as approximately 580,000. Entirely occupied by the action in the field, they knew nothing of what was going on behind their backs. If it was known at all that men in the same uniform served in the concentration camps, they felt no inner relationship to them and had no inner or external contacts with them (witness Hausser; Affidavit Gille and Affidavit Steiner). Quite infrequently personnel was transferred from concentration camps to the front.

The fact that there did not exist in Germany any free dissemination of news was necessarily supplemented by a strict prohibition of the import of foreign newspapers and the listening to foreign stations. Generally speaking, the Government succeeded with those measures. The official statements that the foreign news services contained nothing but propaganda were believed in the Waffen-SS too, because occasionally enemy news had proved to be incorrect. This the Defendant Fritzsche has explained. Finally, this system of prohibition was supplemented by a well-calculated positive German official propaganda. In 1942 Himmler himself declared, in a speech before the Junker School at Tölz, that there were found in the concentration camps mainly criminal elements who, if treated decently, could be educated through positive work to become useful members of society (Affidavits SS-119-122, Von Saucken). Such a contention had to be believed, since the ever-increasing shortage of manpower made it essential to save every human life and to exploit to the utmost all available manpower. Particularly typical in this connection is the Affidavit Rothemund (Affidavit SS-12), because it shows how expedient this explanation was considered by all authorities concerned since it established confidence. This witness testified that at the end of 1943, in his capacity as assistant to the Chief of the SS Personnel Main Office with the RSHA, Amt IV, and with the WVHA, Amtsgruppe D, he had inquired whether the rumors about the killings of Jews were true. He was answered that that was mere enemy propaganda. The WVHA added that the prisoners were indispensable manpower for the armament industry, without whom Germany could not get along.

Not even the highest authorities of the Reich were in a position to gain insight into the true situation. The witness Von Thadden has given details how, by clever play with truths and untruths, Eichmann succeeded in deceiving the Foreign Office. The examinations of the Jewish camps by the witness, whether alone or in the company of representatives of the protective powers or the Red Cross, gave no reason to suspect the mass killings. Eichmann knew how to forestall further examinations in those camps where exterminations of Jews were carried out by the irrefutable contention that there highly secret armament orders were placed, namely, the production of V-weapons, and that therefore no access could be given to those camps.

I have, furthermore, given proof that the Gestapo, in reply to official inquiries in 1942 or 1943, told the Ministry of Justice, personified by the expert for the

prosecution of rumor-mongers, Kuehn, that the rumors about the extermination of the Jews in the Eastern territories were mere inventions. This affidavit has been rejected by the Commission on the grounds that it did not concern the SS. May I now apply for the admission of this document?

The Defendant Fritzsche as a witness has also given a number of clear examples how he, in his official position, did not succeed in obtaining a verification of the rumors concerning the persecution of the Jews, but that he had to conclude the opposite as a result of his examination.

Nothing has been given as proof that the bulk of the SS knew anything of the activity of the Einsatzkommandos.

To refute the question of whether knowledge existed of the biological experiments in the concentration camps I wish to point only to what I consider a grotesque fact—that extensive testimony was taken on the question of whether the witness Göring had known of them. I might state those experiments were carried on only in a few camps and that, as proven by various affidavits, they were carried out only after the prisoners had voluntarily agreed to them; but I am not going to do so because I am not willing to defend them at all, and I do not wish to create such an impression. I am content to refer to the argument about the knowledge or ignorance of Göring in this matter, and to the question as to what evidence has been taken in favor of the unknown SS man. There can be no doubt that through the carrying-out of criminal experiments, and through his knowledge thereof, the director of the Ahnenerbe, the witness Sievers, is charged with guilt, but certainly not his co-workers, since those experiments constituted about one percent of the total research program.

Finally, I would like to quote in regard to the knowledge of those crimes an article which I found in the *Berliner Blätter*, 1946, Number 1, Page 54. From an article by Oskar Götz, entitled "The Jew in the Third Reich," I quote:

"We, for instance, in Camp Theresienstadt, considered the gassings in Auschwitz, the other crimes in the death camps of Mauthausen, Maidanek, Ravensbrück, and Buchenwald to be only rumors, in fact, immeasurably exaggerated rumors. The things that actually happened in Auschwitz, for example, did not authentically come to our attention in Theresienstadt before the spring of 1945, when a few survivors returned from Auschwitz after the camp was dissolved. In the interest of a just evaluation of one's contemporaries one must be factual, and should desire to be factual. No guilty person should go free, but no innocent one should be burdened with guilt.

"And in the interest of calming public opinion in the future, a greater measure of objectivity is urgently required."

I wish that this example of objectivity, which someone who was humiliated by the Nazi regime and the SS still managed to preserve, might become an inspiration to others.

If now one were to reach the conclusion that, apart from a certain definable, or more or less definable, group of culprits—the witness Dr. Morgen mentioned certain circles of culprits within the concentration camp system—the great mass of the SS had no knowledge of the crimes—although most of them, as well as the rest of the Germans, had no knowledge even of the deportations—this fact could be considered criminal under Article 6a of the Charter only if it were in connection with a war of aggression. I have already mentioned before that the bulk of the SS were not aware that they were waging a war of aggression.

Your Honors, President Roosevelt declared in his speech of 25 October 1941, on the occasion of the shooting of hostages by German forces of occupation: “Civilized nations for a long time upheld the principle that none should be punished for the deeds of another person.” Justice Jackson declared on 28 February 1946, that: “The aim of declaring the organizations criminal is to punish assistance in these crimes, though the real authors could never be found nor identified.”

Can they really not be found? Is the contrary not proved by the great number of trials, which I just mentioned before, for concentration camp crimes before Allied military courts, which pronounced 153 death sentences out of 241 defendants? Does the Prosecution still maintain that they have not yet found the real authors, though for more than a year all persons who had anything to do with the concentration camps are under arrest, and though all detainees are today grouped in organizations and are at any time at the disposal of the Tribunal as witnesses? All files and documents, too, are in the hands of the Allies. Despite that, and despite the discrepancy of these two quotations by Roosevelt and Jackson, I shall assume for a moment the point of view of the Prosecution that such a collective criminality exists. Then within its framework the principle still stands that none shall be held responsible for a crime which he did not commit. It means that in this case, too, the number of accused should be held as low as possible.

This limitation can be made in two ways, either separately or combined, according to:

1. The degree of responsibility, that is, the position or the rank held in office;
2. The subdivisions of the whole organization known as SS.

The Prosecution have, to my knowledge, already made this first limitation in their charge against the Party and the Government. From the Party, the Political Leaders only, and from the executives of the German State, the Reich Cabinet members only, are to be put on trial.

As for the limitation of responsibility, a line must be drawn between moral and legal responsibility. The question must be asked, what ought each individual in his respective office to have done if asked to commit a crime upon order, or if he only heard of such a crime? What could reasonably be expected of him?

As for a limitation according to the subdivisions of the whole organization, this can be justified by the fact, which I have thoroughly explained, that these groups had very definite and separated spheres of activity and differed very much as to their knowledge of other activities, and perhaps crimes. A subdivision as to beginning and end of membership, too, would be conceivable and would permit a collective exception of drafted members.

But even for a sentence limited in such a way it seems to me absolutely necessary, in view of the grave consequences brought about by Law Number 10, to insert in the text of the verdict, or to add to the reasons given for the verdict, that each individual member would have an opportunity to object, except as provided under Law Number 10.

Lastly, I want to draw attention to a procedural obstacle to the conviction sought: the meaning of the accessorial sentencing of a member of an organization as an accused individual belonging to this organization seems to me the following, according to Article 9: An organization shall be held responsible for the acts of an individual defendant, who is a member, only if between the acts of this individual defendant and his organization such a connection exists that for legal reasons accessorial liability of the organization is deemed necessary. Such causal connection exists only if the individual defendant committed the deed as a member of the organization, be it that he thereby accomplished the aims of the organization, or that he used the organization for its commitment. On 28 February 1946 Justice Jackson stated: "Individual defendants, at least one of them, must have been members of the organization, and must have been sentenced for a deed by which the criminality of the organization has been ascertained." In the case of the organization of the SS, which I represent, this means: An SS organization can be declared criminal only if at least one of the defendants belonged to it, and was sentenced for a crime which he carried out either through the organization, or which must be considered a result of the aims of the organization and was committed in their realization.

With one exception, about which I am still going to speak, all the defendants stand before this High Tribunal for acts which they have performed as the chiefs of important State or Party offices, but not of the SS, and which they carried out in the fulfillment of their tasks. The fact that a few of the defendants held honorary

ranks in any one of the SS organizations is not enough to consider the SS organizations co-responsible for deeds for which they were not responsible and in which they did not share.

The Defendant Kaltenbrunner might be an exception. He is indicted in his capacity as Chief of the Security Police, that is, the Criminal Police and Gestapo, and the SD, including those deeds which were carried out by the SD. But the SS organization cannot be incriminated by that. The Criminal Police is not indicted. The Gestapo is indicted as such. The indictment of the SD must also be considered as an independent one. It is true that it was originally connected with that against the SS, but the SD was later given its own defense counsel and throughout the whole proceedings it was treated independently. Since 1934 SD and SS were separated. The sentencing of Kaltenbrunner therefore would, if at all, give only a formal basis for the sentencing of the organizations of the Gestapo and the SD, but certainly not of the SS.

As far as the method of the proceedings is concerned, I might point out that none of the defendants concerned was ever asked whether and to what extent he committed his deeds for the SS, or as a member of the SS. This appears to me to be a shortcoming.

I have come to the end, Gentlemen of the High Tribunal. I said in the beginning that this Trial was a most gigantic criminal trial—but nonetheless a criminal trial. And therefore I venture to ask: what purpose, from the standpoint of legal policy, could and would a conviction serve? And I hear the traditional answer—retaliation and deterrence.

Certainly it is necessary to deter, not only the German people and especially the former Nazi formations, but also all those everywhere who might ever be tempted to bow to dictators, or accept anti-democratic methods, and to make them face the severe consequences of the violation of international law, the new universal law now incorporated within the Charter. This Trial should be the last warning to those who do not heed the demands voiced by the world and all its peace-loving citizens, for freedom of speech and religion, for freedom from want and freedom from fear. The war, the terrible consequences of the defeat, the detention of hundreds of thousands of prisoners of war, the painful months of the proceedings here, the political investigations and occupational limitations—all these carry such impressive and deterrent effects that they will have for all of them the result we hope for.

But, Gentlemen of the High Tribunal, one thing above all: your armies have freed Germany from the tyranny of Nazism; now free the world from the curse of retaliation! The world can recover only when an end is made to the hateful slogans directed against races, nations, classes, or parties.

I say this, though I know that there will be many SS men, just as there will be many on the side of the Allies, who will fail to understand the meaning of my words. But they, too, sometime, will come to recognize the eternal truth of the word: "We are here to love, not to hate."

And thus I would like to summarize my defense of the SS.

I indict every one of the murderers and criminals who belonged to that organization or one of its units—and there are more than a few of them.

I acquit the thousands and hundreds of thousands of those who served in good faith, and who therefore share only morally and metaphysically, not criminally, the guilt which the German people must bitterly bear.

But I warn the world and its judges against the commitment of mass injustice in legal form, against the creation of a mass of condemned and outlawed individuals in the heart of Europe; I warn, so that the longing of all peoples and men may be fulfilled.

May God bless your judgment!

THE PRESIDENT: Now, I think the SD will come next.

DR. GAWLIK: I will adhere strictly to the ruling of the Court and only read parts of my statement.

May it please the Tribunal, I do not regard it as my task as counsel for the SD to palliate injustice or to avoid punishment for the people who are responsible.

In the proceedings against the SD we are not concerned with the question whether individual persons must be punished for crimes committed. It is much more important to determine whether, according to the outcome of the evidence submitted, 3,000 officially active persons and 30,000 purely honorary officeholders, who were collected under the designation SD in Ämter III and VI, can be declared criminal.

I have to deal with this question alone. I have to prove whether the charge made against the SD by the Prosecution is justified on the basis of the Charter and, so far as it is admissible according to the Charter, justified on the basis of international law, of national laws, and of legal principles developed by jurisprudence.

I shall first of all take a stand on the legal problem, in order to discuss in the second part of my presentation the factual circumstances under consideration of the result of the evidence. The first part is divided into two sections: In the first section I shall discuss the questions arising from the law itself; in the second, the questions of procedure.

In the material legal part I shall first investigate the question of the organizations and groups in relation to the SD. Then I shall

investigate, (a), what prerequisites must be complied with in order that an organization or group can be declared criminal, (b), what conclusions can be drawn from such findings. Finally I shall investigate, (c), whether the basis *nulla poena sine lege* is opposed to a sentencing of the SD.

I start with the explanation of the word "SD," the Security Service. The word has no unequivocal meaning. The SD originally referred to:

- (a) the SS Formation SD
- (b) Ämter III, VI, and VII.

These were, as it is shown from the interrogations of the witness Hoepfner, two completely different groups of persons.

(a) The SS Formation SD included all persons who were members of the SS, or candidates, and were employed with the Security Police, or with other organizations of a police character (for instance, the Customs Frontier Protection), or with the SD Intelligence Service. This SS Formation SD had no task and no aims. It exercised no activity for a common general purpose. Its members never met for common service or at other general gatherings. They lacked any feeling of solidarity, since they served independently of each other in different organizations. I refer particularly to the testimony of the witness Hoepfner before the Commission and before the Tribunal. It was purely a matter of a registered compilation of SS members and SS candidates of certain professional groups. The members of this SS Special Formation SD wore the SS uniform with the badge "SD" on the left sleeve. The different branches were thus not outwardly distinguishable.

(b) Ämter III, VI, and VII were the Domestic Intelligence Service, the Foreign Intelligence Service, and the Scientific Research Service. They were the SD offices in the Reich Security Main Office (RSHA) which was founded in 1939, in contrast to the Security Police (Sipo) Ämter IV and V. Amt VI was merged on 12 November 1944 with the military Counter-Intelligence; both became the German Intelligence Service. I refer here to Document SD-1, and Schellenberg's affidavit, SD-62.

There was, moreover, the Reich Security Service, but that was something else. The Reich Security Service provided the guard for leading personalities of the State. This organization did not belong to the Reich Security Main Office, nor was it part of the SS. The Reich Security Service was under the then Brigadeführer Rattenhuber, whose immediate superior was Himmler.

Ämter III and VI of the Reich Security Main Office, the Domestic Intelligence Service and the Foreign Intelligence Service, are the ones indicted. Amt VII, although designated as SD together with

Ämter III and VI, is not indicted. I refer particularly to the minutes of the Commission of 23 July 1946. When speaking in my further statements of the SD, I mean by this only the indicted Ämter III and VI. Ämter III and VI of the RSHA were not organized until September 1939.

In a formal sense, therefore, the Prosecution can only refer to the period which has elapsed since that date. In contradiction to this, however, accusations have also been made against the SD with reference to a period before that. Therefore, against the formal text of the Indictment, I shall also make the time before that the subject of my speech.

Ämter III and VI were not indicted separately, but as part of the SS. The Prosecution therefore considers the SS as an organization or group within the meaning of Article 6 of the Charter, and the SD merely as a part thereof. Is this correct? To decide this question, a definition of the terms organization and group within the meaning of the Charter is required.

The American and British Prosecutors, in their opening speeches of 28 February 1946, considered the following prerequisites to be necessary for an organization:

- (1) an alliance of persons with an identifiable relationship,
- (2) a common general purpose,
- (3) the voluntary character of the alliance.

On this definition, which is also in accord with German jurisprudence (*Juristische Rundschau*, 1928, Page 688), I shall base any further arguments.

The decision, therefore, hinges upon the questions as to whether there existed between SS and SD:

- (a) an identifiable relationship,
- (b) a common general purpose.

For the period up to the end of 1933 and the beginning of 1934 this must be answered in the affirmative. I refer in particular to the witness Hoepfner. For this period, therefore, the arguments of counsel for the SS are applicable to the SD, and I shall in consequence make no fundamental statements for this period. For the later period the question as to whether an identifiable relationship existed between the SS and SD must, however, be answered in the negative.

The Reich Security Main Office was not one of the offices of the SS Supreme Command, as has been asserted by the Prosecution. Nor is it true that the RSHA was a department of the SS. Here the Prosecution contradicts itself, since the Gestapo, which was Amt IV of the Reich Security Main Office, is not indicted as part of the SS, but separately.

If the assertion is made in the trial brief against the SS, Page IX, that the SD was an espionage division of the SS, this is obviously, insofar as a division of the SS is meant, a confusion with the SS Special Formation SD. There was no supreme common command over both the SS and SD after 1934.

The connection between the SS and the SD required for the conception of organization was not established through Himmler's person; for in that case this obvious connection must also have existed with the Police, and would have existed even with the Reserve Army, as from 1944. It is true that Himmler strove for the amalgamation of the SS, the SD, and the Police through the creation of a State Defense Corps. This, however, was a plan for the future which had as yet not materialized. Neither was this required union created by the Higher SS and Police Leaders, as they had, as a matter of principle, no essential disciplinary authority over the members of the Ämter III and VI.

The recognizable association necessary for the conception of an organization could not have existed since 1934, if only for the reason that only 10 percent of the regular and honorary members of the Organization SD were members of the SS; 90 percent were not members of the SS and did not wear the uniform of the SS Special Formation SD with the insignia "SD." During the war about 50 percent of the SD were women.

Aside from the required recognizable connection between the SS and the SD, a collective general purpose was also lacking since 1934. For this I refer to the testimony of the witness Hoepfner.

The SD, therefore, was part of the SS only until the year 1934, as an organization according to Article 9 of the Charter. After this period the SS and SD were no longer united in one organization according to the Charter.

Did the SS and the SD during the period after 1934 form a group according to Article 9 of the Charter? It may be doubtful whether the legislator really desired to establish a distinction from a legal point of view between "group" and "organization." The wording of Article 9 of the Charter might indicate that none exists. It says there that groups or organizations may be declared criminal organizations. A group, too, can therefore be declared a criminal organization. If, however, a distinction is assumed, I wish to state in this connection the following:

The Prosecution have stated that the concept of the group should be taken from ordinary parlance. When explaining this concept common sense should be used. According to ordinary parlance a group is a numerically small community of persons. Of 15 to 20 persons we speak as a group; not, however, for larger unions. We speak of the fact that groups were formed within a party, or

within an association. The group is part of the organization, according to ordinary parlance. A group, therefore, is a subdivision of an organization.

In this connection I should like to point to a finding of the Reich Supreme Court of 8 May 1922. This finding states that within a bigger association of persons following some general aims, a group may form in order to pursue a definite individual aim. This may occur particularly if the larger association pursues approved aims with approved means; part of the members, however—perhaps without the others being informed thereof—have united for activities which attempt to further the general aims in a forbidden manner.

Article 9 of the Charter therefore might be explained as follows: We can declare as criminal:

- (1) an organization, or
- (2) a group as part of an organization.

The SD could have been a group, during the period since 1934, only if it had been part of the SS. This, however, as I already stated, is not the case. Result: Since 1934 the SD was not part of the SS as an organization or group according to Article 9 of the Charter.

I come to a further question: Were the Ämter III and VI a centralized organization or group, or were they two separate organizations in the sense of the Charter?

The Ämter III and VI had neither an identifiable relationship nor a collective general purpose. This held good for the time after 1939 when Ämter III and VI belonged to the Reich Security Main Office (RSHA), as well as for the period prior to 1939, when they were united in the SD Main Office. Amt III was the Domestic Intelligence Service, Amt VI the Foreign Intelligence Service.

On the basis of the presentation of evidence it can be considered as proved that the aims, tasks, activities, and methods of Ämter III and VI were always completely different. The fusion of Ämter III and VI in the Reich Security Main Office does not suffice to prove a recognizable connection between both agencies, and to establish that they have a general task in common. The Secret State Police, Amt IV, and the Criminal Police, Amt V, also belonged to the Reich Security Main Office. The Gestapo is rightly considered by the Prosecution as an independent organization and has been charged as such. The Prosecution has evidently the same opinion regarding the Criminal Police, against which no charge was made. Just as the Gestapo and the Criminal Police, through union within the RSHA, lose their character as independent organizations, the

fusion of Ämter III and VI failed to create a recognizable connection and common general task for both these offices. The Reich Security Main Office was only the designation of an administrative agency. I refer here to a statement made by the witness Best.

The SD, therefore, was no uniform organization within the meaning of the Charter, and Ämter III and VI could really only have been two separate organizations, if one were further to establish voluntary membership.

According to the speech of the Prosecution it should not be necessary for each member to be a voluntary one. The Prosecution considers it unimportant if a small part or small percentage did not join voluntarily. Let me point out in this respect that this juridical standpoint does not tally with German jurisdiction. In 1928 the Reich Supreme Court established that for an association, which would correspond to the Charter's concept of an organization, the voluntary contractual union of all members was required. I leave the question undecided as to whether an organization can be considered as existent even though a small percentage of the members did not belong to the society on the basis of a voluntary contractual union, because this point is not of importance as far as the SD is concerned. The examination of evidence has revealed that during the war the membership of a considerable portion of the members of the SD was not voluntary, but based on a legal ordinance, in the form of compulsory service or emergency service. I refer to the deposition of the witness Hoepfner, who revealed that during the war an estimated 50 to 60 percent of the members belonged to the SD by virtue of a legal ordinance. These statements are supported by the affidavits which disclose on an average the same percentages for a number of offices. Moreover I refer to the collective list of affidavits submitted by me on the subject.

The legal prescriptions on which, since 1939, compulsory service and emergency service were based are to be found in Documents SD-65 to 69 submitted by me. I especially refer in this respect to Document SD-65, reproducing the circular of 16 October 1940, in the version issued on 1 July 1942. It is expressly stipulated in this circular that the SD regional agencies, as offices entitled to such claims, can ask for replacements of personnel. Likewise no withdrawal was possible during the war for those who joined the SD voluntarily. In this connection I refer to Affidavit SD-22. It is therefore not accurate for the Prosecution to maintain that membership in the SD was voluntary.

Consequently, on the basis of the juridical standpoint brought forward by the Prosecution, Ämter III and VI cannot for the duration of the war be considered as organizations as conceived by the Charter. Neither were they groups in the sense of the Charter,

because a group, as part of the organization, requires the characteristics of an organization, including voluntary membership. As a result, the following can be concluded:

(1) Until 1934 or thereabouts the SD was part of the SS.

(2) In the period from 1934 to 1939, Domestic Intelligence and Foreign Intelligence were separate organizations.

(3) Ever since 1939 they were no organization or group in the sense of the Charter, because the membership of a large part of the members was based on legal ordinance.

I now come to the question of what characteristics an organization must have to be called criminal.

1. The Prosecution have submitted that the organization

(a) must pursue a purpose which, according to the definition of Article 6 of the Charter, is punishable, or

(b) pursue legitimate purposes through means which, according to Article 6, are liable to punishment.

A further requirement, according to the Prosecution, is that the guilt of the members must be established. This means that the members must have known that the organizations pursued goals termed punishable according to Article 6, or legitimate goals by punishable means.

However, in the submission of the Prosecution an organization can be declared criminal even though not all of its members knew about the punishable purposes. This contention I cannot accept.

Professor Exner established, in detail and convincingly, in his final pleadings for the Defendant Jodl, that the action *per se* is not a crime, but that guilt must be there also. Without guilt there can be no punishment. Going further, Professor Dr. Exner has established that this principle can also be found in decisions of foreign countries. I refer to the statement made by Professor Exner, and I wish to point to the American Law of 28 June 1940, previously mentioned, which the Prosecution cited as an illustration of the fact that organizations can be declared criminal. This law expressly requires knowledge of illegitimate goals. In English law, too, it is a general practice that a person cannot be convicted unless it can be proven that guilty intent was involved.

The argument of the Prosecution, that knowledge on the part of some of the members is sufficient for sentencing the organization, could be upheld if Law Number 10 were drawn up differently; in other words, if by reason of Law Number 10 an investigation were provided to determine whether the individual member had knowledge of the incriminating goals and activities of the organization.

That is not the case, however. Law Number 10 provides for conviction of each member merely by reason of the fact that he belonged to an organization which has been declared criminal. The members can no longer argue in subsequent proceedings that they did not know of the criminal goals and purposes. The opinion held by the Prosecution would thus mean that in subsequent proceedings persons will be convicted who had no knowledge of the criminal goals or activities. This would be contrary to the fundamental principle known to penal law in the entire world—which I previously referred to—according to which proof of objective facts is insufficient for conviction and the presence of guilt must also be proven. In view of this, and since guilt can no longer be established in subsequent proceedings, it is imperative that the guilt of all members be established in this Trial before the International Military Tribunal. Only to the extent that this guilt has been established could the organization, or individual groups as a part of the organization, be declared criminal.

Guilt also includes cognizance of illegality. In this respect, too, I should like to refer to Professor Exner's argument, whereby he established convincingly that not every serious crime—and only serious crimes are being tried here—must necessarily presuppose cognizance that something punishable is being done, but certainly that it is wrong to act in that manner. The perpetrator must be cognizant of the fact that he commits an infraction of the law, or that he is acting in a manner considered naturally wrong. Professor Exner has also established that these principles prevail not only in German penal law, but he also cited a number of examples from English law.

In other words, the members are not only required to know the goals or methods of the organizations, in accordance with Article 6, but must also be aware that these goals or these methods are illegal, or in any case contrary to law. In that connection the question arises whether all members must have such cognizance, or whether it suffices that only some of them have it. Because—for reasons which I already explained—only such a person is liable to punishment who was conscious of the illegality, and because such consciousness can no longer be examined in subsequent proceedings, it must be established in the present proceedings for all members, for otherwise those members might be punished by virtue of Law Number 10, who did not have this consciousness. To renounce the requirement of cognizance of illegality would unduly raise the demands made on simple members.

The cognizance of illegality may equally be absent when a perpetrator executes an order given. The provision of Article 8 of the Charter merely eliminates superior orders as a general reason for

exclusion from punishment; but it is possible for an order to exclude the cognizance of illegality in individual cases. He who has recognized the illegality of his action cannot, according to Article 8, justify himself by reference to an order. In a case, however, where a person considers his action right and legal by virtue of an order given him, he must be exonerated. The provisions of Article 8 of the Charter can only have this sense and this meaning.

The question whether the plea of superior orders furnishes grounds for exoneration is not uncontested in international writings. Article 8 of the Charter rules on this controversial question that the perpetrator cannot plead superior orders. Therefore I do not need to discuss this controversial question in greater detail. All authors, however, who deal with this question assume that the subordinate knew that the order was illegal and unjust. They deal mainly with the question as to whether the subordinate, although he was aware of the illegality and unlawfulness of the order, had grounds for exemption from punishment. It is to be concluded herefrom that in the absence of such knowledge, which may also be founded on an order, the perpetrator is exempt from punishment.

The French Prosecutor also stated that superior orders do not cover the execution of a deed which was obviously punishable. It would lead to an illogical result if one considered it inadmissible to cite an order as proof of the lack of illegality. He who carried out an act without an order would not be punished if he lacked the knowledge of its illegality. If, however, he commits the same deed on the strength of an order, he would have to be punished, unless one were to agree with my point of view. Such a misinterpretation would contradict the meaning and purpose of the Charter. Orders can, however, place the perpetrator under a state of compulsion, and for that reason exclude guilt.

It is a general rule of English law that any person is protected against punishment who has committed crimes under the stress of force employed by other people, and not as a result of unhindered and deliberate intention. According to English law this protection also exists in the relationship between the state and society, such as between the supreme power and the subjects of the state, and obedience to the ruling powers will act as an excuse if bodily force is exercised or imminent. Thus I arrive at the following result: An organization could only be declared criminal if

- (1) its purposes or expedients correspond with the requirements of Article 6 of the Charter;
- (2) all members knew these purposes and expedients;
- (3) all members were conscious of the fact that these purposes were illegal or unjust.

This result gives rise to two further questions:

1. A legal one, namely, whether the conviction of an organization can be brought into harmony with the general rules of international law and national law.

2. A factual one, namely, whether the necessary elements of the case can be established at all for all members of the SD, and whether a trial of this kind can be held at all.

Before I begin to discuss the legal question I take the liberty of drawing the attention of the Tribunal to the fact that the stipulation in Article 9 was not a compulsory rule, but only an optional one. Even if the conditions are present for declaring an organization as criminal, the Court can refrain from doing so. It may be assumed that the legislators pursued a purpose in not prescribing the conviction of the organizations as compulsory even if all the necessary conditions were fulfilled. It may be presumed that the legislators who promulgated the Charter desired to submit Article 9 to an examination under the rules of international law.

By this the authors of the Charter apparently, with regard to Article 9, wished to transfer the judge's right of examination to the International Military Tribunal. I expressly emphasize, in order to avoid any misunderstandings, that this refers only to Article 9, because in other respects the Charter is a mandatory rule. The International Military Tribunal was to examine Article 9 to determine whether this rule constitutes a further development of the legal concepts of international law and national laws, or whether it is in contradiction to these rules. The fact that Article 9 is a rule previously unknown in law especially points to the existence of such an intention. The question as to whether a formal law is in contradiction to other laws cannot be immediately investigated when the law is issued. This can only be determined in the course of the practical application of the law and after research by scholars.

English constitutional law, with its special concept of the constitution, does not recognize the judge's right of examination. The Union of the Socialist Soviet Republics does not recognize the judge's right of examination either. In France the judge's right of examination is rejected by the courts, but is almost unanimously accepted by legal scholars. In the United States the judge's right of examination is generally recognized. The courts of the United States are required to compare the laws which have been issued with the Constitution, and to discover the true intentions of both.

I believe that the international community of nations comes close to the federal system of the United States, and that therefore the International Military Tribunal is justified in examining the relationship of Article 9 of the Charter to the generally recognized

rules of international law and also the laws of individual nations which, according to the statements of Justice Jackson, are likewise to form the legal foundation for the decision.

Concerning Article 9 of the Charter, it must be added that it is a precept unknown to the previous laws. It can obviously be presumed, and undoubtedly needs no further explanation, that the nations which promulgated the Charter wanted to develop further the basic concepts of prevailing international law and bring it into legal form, and that in doing so they certainly had no intention of placing themselves in opposition to the rules of international law. All written law, however, requires careful and scholarly examination and revision, to allow a reasonable application in practice to become possible. Only in this way will the courts be placed in a position to reach verdicts which are really in accordance with the facts. The International Military Tribunal, therefore, on the basis of the judge's right of examination to which it is entitled, will have to examine the relationship of Article 9 of the Charter to the general basic legal principles of international law and the national laws of civilized nations.

In this connection we have to start from the legal significance of the assertion, permissible according to Article 9 of the Charter, that an organization can be criminal. Article 9 varies basically from the corporate penal law as introduced, for example, into English law by Section 2 of the Interpretation Act of 1889. Punishment according to corporate penal law is directed at the organization. According to Article 9, the sentence can no longer affect the organizations, because they have been dissolved and no longer exist. The sentence is directed against the individual members, because the verdict of the Court is the basis for the subsequent proceedings according to Law Number 10.

Two other important differences must be mentioned:

(1) According to corporate penal law, especially English corporate penal law, no imprisonment sentence is permitted.

Article 9 is, nevertheless, intended as a basis for imprisonment sentences and even death sentences, as provided in Law Number 10.

(2) According to English corporate penal law, no crimes and offenses can be prosecuted.

If we examine English jurisdiction, we find that corporations have been condemned only on account of transgressions, especially on account of neglect of public obligations, such as failure to repair streets or bridges although such an obligation existed, blocking of a street by a railway company, or for publishing a lampoon.

Article 9, on the other hand, deals with major crimes. Article 9 of the Charter does not accordingly amount to the introduction of corporate penal law into international criminal law.

A number of foreign laws have been quoted by the Prosecution, according to which it should be permissible to declare an organization criminal: from American law, the Law of 28 June 1940 and the "California Act"; from English law, the "British India Act Number 30" of 14 November 1936; from French law, the Law of 18 December 1893, Section 265 of the French Penal Law Code, Section 1 of the Law of 26 August 1944; and two legal decisions from Russian law.

THE PRESIDENT: Dr. Gawlik, I believe you are reading too rapidly.

DR. GAWLIK: The following German laws were also cited:

- (1) Articles 128 and 129 of the German Criminal Code of 1871,
- (2) The Law of 22 March 1921,
- (3) The Law of 21 July 1922.

In this connection it should be noted that according to all these laws only individual persons may be prosecuted, and that in the proceedings against such prosecuted individuals it may be established that the organization has a criminal character, without this having a legal effect upon the non-prosecuted members. It may thereby be established in proceedings against some members of the organization that the organization pursues aims contrary to law, while in subsequent proceedings against other members this may be denied.

Non-applicability of sentence against members who are not accused is however the decisive factor which distinguishes these laws from Article 9 of the Charter. The decision according to Article 9 of the Charter is, in contrast to the laws cited by the Prosecution, binding in the proceedings against the individual members before military tribunals, and indeed the sentencing of the organizations through the International Military Tribunal contains not only the effective establishment of the objective facts in the case, but furthermore an effective establishment of guilt for all the members, including consciousness of illegality, that is to say, a legal effect of hitherto unique significance in penal law.

Thus a verdict based on Article 9 does not amount to a further development of corporate law, nor to the sentencing of individual persons because of the membership in a criminal community of persons, but to a conviction of the collective members of the organizations, because the essential facts, which shall form the basis for later judgments in subsequent proceedings according to Law Number 10, have been effectively established for the collective members. In subsequent proceedings the sole question of membership must be examined. In other words: we are here concerned with the collective judgment of all members of the organization.

What is the attitude of international law scholars toward the question of collective conviction?

The majority of the American, English, and French international law scholars reject collective conviction as "arbitrary and contrary to the elementary principles of justice" (Garner in *International Law and the World War*, Volume 1, Page 154). The well-known authority on international law, Garner, rightly states that collective condemnation, even if it is applied in the mildest form, necessarily includes the punishment of innocent persons. Garner goes on to explain that for that reason a collective conviction should never be employed as long as other just measures fulfill the same purpose. The French legal scholars Bonfils and de Martons have condemned the basic principle of collective punishment in detailed dissertations, expressing the hope that collective conviction would disappear altogether.

These statements should be fully concurred in.

In the proceedings against the organizations past crimes are to be atoned for. In order to achieve this aim, however, the indirect way of convicting the organizations is not necessary. That aim can be achieved by instituting proceedings against individual persons who participated in these crimes, as has been done in a large number of cases.

On the basis of the general basic legal principles of international law and the national laws of civilized states, therefore, use should be made of the optional rule of Article 9, by refraining from declaring the accused organizations to be criminal. The persons responsible for the crimes can be punished in individual proceedings.

There now arises the question whether it is at all possible in this Trial to establish all the required facts.

To do so would appear impossible. Even to furnish proof that all members of the SD were informed of certain criminal goals would appear impossible. Guilt can always be established for the individual only. All guilt is bound to a person. If many persons participate in some offense or crime, the judge must examine the entire group of persons involved singly, in order to determine guilt, innocence, or complicity in a concrete and well-defined manner.

It seems entirely impossible, however, to determine whether all members were cognizant of the illegality and unrighteousness of the goals and tasks. In this connection we must also examine what was to be the standard for members of the SD in determining whether the goals or means were illegitimate or unrighteous. According to the German law in force while the organization was in existence, these goals and means were permitted, as I shall show in the section dealing with facts. It may be conceded that

the German legal measures conflicted in part with the provisions of international law, and that therefore goals and methods—while not illegal or wrong according to the law of the German State—can nevertheless be considered illegitimate and unrighteous according to the concepts of international law. But this is not the decisive point. What does count is whether the members, that is, all the members, recognized the illegality and unrighteousness of goals and methods which were legitimate according to German laws.

The well-known teacher of international law, Oppenheim, has stated that the law cannot demand that an individual be punished for a deed which he was forced to commit in virtue of the law. If the best-known authorities on international law cannot agree as to what is right and wrong, can one demand from ordinary members of the organizations that they recognize it?

The capital crimes which were discussed during the Trial, for instance, the extermination of the Jews, and the inhuman treatment in the concentration camps, require no discussion as to right or wrong. The organizations, however, are charged with a great number of punishable offenses, and the question as to whether primarily the perpetrators, and furthermore all members, knew of the injustice and the illegality, cannot lightly be answered in the affirmative.

Particularly where acts and deeds were committed during the war it is very difficult to decide whether they were recognized as illegal and unjust. In times of peace everybody knows that he must not kill, and that another's property is inviolable. Such acts are, however, partly justifiable in wartime. The soldier can kill the enemy. The confiscation of foreign property is permitted under certain circumstances. The individual who commits the deed, together with all the members, therefore has consciousness of illegal acts committed during the war only as long as he is aware of the limitations which are set by law.

A strict examination of these points in the case of the organization is particularly necessary, because their members were for the most part men who had no juridical knowledge, and to whom the limitations of international law are unknown. I believe that this is also the opinion of the Chief Prosecutor for the United States who explained in his opening speech of 20 November 1945 that a soldier assigned to an execution squad could not hold an investigation as to whether the execution was legally admissible.

While examining the question concerning the knowledge of the members as to illegality and injustice, the mistake should not be made of assuming that the simple members of the organization had the same knowledge which we now have gained in this Trial on the basis of documents coming from secret archives. Particularly in

the proceedings against the SD a great number of secret papers, documents, and regulations have been produced, which were only intended for the internal administration of individual offices. The content of these papers, therefore, testifies that they had not been brought to the knowledge of all members but only to that of a small definite circle. In this connection I wish to refer for example to the well-known Document L-180, the Stahlecker report, dealing with the activity of Einsatzgruppe A.

It can, therefore, already be said that a great part of the evidence produced by the Prosecution does not suffice for the collective conviction of the members of the SD. The documents do not even prove that the offenders themselves were conscious of illegality, because, in order to establish this, one would have to be familiar with the particular circumstances of the act. And it must still be proved that the members of the SD knew of these acts and recognized that the acts were illegal, or at least wrong.

I do not consider it necessary to discuss this question in the second part of my statement with regard to each act with which the SD had been charged; in my opinion it is sufficient that I have described the problem in general, and I will leave the examination in individual cases to the Tribunal. In each individual case, however, with which the SD is charged, and with each document submitted against the SD, the Tribunal...

THE PRESIDENT: Would that be a convenient point to break off?

[The Tribunal adjourned until 27 August 1946 at 1000 hours.]