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FOREWORD

This is the first Report to be published in this series of the trials in respect of Concentration Camps. These camps were main instruments of terrorism and atrocity utilised by Hitler and his lieutenants, at first before the war within Germany while he was establishing the Nazi domination over his own nation (this was a necessary preliminary to his plan of dominating the world), and later, after his victories in Europe, were used to crush the resistance in the occupied countries and to remove people likely to give trouble, and, most appalling of all, to effect the mass destruction of races or peoples who were odious to the Nazi mind or impeded his purpose of securing *lebensraum* for the Nazis. The number of concentration camps increased enormously as the war went on so that at the end of the war there were over 300 in Germany and the occupied countries. Of these that at Auschwitz in Poland had an evil pre-eminence—in it at least 2,500,000 human beings (or as some say 4,000,000) were done to death by being poisoned in gas chambers. These unhappy people had been brought in railway trucks under horrible conditions from the occupied countries : they were the survivors of those who started. How many died on the way is unknown. This use of poison gas chambers was the outstanding feature of Auschwitz. Belsen, which was closely associated, was in Germany and shared with Auschwitz the normal characteristics of a German concentration camp—filth, starvation, absence of sanitation or adequate medical equipment, overwork, ill-usage of every kind, beatings, hangings, shootings and every form of inhumanity. The forty-five accused were alleged to have come from one or the other of these two camps. They were all tried in one case, the objections of the defending Counsel, who were all British except one Polish officer, being overruled.

The trial lasted from September 17th to November 17th, 1945, the Court meeting on 54 days, and was conducted with scrupulous patience and impartiality. The Court was a British Military Court, convened under the Royal Warrant, the terms of which are explained in the commentary to the present Report. Jurisdiction was asserted under the military law, which entitles the Court to punish war crimes, limited under the Royal Warrant to crimes against Allied nationals, if the accused have been captured or by surrender or extradition or otherwise are in the custody of the Convening Authority, the Commander-in-Chief. Neither the place in which the offence was committed nor the precise nationality of the victims was in this context material for giving jurisdiction. The victims were all Allied nationals from ten different Allied countries, so that it was impossible to have a national judge for each nationality, but seats were provided behind the bench for each of the ten nations so that any national representative might be able to attend. For a few days I occupied the seat marked for the British observer and could observe and admire the fairness of the trial, though I noted, as in other such cases, that fairness was not generally compatible with expedition. The Report here printed summarises the evidence with considerable fullness, which at least will enable future historians and lawyers to have a sufficiently full appreciation of the facts.

The Court acting under the Royal Warrant was careful to see that the victims were Allied nationals, but as their number ran into millions at

Auschwitz and to tens of thousands at Belsen, it was impossible to state (as is usually done in murder trials) the names and identities of the great mass of the victims. The crimes were committed, in this as in other similar cases, in the occupied countries even though the victims had been deported from other countries and in many cases the period of their sojourn in the occupied country before they were gassed was very brief. They were, however, all the same under the protection of the Hague Convention, and also, if prisoners of war, of the Geneva Conventions.

The Royal Warrant did not cover crimes against peace or crimes against humanity.

The reader will find, I imagine, in the Report, all that he needs for understanding the facts, the law and the procedure and I shall say little in detail on these topics. I may, however, take this opportunity, perhaps rather by way of digression, of saying something about the effect which the disclosures to the world had on the prosecution of war crimes.

Auschwitz was attacked and recovered by the Russian forces on January 27th, 1945. A very short time before that date Buchenwald had been reconquered. Buchenwald was the first concentration camp to be opened and exposed to the public eye. I remember how difficult it was before these disclosures to interest people in war crimes. When people were told of the doings in the occupied countries, the slaughters, tortures, massacres and so forth, they were generally uninterested and sceptical. Some wag had invented the term " atrocity tale," as one would say " traveller's tale," and that was often enough to dispose of it. But the publicity given to Buchenwald and the other camps made a profound impression. The Houses of Parliament sent a deputation almost at once to inspect and report on Buchenwald ; so also did this Commission, and then soon afterwards a body of Congressmen from the United States came over for the same purpose. The feeling of the world was at last fully roused on this horrible topic. It was not indeed until August 8th, 1945, that the London Agreement was signed and with it the Charter of the International Military Tribunal which sat at Nuremberg. The indictment was lodged on the following October 8th, 1945. I cannot but think that the disclosures of the concentration camps helped to create that fuller detestation which carried with it support of the Prosecution, though indeed the great statesmen of the Allied nations had announced their intention to punish war crimes committed by the Axis, and Mr. Justice Jackson, acting under President Truman, had already gone a good distance in organising the magnificent team of expert workers and the impressive local setting for the trial at Nuremberg. It was not until October 1st, 1946, that the Tribunal delivered its judgment. When I reflect on the enormous quantity of work expended and the difficulties surmounted, I can confidently assert that not only was the actual achievement outstanding, but it was completed with record expedition. Behind it was a strong surge of public enthusiasm to which the concentration camps, which figure so largely in the judgment of the Tribunal, immensely contributed. Perhaps the wave of popular abhorrence has abated and is dying away. The British at least are poor haters. Britain has not been occupied or conquered. Memories are short. Immediate problems and necessities crowd out thought for what is past. The idea of retributive

justice becomes cold and repelling. But at least a great deal has been actually accomplished, even though the closing of the chapter is now not far distant. All the crimes cannot be brought up or punished. The Nuremberg Judgment, however, and all the judgments of which that now reported is one specimen, and also what are called the subsequent proceedings at Nuremberg, that is, the decisions given on the trials organised by General Telford Taylor, are at least solid witnesses that there is an international criminal law of war crimes. That is a welcome contrast to what happened in 1919. In the 1914-1918 war much the same atrocities, at least in their atrocious character though not in their extent, were perpetrated by the Germans as in the last war. But there was no real or serious attempt by the Allied nations to vindicate practically law or justice. Hence came what has been called the Leipzig fiasco. A lame and impotent conclusion. The sceptic is likely to say that it made no difference to the conduct of the Germany in 1939—the enthusiast may not be too confident in contradiction. Though much more might have been done to effect justice enough has been achieved to vindicate its reality and effectiveness. The hard-boiled exponents of a traditional international law (or no law) may perhaps still say that the Nuremberg trial and all the others were misconceived and erroneous. Others, including myself, will maintain the contrary. *Securus judicat orbis terrarum.* Future generations will assuredly not let this achievement die or its lesson be lost.

In this brief foreword I shall only add two further observations.

A distinguished Professor of International Law, Colonel Smith was permitted by leave of the Court to appear as an additional Defending Officer, the sanction of the Convening Officer having been first obtained. The effect of his address is given in the Report as are also the reply of the Prosecuting Council and the comments upon it by the Judge Advocate in his summing up ; I do not think it necessary to refer further to the matter here, except to observe that all the material objections have now been dealt with in the judgment of the Nuremberg Tribunal in the sense opposite to Professor Smith's arguments : indeed, if his arguments were in substance good, the validity of all the judgments delivered in the numerous war crimes cases which have been decided in Allied international, military and national Courts could not stand. The Military Court in this case obviously rejected these contentions. Though the doctrine of *stare decisis* does not apply in this region of war crimes decisions, such decisions are persuasive though not coercive, and the overwhelming mass of authority has now established a jurisprudence.

I may also add that Lieut.-Colonel H. Wade, Research Officer of the Commission, has prepared a list of Concentration Camp Cases tried since the Belsen case. This list, if necessary brought up to date, will it is contemplated be printed in a subsequent Volume of these Reports.

The present Volume is the work of Mr. George Brand, LL.B. (London), and is the outcome of researches carried out by him in his capacity as Legal Officer of the Commission. The Office of the British Judge Advocate General has rendered invaluable assistance in commenting upon the preparatory papers. These papers were also examined, discussed and approved on behalf of the Commission by its Committee on Legal Pub-

lications, of which Monsieur de Baer, Belgian Government Representative on the Commission, acted as Chairman, and of which the members were Mr. Jacob Aars-Rynning, Mr. Earl W. Kintner and Dr. Erik Schram Nielsen, Representatives on the Commission of the Norwegian, United States and Danish Governments respectively. Mr. Egon Schwelb, Dr. jur. (Prague), LL.B. (London), former Legal Officer, and Mr. Jerzy Litawski, LL.M. and LL.D. (Cracow), Legal Officer, who, together with Mr. Brand, were responsible for the preparation of Volume I of this series of War Crime Trial Law Reports, were not able to contribute to the present Volume, Dr. Schwelb because of his supervening appointment as Assistant Director of the Division of Human Rights of the United Nations Secretariat, and Dr. Litawski because of the pressure of his other duties with the Commission.

WRIGHT,
Chairman,
United Nations War Crimes Commission.

London, *October*, 1947.

CASE No. 10.

THE BELSEN TRIAL

TRIAL OF JOSEF KRAMER AND 44 OTHERS

BRITISH MILITARY COURT, LUNEBURG,
17TH SEPTEMBER–17TH NOVEMBER, 1945

Killing and ill-treatment of Allied military personnel and civilians in Belsen and Auschwitz concentration camps treated as a war crime punishable on the individual. Scope of Regulation 8 (ii) *of the British Royal Warrant, Army Order* 81/1945, *relating to joint responsibility. Liability of civilian Allied nationals alleged to have identified themselves with the German S.S. in charge of the camps. Admissibility of evidence of offences committed outside the two camps. The defences of superior orders, of the alleged supremacy of Municipal over International Law and of necessity. Types of evidence admissible under Regulation* 8 (i) *of the Royal Warrant.*

Josef Kramer and forty-four others were alleged to have been either full members of the staff of Belsen or Auschwitz concentration camps, or of both, or prisoners elevated by the camp administrators to positions of authority over the other internees. They were accused in the first place of having committed individually murders and other offences against the camp inmates, and in the second place of having all knowingly participated in a common plan to operate a system of ill-treatment and murder in these camps. Applications by the Defence first that the Auschwitz and the Belsen charges should form the subject of separate trials, and secondly that various individual accused should be tried separately, were rejected by the Court. The evidence for the Prosecution was notable for the unusually large amount of documentary testimony which it included, but a number of witnesses also appeared in the witness box for both the Prosecution and the Defence.

On behalf of all the accused it was argued that offences committed in concentration camps, even against prisoners of war, were not war crimes ; that the offences alleged did not fall within the limited categories of war crimes which

could be committed by civilians ; that the victims were not always Allied nationals ; that the concentration camp system was legal in German law, which was the system to which the accused owed their primary allegiance ; that under German law many of the victims had become German subjects through the annexation of parts of Poland and Czechoslovakia ; that it was incorrect to regard International Law as being dynamic in a sense which would allow a reversal of one of its principles ; that the British Royal Warrant, Army Order 81/1945 as amended, did not set out to alter substantive International Law ; that in general the State and not the individual was legally responsible for breaches of International Law ; that the pre-April, 1944, text of paragraph 443 of the British *Manual of Military Law* (itself not a binding authority) was correct in law ; and that it would be wrong to apply an amendment to that text made after the commission of many of the offences alleged. Counsel for individual accused argued that the affidavit evidence and much of the oral evidence before the Court was unreliable ; that conditions or certain events in the camps were outside the control of the accused ; that no prior agreement sufficient to make them jointly responsible under Regulation 8 (ii) of the Royal Warrant had been shown ; that Regulation 8 (ii) could not be interpreted so as to make an accused liable for the acts of a superior or for offences of others more serious than those proved against the accused ; that a certain degree of violence was necessary to keep order and to preserve food supplies ; that the accused were protected even by the amended text of paragraph 443 regarding superior orders ; that it had not been proved that any of the persons named in the charge sheets as killed actually died at the hands of the accused ; and that the Polish accused could not be regarded as war criminals.

The Prosecutor argued that all the victims were protected by provisions of conventional International Law ; that the offences alleged were war crimes because the accused were members of the German armed forces and the charge alleged the ill-treatment of Allied nationals during time of war, and because the concentration camp system was in any case intended to further the German war effort ; that it was recognised that war criminals could be made individually responsible for their offences ; that Germany could not legally annex territory till after the war and had in the main not actually attempted to do so ; that it was

not necessary on a charge of murder to prove the murder of named persons ; that most of the offences were committed against superior orders, and the gas chambers offences, the only exception, were not committed without a knowledge that they were wrongful ; that the offences were not legal under German law ; that the amended version of paragraph 443 was in conformity with the best legal opinion ; that proof of agreement, sufficient to satisfy Regulation 8 (ii), could be made by inference from criminal actions ; and that the Polish accused must be regarded in the same light as the ex-enemy accused since they had by their acts identified themselves with the S.S. authorities.

One accused, Gura, fell ill during the trial, and proceedings against him were set aside for later action. The Court, after deleting certain parts of the charge, found thirty of the accused guilty and pronounced sentences varying from the death penalty to one year's imprisonment. The sentences were confirmed by higher military authority.

PART 1. OUTLINE OF THE PROCEEDINGS

A. THE COURT

The Court consisted of Major-General H. P. M. Berney-Ficklin, C.B., M.C., as President, and, as members, Brig. A. de L. Cazenove, C.B.E., D.S.O., M.V.O., Col. G. W. Richards, C.B.E., D.S.O., M.C. (Royal Tank Regiment), Lt-Col. R. B. Morrish, T.D. (Royal Artillery), and Lt.-Col. R. McLay (Royal Artillery). Lt.-Col. J. W. L. Corbyn, M.C. (Wiltshire Regiment), was waiting member.

The Judge Advocate was C. L. Stirling, Esq., C.B.E., Barrister-at-Law.

The Prosecutor was Col. T. M. Backhouse, T.D., of the Legal Staff, Headquarters, British Army of the Rhine, assisted by Major H. G. Murton-Neale, R.A.

A number of defending Counsel took part in the trial, each acting on behalf of two or more of the accused. These Counsel and the accused whom they defended were : Major Winwood (Kramer, Fritz Klein, Weingartner and Kraft), Major A. S. Munro, R.A.S.C. (Hoessler, Borman, Volkenrath and Ehlert), Major L. S. W. Cranfield, H.A.C. (Grese, Lothe, Lobauer and Klippel), Capt. D. F. Roberts, R.A. (Schmitz and Francioh), Capt. C. Brown, R.A. (Gura, Mathes, Calesson and Egersdorf), Capt. J. H. Fielden, R.A. (Pichen, Otto and Stofel), Capt. E. W. Corbally, Cameronians (Schreirer, Dorr, Barsch and Zoddel), Capt. A. H. S. Neave, Black Watch (Schlomowicz, Ida and Ilse Forster and Opitz), Capt. J. R. Phillips, R.A. (Charlotte Klein, Bothe, Walter and Haschke), Lieut. J. M. Boyd, R.A. (Fiest, Sauer and Lisiewitz), Capt. D. E. Munro, Gordon Highlanders (Roth, Hempel and Hahnel), Lieut. A. Jedrzejowicz, Polish Armoured Division (Starotska, Polanski, Kopper, Ostrowski, Burgraf and Aurdzieg).

Colonel H. A. Smith, at that time Professor of International Law at London University, delivered a closing speech as Counsel for the defendants as a whole.

B. THE CHARGE

The accused were : Joseph Kramer, Dr. Fritz Klein, Peter Weingartner, Georg Kraft, Franz Hoessler, Juana Borman, Elizabeth Volkenrath, Herta Ehlert, Irma Grese, Ilse Lothe, Hilde Lobauer, Josef Klippel, Oscar Schmitz, Karl Francioh, Fritz Mathes, Otto Calesson, Medislaw Burgraf, Karl Egersdorf, Anchor Pichen, Walter Otto, Franz Stofel, Heinrich Schreirer, Wilhelm Dorr, Eric Barsch, Erich Zoddel, Ignatz Schlomowicz, Vladislav Ostrowski, Antoni Aurdzieg, Ilse Forster, Ida Forster, Klara Opitz, Charlotte Klein, Herta Bothe, Frieda Walter, Irene Haschke, Gertrud Fiest, Gertrud Sauer, Hilda Lisiewitz, Johanne Roth, Anna Hempel, Hildegard Hahnel, Helena Kopper, Antoni Polanski, Stanislawa Starotska and Ladislaw Gura.

All except Starotska were charged with having committed a war crime, in that they " at Bergen-Belsen, Germany, between 1st October 1942 and 30th April 1945 when members of the staff of Bergen-Belsen Concentration Camp responsible for the well-being of the persons interned there, in violation of the laws and usages of war were together concerned as parties to the ill-treatment of certain of such persons causing the deaths of Keith Meyer (a British national), Anna Kis, Sara Kohn (both Hungarian nationals), Hejmech Glinovjechy and Maria Konatkevicz (both Polish nationals), and Marcel Freson de Montigny (a French national), Maurice Van Eijnsbergen (a Dutch national), Jan Markowski and Georgej Ferenz (both Polish nationals), Maurice Van Mevlenaar (a Belgian national), Salvatore Verdura (an Italian national), and Therese Klee (a British national of Honduras), Allied nationals and other Allied nationals whose names are unknown and physical suffering to other persons interned there, Allied nationals and particularly Harold Osmund le Druillenec (a British national), Benec Zuchermann, a female internee named Korperova, a female internee named Hoffman, Luba Rormann, Ida Frydman (all Polish nationals) and Alexandra Siwidowa, a Russian national and other Allied nationals whose names are unknown."

Starotska, Kramer, Dr. Klein, Weingartner, Kraft, Hoessler, Borman, Volkenrath, Ehlert, Gura, Grese, Lothe, Lobauer and Schreirer were charged with having committed a war crime in that they " at Auschwitz, Poland, between 1st October 1942 and 30th April 1945 when members of the staff of Auschwitz Concentration Camp responsible for the well-being of persons interned there in violation of the law and usages of war were together concerned as parties to the ill-treatment of certain such persons causing the deaths of Rachella Silberstein (a Polish national), Allied nationals and other Allied nationals whose names are unknown and physical suffering to other persons interned there, Allied nationals, and particularly to Ewa Gryka and Hanka Rosenwayg (both Polish nationals) and other Allied nationals whose names are unknown."

All the accused pleaded not guilty to the charges made against them.

C. APPLICATION BY THE DEFENCE FOR THE SEVERING OF THE TWO CHARGES

On the first day of the trial the Defence submitted that the joinder of the two charges was bad, and that they should be heard separately, preferably by different courts.

The spokesman for the Defending Officers submitted that this application to sever the Belsen charge from the Auschwitz charge was not an application for separate trial for each accused and was therefore unaffected by the Regulation made under the second Royal Warrant.(1) In respect of Belsen and Auschwitz there were two entirely different charges and there was no justification in joining them, because between Belsen and Auschwitz there was no connection ; they had only this in common, that they were both concentration camps. The accused who were only in one of the camps could not be said to have formed part of a unit or group or to have taken part in any concerted action when in fact they were never in the other camp. In the opinion of the Defence, Regulation 8, according to which no application by any of the accused to be tried separately was to be allowed, was not relevant.

Furthermore, Rule of Procedure 16 (2) which provided for joint trials read as follows, in so far as it was material : " Any number of accused persons may be charged jointly and tried together for an offence alleged to have been committed by them collectively. Where so charged any one or more of such persons may at the same time be charged and tried for any other offence alleged to have been committed by him or them individually or collectively, provided that all the said offences are founded on the same facts, or form or are part of a series of offences of the same or a similar character." Counsel submitted that there was between the two charges nothing in the nature of a series ; all they had in common was a very slight surface similarity in that they were both concentration camps administered by Germans.

On behalf of those accused who appeared on both charge sheets, Counsel pointed out that Rule of Procedure 108 included the words : " No formal charge sheet shall be necessary, but the convening officer may nevertheless direct a separate trial of two or more charges preferred against an accused ; or the accused, before pleading, may apply to be tried separately on any one or more of such charges on the ground that he will be embarrassed in his defence if not so tried separately, and the Court shall accede to his application unless they think it to be unreasonable." Counsel submitted that persons accused mainly of offences committed at Belsen would be

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(1) The original text of the Royal Warrant contained the following provision in Regulation 8 (ii) :

" Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as *prima facie* evidence of the responsibility of each member of that unit or group for that crime."

On the end of this provision, the following was added by the second Royal Warrant (Army Order 127/1945), of 4th August, 1945 : " In any such case all or any members of any such unit or group may be charged and tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the Court." Regarding the Royal Warrant as a whole, see pp. 126 *et seq.*

(2) Regarding the Rules of Procedure in general, see pp. 129-130.

prejudiced by the fact that at least half of the evidence related to Auschwitz particularly since the latter evidence would include that concerning gas chambers.

The Prosecutor said that he disagreed, not on the law but on the facts. The charges were identical, word for word; the only difference was in the victims, and in many cases there was even no difference in the victims. The allegation of the Prosecution was that these two cases were a continuation of a series, in so far as the persons who were first at Auschwitz were concerned. With the exception of Starotska all of the Belsen accused came from Auschwitz to Belsen. First of all at Auschwitz they ill-treated a body of persons and then went to Belsen where they continued with the ill-treatment. One offence was precisely the same as the other. The individual methods of ill-treatment sometimes varied because every known method of ill-treatment was used at one or the other of these camps. Of course, the accused found at Belsen a lot of new people, but all the witnesses with regard to Auschwitz were found at Belsen. The Prosecutor said that if the Court decided to separate the two charges, he would apply to give the evidence in respect of Auschwitz on the Belsen charge. Some of the accused had said of Belsen: "We realise that conditions here were appalling but we could not help it." The Prosecutor said that he would therefore ask, if necessary, to give evidence that the conditions which these same people created somewhere else were equally appalling and that they merely carried on with a series of similar offences.

With regard to the question of the joint trial of individual persons, the Prosecutor made it quite clear that the Prosecution would allege a joint and collective offence by a group of people. Individual atrocities committed by individual persons were put forward to show that they were taking part in and acquiescing in the system which a group were carrying on. They were a unit acting in common, under a commanding officer, Kramer, who was the Kommandant of that camp. All the accused were either members of his staff or internees who had been given authority by him. They were definitely a group or unit within the sense of the Regulation. The Prosecutor agreed that this last argument applied to the question of separate trials for each accused, not to the question of splitting the charges, already dealt with.

After hearing these arguments, the Court overruled the application for the severing of the two charges.

D. APPLICATION BY THE DEFENCE FOR INDIVIDUAL TRIALS AGAINST INDIVIDUAL ACCUSED

The Defence put forward a further application that several of the accused should be tried separately. They maintained that there was no evidence that the crime had been the result of concerted action; therefore the provision introduced by the second Royal Warrant, barring applications for separate trial, did not apply. Various Defence Counsel said that the defence of their particular clients would be embarrassed through the joint trial, particularly by the fact that these clients would be prevented from calling some of the other accused as witnesses in their defence, except possibly upon

Cross-examination if these accused gave evidence on their own behalf.(1) As to the interpretation of the word " concert " used in Regulation 8, Counsel quoted " The Little Oxford Dictionary," according to which the word meant " to plan, to premeditate, or to contrive," all of which words clearly implied a certain amount of common intention, or common action, between various people. There was not sufficient evidence at this stage to indicate such planning. Clearly the Court could not deal with the matter fully until the case had been tried ; the provision, therefore, must mean : " Where there is evidence on the face of the matter that the war crime has been the result of concerted action." Certain of the accused, however, had only arrived in Belsen in the month of its liberation by the Allies.

The Prosecutor replied that there was contained in the depositions *prima facie* evidence of concerted action, the people concerned all being members of an organisation working under a joint leader and taking part in cruelties.

In connection with this application, further difficulties on a point of law arose out of the wording of the Royal Warrant.(2) There was substantial agreement between the Prosecution and the Defence that it must have been intended by the authors of the second Royal Warrant, amending Regulation 8 (ii), that the Court should look at the documents before it, namely, the charge sheet and the abstract,(3) and if the Court thought that the accused came within the group or the unit, then it had no right to hear an application to sever.

The Court decided that these were cases which did fall within the Regulation 8 (ii) and that they were, therefore, bound to comply with the Regulations. That being so, they must refuse the application for separate trial.

E. THE OPENING OF THE CASE FOR THE PROSECUTION

In opening the case, the Prosecutor stated that the charges in the case alleged that, when the accused were members of the staff of one or other of the two concentration camps involved and as such were responsible for the well-being of the prisoners interned there, that they were together concerned as parties to the ill-treatment of certain of the persons interned in the camp in violation of the law and usages of war ; and that by that ill-treatment they caused the death of some of them and caused physical suffering to

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(1) Footnote 3 to Rule of Procedure 16, points out that in a joint trial, " though each of the accused is a competent witness, none of the other persons charged jointly with him can compel him to give evidence." This rule is derived from English criminal law and is made applicable to war crime trials by Regulation 3 of the Royal Warrant and Section 128 of the Army Act. (See p. 129.)

(2) The original text, quoted above, presupposed that, " there is evidence that a war crime has been the result of concerted action." The provision added by the second Royal Warrant deals not with the result of the trial, but with a situation arising at its outset. The proper and only time to make such an application is before any evidence is called before the Court, at a time when there is no evidence, in the technical sense, at all. On the Royal Warrant in general, see Part II, pp. 126 *et seq.*

(3) Regulation 4 of the Royal Warrant states that before trial the Commanding Officer having custody over the accused shall cause a Summary of Evidence or an abstract of evidence to be prepared as the Convening Officer may direct. See pp. 137-8.

others. As this was the first case of this kind to be tried the Prosecutor thought he should shortly put before the Court the grounds on which they could claim jurisdiction to try these charges. In this connection Counsel referred to Chapter XIV, Paragraph 449, of the British *Manual of Military Law* (1) and to the Royal Warrant Army, Order 81/1945. The acts set out in the charges were undoubtedly war crimes if proved because the persons interned in both Auschwitz and Belsen included Allied nationals. Counsel expressly pointed out that, " We are not, of course, concerned in this trial with atrocities by Germans against Germans." The Allied nationals in these camps were either prisoners of war, persons who had been deported from occupied countries or persons who had been interned in the ordinary way. They were all persons who had been placed there without trial, because of their religion, their nationality, or their refusal to work for the enemy, or merely because they were prisoners of war who, it was thought, might conveniently be used or exterminated in such places. The laws and usages of war provided for the proper treatment not only of prisoners of war but of the civilian citizens of the countries occupied by a belligerent. So far as the inhabitants of occupied territories were concerned, the Prosecutor quoted paragraph 383 (2) and paragraph 59 (*f*) (3) of chapter XIV of the British *Manual* and Article 46 (4) of the Hague Regulations. As to the definition of a war crime the Prosecutor referred to paragraphs 441–443 of chapter XIV (5) of the British *Manual.*

The persons who according to the Prosecution suffered these wrongs came from ten different nationalities. Britain had accepted the responsibility of this trial, because it was quite impossible to form a Court and to carry on a trial if all these nationalities were in fact represented, and as Britain was the country which was controlling this zone of Germany, and which held these accused, Britain had accepted the responsibility of the trial. Observers had been invited from each of the countries who had nationals in these camps.

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(1) " Charges of war crimes may be dealt with by military courts or by such courts as the belligerent concerned may determine. In every case, however, there must be a trial before punishment, and the utmost care must be taken to confine the punishment to the actual offender."

(2) " It is the duty of the occupant to see that the lives of inhabitants are respected, that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with, and generally that duress, unlawful and criminal attacks on their persons, and felonious actions as regards their property, are just as punishable as in times of peace."

(3) Clause (*f*) of paragraph 59, which deals with the treatment of prisoners of war, reads as follows: " Women shall be treated with all consideration due to their sex."

(4) " Family honour and rights, individual life, and private property, as well as religious convictions and worship, must be respected."

(5) The parts of these paragraphs quoted read as follows:

" 441. The term " War Crime " is the technical expression for such an act of enemy soldiers and enemy civilians as may be visited by punishment on capture of the offenders . . .

442. War crimes may be divided into four different classes:

(i) Violations of the recognized rules of warfare by members of the armed forces . . .

443. The more important violations are the following: . . .

ill-treatment of prisoners of war; . . . ill-treatment of inhabitants in occupied territory . . ."

The Prosecutor claimed that although the words " inhabitants in occupied countries " were used, it was obvious that they should be extended to " all inhabitants of occupied countries who have been deported from their own country," the deportation, in fact, being a further infringement.

The Prosecutor said that he would ask the Court to say that the conditions which were found in Belsen and in Auschwitz were brought about, not only by criminal neglect, but by deliberate starvation and ill-treatment, with the malicious knowledge that they must cause death or lasting physical injury. In respect of Auschwitz, the Prosecution would ask the Court to say, in addition, that there was a deliberate killing of thousands and probably millions of people, and that each of the accused who was charged in the Auschwitz charge had his or her share in this joint endeavour, this policy of deliberate extermination.

In respect of Belsen there would not be an allegation that there was a gas chamber or that persons were herded by their thousands to their death but there would be an allegation that every member of the staff of Belsen bore his or her share in the treatment given to the prisoners at Belsen, which they knew was causing and would continue to cause death and injury. The Prosecutor would ask the Court to view the evidence as a whole and to say that each must bear his responsibility not only for the actions of his own hand, but for the actions of this criminal gang who were working together. Nevertheless, lest there should be the slightest shadow of doubt, no person had been brought before the Court against whom the Prosecution would not produce some evidence of personal acts of deliberate cruelty and in many cases of murder.

F. THE EVIDENCE FOR THE PROSECUTION

1. *Brigadier H. L. Glyn Hughes, C.B.E., D.S.O., M.C.*

Brigadier Glyn Hughes said that, shortly before the 15th April, 1945, certain German officers came to the headquarters of 8th Corps and asked for a truce in respect of Belsen camp. In pursuance of the arrangement arrived at, he went on the same day to Belsen camp, after it had been captured. There were piles of corpses lying all over the camp. Even within the huts there were numbers of bodies, some even in the same bunks as the living. Most of the internees were suffering from some form of gastro-enteritis and were too weak to leave the huts. The lavatories in the huts had long been out of use. Those who were strong enough could get into the appropriate compounds but others performed their natural actions from where they were. The compounds were one mass of human excreta. Some of the huts had bunks, but not many, and they were filled absolutely to overflowing with prisoners in every state of emaciation and disease. There was not room for them to lie down at full length in the huts. In the most crowded there were anything from 600 to 1,000 people in accommodation which should only have taken 100. There were large medical supplies in the stores at Belsen, but issues for the use of the prisoners were inadequate. The witness had made a tour of the camp accompanied by Kramer, the Kommandant of Belsen ; the latter seemed to be quite callous and indifferent to what they saw.

The principal causes of death in Belsen were lack of food and lack of washing facilities which in its turn led to lice and the spread of typhus. Even after the liberation matters were not easy in the way of food, in spite of the facilities which the British had, because special feeding was necessary.

To cope with the situation which was found at Belsen he had 54 officers and 307 other ranks all of whom came from medical units, but many more could have been used in the task had they been available.

In an affidavit entered later by Counsel for Francioh,(1) Brigadier Glyn Hughes said that if any large scale shooting had taken place on the 15th April, he would have known about it, and that he did not see any large number of corpses in the vicinity of kitchen 3 on the 16th April, 1945.

2. *Deposition of Lt.-Col. J. A. D. Johnston, R.A.M.C.*

Lt.-Col. Johnston said that he arrived at Belsen concentration camp on the 17th April, 1945. He described the prisoners whom he found there as " a dense mass of emaciated apathetic scarecrows huddled together in wooden huts, and in many cases without beds or blankets, and in some cases without any clothing whatsoever."

3. *Captain D. A. Sington*

This witness, a Captain in the Intelligence Corps, sa d that on 15th April, 1945, he went to Belsen camp for the purpose of making announcements. The general state of the camp was one of unbelievable congestion ; another feature which very soon attracted his attention was the great number of dead. A third memory was that of people who came out and died in the open air. One fourth impression was the complete lack of sanitary facilities. The general appearance of the inmates, with a few exceptions, was one of extreme weakness and in the majority of cases an almost unbelievable lack of flesh on the bones ; there were inmates who had gangrenes on their bodies and asked for help and others suffering from dysentery who also wanted help. When he entered, the S.S. were still in control, there was an atmosphere of terror and the people were behaving like terrified animals. He found that some of the internees had been given by the camp authorities special disciplinary powers over their other inmates. They had various names : Lagerältester, Blockältester, Stellvertreter and Kapo.(2)

4. *Major A. L. Berney*

This witness stated that he arrived at Belsen on the 15th April. The next morning he went in search of food for the Belsen internees to a Wehrmacht camp which was about three kilometres up the road. There he saw a Hauptmann, who said that Belsen had been supplied from his stores. The witness said that in the store at the camp there were 600 tons of potatoes, 120 tons of tinned meat, 30 tons of sugar and more than 20 tons of powdered milk as well as cocoa, grain, wheat and other foodstuffs. There was a fully stocked and completely staffed bakery in the Wehrmacht camp capable of turning out 60,000 loaves a day.

5. *Mr. Harold O. Le Druillenec*

This witness, a British subject from Jersey, stated that he had been arrested by the Germans in June, 1944, and was sent to Belsen on about April 5th,

(1) Contrast p. 13. Brigadier Glyn Hughes had in the meantime left Luneburg and his further evidence had to be given by affidavit.

(2) The first three terms may be translated respectively as Camp Senior, Block Senior and Deputy Camp Senior. A Kapo was a lesser functionary.

1945. He was put into Block 13 with five or six hundred others, and there were more on the following night. The floor was wet and foul through having been used as a latrine. The internees were so crowded that they could not lie down. Sleep was impossible, and the atmosphere was vile. Seven or eight died in the first night. On mornings, the appel used to last from about half-past three till about eight or nine o'clock ; this in itself was a terrible strain. (The witness was judging times ; he had no watch.) The appel was the normal concentration camp roll-call during which time the prisoners were supposed to stand in ranks of five, presumably to make the ranks easy to count. They were counted and then counted again and again for hours ; apparently no two men could make the total the same. The prisoners had to stand at attention ; if they moved they received a blow on the head.

On his fifth day at the camp and during about four days following, he and others had to drag corpses and put them in large burial pits. This went on from sunrise to dusk and many died in the process. He thought that the operation was intended to clear up the camp before the British arrived. Anybody who faltered was struck. He had altogether a pint of soup during his first four days at the camp. During the last five days before the liberation, which were spent in burying the dead, he had neither food nor water. Nearly every minute of the day, shots were going off about the camp ; guards would shoot internees usually for no reason at all.

6. *Dr. Ada Bimko*

Dr. Bimko, a Jewess from Poland, stated that she was arrested and sent to Auschwitz on 4th August, 1943. She was transferred to Belsen on 23rd November, 1944. In both camps she worked in a hospital. At a point later than her own arrival Kramer became Kommandant of Birkenau,(1) which was that part of Auschwitz which contained the camp's five crematoria. She testified that records which had been secretly compiled by internees working in the Sonderkommando (Special Fatigue Party) at the Auschwitz crematoria showed, according to a member of the Sonderkommando to whom she had spoken, that about four million people had been destroyed in the crematoria. Experiments had been carried out in Block 10 in Auschwitz ; one woman had told her that an experiment in artificial insemination had been carried out on her. Prisoners selected for the gas chamber were sent first to Block 25, where they often waited days without food and drink, before the lorries arrived for them.

Kramer, Klein and Hoessler, said the witness, took an active part in selections made at Auschwitz, a process whereby numbers of prisoners were chosen from the rest and sent to the gas chambers. She had seen Kramer at Belsen kicking four Russians who were too weak to work. Kramer arrived at Belsen early in December, 1944, and on his arrival roll-calls and beatings commenced.

Giving evidence regarding various other accused, the witness testified that Borman possessed a large dog, and that Starotska was a Block Senior at

(1) Otherwise referred to as Auschwitz No. 2.

Auschwitz. Some internees at Belsen expressed a wish that Stania (by which name this witness and others identified Starotska in the dock) should be appointed Block Senior in place of the existing one. Dr. Bimko identified Francioh as having been in charge of the kitchen of the women's camp. A young woman internee was once bending down to take away some potato peelings and suddenly the accused jumped out of the kitchen with a gun in his hand and fired it twice. Soon afterwards the woman died. Otto was a supervisor of electricians in Belsen, and Dr. Bimko did not think that he was possessed of any general authority over the internees. Sauer was the Aufseherin (overseer) at No. 2 women's compound in Belsen.

7. *Sophia Litwinska*

This witness, a Jewess from Poland, said that she was sent to Auschwitz as a prisoner at the beginning of the Autumn of 1941, and was transferred to Belsen about three months before its liberation.

Litwinska said that on the 24th December, 1941, at a selection at Auschwitz there was a parade of 3,000 Jewesses at which Hoessler was present. The women were naked, and those selected were taken to the gas chamber, a room equipped to look like a bath-house. She herself was actually taken to the gas chamber but was brought out again ; her life was saved, in her opinion, partly because she was the wife of a Polish officer. Cross-examined by Lt. Jedrzejowicz on behalf of Starotska, the witness said that there was a rather deep ditch accompanying the wire which surrounded Auschwitz camp and which was not easy to cross. In compound A, where the witness lived, the ditch was inside the wire.(1)

The rest of the witness's evidence concerned Belsen. She could not identify Pichen in the dock but said that, a few days before the British arrived, certain prisoners tried to steal from kitchen No. 1, and when two S.S. men returned they started shooting the prisoners ; many were killed. She could not say whether these two had any physical deformity.(2) She had seen Ilse Forster beat to death a young girl of 16 or 17 years when the accused was in charge of kitchen No. 1 at Belsen. Litwinska went on to say that Ilse Forster had beaten her with a rubber truncheon, with the result that her head was swollen and her arms and back were blue and green. She testified that Hahnel worked in No. 1 kitchen during the last few days before the liberation. The witness had worked in No. 2 kitchen for a few days but, when cross-examined, she did not recognise Mathes.(3) She had worked in kitchen No. 1 during all her time in Belsen excepting these few days in kitchen No. 2 when she first arrived, and she was quite certain that Barsch was not in kitchen No. 1 during that period.(4)

8. *Cecilia Frommer*

This witness, a Polish Jewess, said that she was sent to Auschwitz as a prisoner in October, 1943. She testified that at Auschwitz, when she was going to see a sick friend, either Volkenrath or her sister, who resembled one another, beat her and made her kneel outside her hut. She went to Belsen

(1) See p. 101. (2) See p. 92. (3) See p. 51. (4) See p. 93.

in January, 1945, and was employed in No. 2 kitchen. She said that she did not know Mathes, and that he did not work in No. 2 cookhouse at Belsen while she was there.

9. *Anni Jonas*

Anni Jonas, a Jewess from Breslau, stated that she was arrested on 17th June, 1943, and was sent to Auschwitz, where she stayed till 25th November, 1944. Here she saw Hoessler with a certain Dr. Mengele taking part in a selection where sick Jews were being chosen for the gas chambers. She said that Hoessler was also in charge of the " Union " Kommando (fatigue party), and that he used to make selections and send the sick and the weak out of the Kommando. These were collected in Block 25, and from there they went to the gas chamber. Jonas said she recognised Borman, who had several times been present on selections from the " Union " Kommando. She had seen Borman pointing out to Dr. Mengele certain prisoners, saying : " This one looks quite weak."

10. *Dora Szafran*

This witness, a Jewess from Poland, stated that she was arrested and was sent to Auschwitz on 25th June, 1943. She said that Kramer, Dr. Klein and Hoessler took part in selections for the gas chamber at which she was present. Whenever Kramer attended a doctor was always present. On one occasion (1) when coming back from a working Kommando at Auschwitz, one of the workers had a swollen leg and could not keep up with the others. Borman then set her dog on her (the witness thought it was an Alsatian dog), and encouraged it first to tear the woman's clothes then to go for her throat. Afterwards Borman was very proud of what she had done ; a stretcher was brought and the woman was taken away. Borman was present at selections many times even with her dog.

The witness had seen both Grese and Kramer beating internees. Grese was one of the few S.S. women allowed to carry a gun. In Camp " A " in Block 9, two girls were selected for the gas chamber ; they jumped from the window, and when they were lying on the ground Grese shot them twice. The witness claimed to have known Starotska as Camp Senior at Auschwitz. She had carried out selections on her own initiative and authority. Anyone wearing armlets could take part in the selections. Usually this power was given to the Block Seniors, Camp Seniors and Kapos.

Kopper worked in the same Kommando as the witness at Auschwitz, which was " one of the worst Kommandos," because they had to make " munition instruments " out of asphalt. The accused worked in many different Kommandos in order to be able to inform the authorities of the behaviour of the prisoners. The witness knew this because after she left Szafran's Kommando several of its members found themselves in penal Kommandos.

The witness said that she was transferred to Belsen on 18th January, 1945. Here Grese had beaten a girl very severely. Szafran said that Francioh was in charge of her kitchen, and that on the day the British arrived, she saw him

(1) According to the witness, in April, 1943. See p. 82.

fire with a pistol from kitchen No. 3 through the window at a number of women, killing several. Giving evidence of the conditions in Belsen the witness said that the supply of food to the prisoners depended very largely on the efforts of the " senior of the block".

11. *Helen Hammermasch*

This witness, a Polish Jewess, was sent to Auschwitz as a prisoner in 1944. Here, she saw Kramer taking part in one selection and Klein in several; the former took an active part, loading the victims into vehicles, and beating them if they cried because they knew what was awaiting them. Hammermasch also said that she once saw Kramer kicking a Russian who fell to the ground and stayed there so long that she concluded that he was dead. The witness heard that at Auschwitz Hoessler ordered six girls to be hanged; she actually saw four being hanged. Of Grese, she said: " I did not personally see her do anything, I heard she beat up people."

At about the middle of January, she was transferred to Belsen. The witness stated that she saw Volkenrath and Kramer beating or kicking prisoners in that camp. Of Lobauer she knew nothing except that she selected people for work.

12. *Ilona Stein*

Ilona Stein, a Jewess from Hungary, said that she was arrested on 8th June, 1944, and sent to Auschwitz. On 1st January, 1945, she was transferred to Belsen.

At Auschwitz, Kramer, Grese and Mengele took part in selections: from the more experienced inmates she had learnt that the younger ones were taken to labour camps to work and the others to the crematorium. On one occasion some of the prisoners tried to hide. They were pointed out to the guard by Grese and they were shot. On another occasion a mother was talking to her daughter in another compound. Unfortunately Grese saw her. She came on a cycle before the mother could get away and the mother was beaten severely and kicked by Grese. The witness had seen this accused often beating people in Auschwitz with a riding-whip. In an affidavit Stein said: " At a selection a Hungarian woman tried to escape and join her daughter. Grese noticed this and ordered one of the S.S. guards to shoot the woman. I did not hear the order but I saw Grese speak to the guard and he shot at once."

Lobauer was a supervisor at Auschwitz. If the prisoners did not march properly or did not stand still on roll-calls she beat them. She beat them at every opportunity with a stick. Borman also beat people frequently at Auschwitz.

In Belsen, if Grese was taking roll-call and the count was not right, she made the prisoners stand for hours without food, even if it was cold, raining, or snowing. Even dying patients had to be brought out on these occasions. Ida Forster worked in No: 2 kitchen, the witness believed, and she remembered the accused rushing out and hitting with a rubber tube a prisoner who was looking for scraps; the victim had to be carried away. This was the accused's usual practice when prisoners approached the kitchen for remnants. Irene Haschke used to spill prisoners' soup and beat them.

Stein remembered Francioh at Belsen, in No. 2 kitchen she thought. Before the British came he went round with his gun and the witness saw him shooting people. A few days before the British came a friend and herself went towards the kitchen carrying an empty container. The accused came out of the kitchen and started shooting. Stein " did not look very much," but ran away. A few minutes later her friend was brought dead to her block. The accused was the only one who could have shot her On another occasion she saw two other girls shot by the accused and taken away. Haschke worked in Belsen in No. 2 kitchen, and took part in beatings. Starotska beat prisoners in both camps ; the witness had herself been thrashed by her for being out of line in a bath parade.

13. *Abraham Glinowieski*

Glinowieski, a Jew from Poland, said that he had been arrested and sent to Auschwitz in 1942. He left the camp in October or November, 1944, and arrived eventually at Belsen, where he stayed two and a half months before the Allies liberated the camp.

The witness said that in Auschwitz in the autumn of 1943, Kramer found him in possession of a little bread and margarine and a pair of boots, and that he received 25 blows as a consequence. The witness continued by saying that his brother, on another occasion, was taking some cigarettes to a woman in the women's block, where he was not permitted to go, when Weingartner appeared and slapped and searched the brother, finding 240 cigarettes, some roubles and a signet ring. This all took place in the Block Leader's room and Glinowieski's brother received 75 strokes. When his brother left the room he was kicked out by Weingartner and could hardly stand. The brother was taken to hospital. The witness did not see his brother die, but he was told that he had died.

Grese was the camp leader at Camp C and when a transport from Hungary arrived she sent hundreds of sick and healthy people to the gas chambers. The witness saw her every day because he was working near by. She used to come for inspections at the various blocks and she would beat people with a stick. She also had a pistol with her. Lobauer was at Auschwitz as Lager-kapo and assisted in taking people to the crematorium. Starotska was Camp Senior at Birkenau. She beat internees on parade.

The witness then spoke of a Camp Senior at Belsen who was known as Erich. His behaviour was very bad. Glinowieski claimed that while his friend and he were queuing for soup, the accused beat the latter terribly with his fist and then with a stick and, when he fell down, kicked him three times between the legs. The victim was in hospital for two or three weeks and then two or three days before the liberation the man died.(1)

14. *Hanka Rozenwayg*

This witness, a Polish Jewess, said that she was arrested and was eventually

(1) See p. 140 regarding the objection raised by the Defence at this point that the accused was not identified by the witness. See however p. 18 for a later revelation by Lt.-Col. Champion.

sent to Auschwitz in the summer of 1943. She went to Belsen about half a year before the British liberated the camp.

Rozenwayg said that Kramer supervised selections and that Hoessler made selections for the gas chamber. The witness was present at one of these selections when the latter helped the doctors. Anyone he disliked was put in Block 25 and then went to the gas chamber. The witness had also seen Starotska taking part in selections. She took down the numbers of those who were afterwards sent to Block 25. Borman always went about with a big dog treating prisoners very badly, and all prisoners were afraid of her. Rozenwayg remembered an occasion when someone lit a fire in her quarters and Borman arrived and struck the girls present, including the witness, over their faces with her hands. On another occasion when the witness was part of a Kommando and failed to please Lothe with her work, the latter complained to Grese, who set a dog on the witness which tore her clothing and made marks on her body which were still there. Lothe beat a Polish girl, knocked her to the ground, and then went on kicking her. The witness herself had also been beaten by Lothe more than once.

About fourteen days before the liberation a woman went to get water from a water cistern at Belsen, and Haschke pushed the woman into the water. The woman was drowned. The witness did not know where Haschke worked but she saw her in the vicinity of cookhouse 1 at Belsen in Camp 2.

15. *Lidia Sunschein*

Lidia Sunschein, a Polish Jewess, said that she was arrested and sent to Auschwitz in March, 1943. She was transferred to Belsen in January, 1945.

This witness testified that she saw Kramer take part in selections with Dr. Klein, Hoessler, and others ; in July, 1944, Kramer had her family sent to the gas chamber. At Belsen, Kramer made some Russian girls kneel in the rain and deprived them of food for 24 hours because they had been stealing bread ; several died as a result.

In December, 1944, at Auschwitz, Weingartner was the leader of a Kommando called Vistula, in which there were 1,000 girls who were regu lating the river by carrying sand. The witness was a supervisor of the work and, as she did not ill-treat the prisoners, she was made, as a punishment, to work in water which reached up to her knees. Weingartner told her to treat people badly and to chase them to make them work as quickly as possible. This accused beat internees and deprived them of their extra food if he was not satisfied with their work. They had to go some seven or eight kilometres from the camp to where they worked by a bad road up a steep hill. Dogs were set upon them to chase them up the hill ; Weingartner was in command of the guards who were in charge of the dogs. When 1,000 volunteers appeared for work in a kitchen at Belsen, Weingartner and another man tried to make the crowd line up. They beat many women with sticks as they could not secure order. Weingartner shot into the air. The witness had said to the accused in German that she wanted to leave the Kommando as she did not want to die after so much suffering. Weingartner caught her and gave her 15 blows with a rubber truncheon on her head, so that she

fainted. The accused forced her to work, and as a result she went to bed for ten days. In general, he was very cruel to internees at Belsen.

Hoessler was present at various selections ; and once he chose people, including great numbers of young women, for the gas chambers on his own initiative, because he found some pyjamas outside a block. The witness was present at this selection. Hoessler was in charge of the Kommando " Union," and six girls including the witness who were engaged in destroying one of the crematoria were found in possession of some wire-cutters. She had heard that four of the other five girls were punished for this by hanging. She had moved to Belsen in the meantime.

The witness knew Volkenrath at Auschwitz, where the latter was in the bread store and the parcel department. The witness saw Volkenrath beating people in her store whom she suspected of stealing. Starotska was a Camp Senior at Auschwitz, but Sunschein knew nothing else about her.

Sunschein said that once at Auschwitz, when passing from Camp A to Camp B, she spent a period in Block 25.

Ehlert beat people at Belsen, for instance for not tying their shoe laces properly, but mainly with her hands. She beat the witness with her hand several times. At Belsen, Grese was the Arbeitsdienstführerin. She behaved very badly, and on one occasion on coming back from work a girl lost a piece of rag from her pocket and the whole Kommando, as a punishment, had to run up and down, kneeling and rising, for half an hour. Sunschein stated that she did not know Mathes and that he did not work in No. 2 cookhouse at Belsen while she was there. Ida Forster was an Overseer at Belsen and led a Kommando. Sauer was in the witness's cookhouse, No. 2, at Belsen. She used to beat girls and pull their hair. Just before the British came she found a girl with a turnip in her hand and gave her a terrible beating. Hempel also worked in cookhouse No. 2. She was worse than Sauer. She beat people with a rubber truncheon and once, when girls were found outside the kitchen with remnants of turnips in their hands, Hempel took them into her room and beat them until blood came. To the cookhouse personnel she was very cruel, beating them at times for no reason at all. Kopper was considered to be an informer in the camp at Belsen. In Auschwitz she was in the punishment Kommando. Francioh worked in Sunschein's cookhouse for a short while, about two months before the arrival of the British, and beat the personnel terribly.

16. *Lt.-Col. S. G. Champion*

This witness stated that he took over from Major Smallwood[1] the task of collecting evidence at Belsen. The team at his service consisted of one commissioned police officer and five non-commissioned officers. Very soon after they arrived they received further photographs of suspected people. The police were instructed to take the photographs round the various parts of the camp and to ask whether anybody could identify any of the people in the photographs and if so what they knew about him or her. In addition, a large number of people called at his office and were asked the same question. His instructions to the police officers were to take a note of anything that was

(1) See p. 39.

said either in favour of or against the accused. Some photographs were included of people who the witness had no reason to think came from Belsen. These were in the nature of dummy photographs. His team collected evidence and drew up affidavits to be sworn by the witnesses in front of Lt.-Col. Champion. As far as possible he cross-examined witnesses to test credibility. One of the dfficulties they had was to make the witnesses understand the difference between direct evidence and hearsay ; but they did succeed in doing that and the witnesses were very fair when they understood the difference.

The witness Glinowieski, said Lt.-Col. Champion, had, in the process of making an affidavit before him, identified Zoddel by photograph as being the Camp Senior named Erich whom he accused.

The Judge Advocate, during the examination of Lt.-Col. Champion, said that he had noticed, especially in the case of Jewish witnesses, that the dates and sometimes the years differed between what they had apparently said in their affidavits and what they were saying in Court. He asked Lt.-Col. Champion whether he knew whether Jews had a different calendar. Lt.-Col. Champion replied that this frightful suggestion had not occurred to him. He added : " I am afraid if they were using a different calendar I had not thought about it. If they produced a month like May, I would believe that they meant the same May as we talk about." The witness said that he did not think the Jews did use a different calendar, but he did feel that the dates in the affidavits were very unreliable.

17. *Sgt. Dinsdale and Sgt. Higgs*

These two witnesses, previously members of No. 1 War Crimes Investigation Unit, provided further information regarding the preparation of affidavits.(1)

18. *Dr. Fritz Leo*

Dr. Leo, a German national, stated that he was sent to Belsen as a prisoner on 7th February, 1945, and there worked as a doctor. There were only crude facilities for minor operations, and for serious conditions like appendicitis or severe bullet wounds nothing could be done. Typhus was rampant in the men's compound No. 1 early in January and it spread to No. 2 early in February. The S.S. administration, having visited the camp and well knowing the conditions there, sent in many new transports of prisoners every week. Asked to describe the condition of his block, the witness said : " One day a bigger transport of 2,000 people came from the southern part of Germany. Already during the journey 400 of them died and the others were so weak that they had to be helped at every step."

The witness gave evidence of the killing of the Englishman Keith Meyer mentioned in the Belsen charge. While suffering from typhus he was taken from hospital to the room of a Block Leader Stuber and shot.

(1) Their remarks were referred to by Captain Phillips in his closing address, see p. 96.

19. *Estera Guterman*

A Jewess from Poland, this witness stated that, after a period in Auschwitz, she was sent to Belsen in July, 1944. She said that Kopper was Block Senior or assistant Block Senior in three blocks at different times. She beat internees. Once the witness moved at a roll-call, and Kopper beat her across the head severely with a belt and made her kneel down. The weather was very wet and it snowed. An Overseer was passing and when she suggested that the witness should stand up, Kopper said : " I am sorry, but I am responsible here and she must kneel as I have told her to do." Another internee named Fischer died of a high fever three weeks after Kopper made her kneel for an hour during roll-call in the rain. The witness also remembered a sick Polish woman suffering from swollen legs. She asked to be allowed to stay in bed but Kopper started to beat her and compelled her to go on parade. She fainted on the parade and was taken to hospital ; after three days she died. Guterman had also seen Kopper beat other people who had come from other blocks to visit internees.

20. *Paula Synger*

Paula Synger, a Jewess from Poland, claimed to have been sent to Auschwitz on 3rd July, 1944, and to have been transferred to Belsen on 3rd November. She said that Kopper, as Block Senior at Belsen, beat internees with a leather belt, or anything else available. There was an old woman from Leipzig, suffering from heart disease, whom the witness tried to persuade the accused to excuse from parade ; the accused started to beat the old woman and made her attend the parade. On the parade she fainted. Kopper would not let Synger take her into the block. The witness and others took out a chair for her and after parade took her to hospital, where she died. The weather was very cold and it was raining. There was a regulation in the camp that sick people were not allowed to attend roll-calls every day, but Kopper was very unjust in this respect, because instead of allowing sick people to stay behind she compelled them to attend the parades and left in the block people whom she wanted to favour.

21. *Rachla Koppel*

This witness, a Polish Jewess, stated that she was sent as a prisoner to Auschwitz in 1944, and after two weeks transferred to Belsen where she stayed a year. She said that conditions at Belsen deteriorated when Kramer came ; the prisoners had to parade bare-footed and were starved. There was no beating until Kramer came. Once the witness missed her supper through going to the hospital for treatment. When she came back she went to Kopper the Block Senior and said that she had not had her supper. Kopper got out of bed and started beating her terribly on the head, so that she fainted. Kopper behaved to others in the block very badly. Once on a parade, when a woman asked to be excused for a minute, Kopper started beating her with a stick and the woman died.

22. *Helene Klein*

This witness, a Polish Jewess, stated that she was sent as a prisoner to Auschwitz in November, 1943. She was later transferred to Belsen.

The witness said that she had seen many selections for the gas chambers. Dr. Klein, Hoessler and others carried out a selection in January, 1944. During this selection Helene Klein herself was chosen for the gas chamber, but before her number could be written down by Hoessler she was cunning enough to hide herself. She then asked Hoessler to excuse her, but he said ; " You have lived long enough. Come, my child." He took Klein to the tables where the numbers were being written down ; but the witness escaped and her number was not taken.

Weingartner used to stand at the gate in Belsen as the working parties went in and out, and frequently beat the prisoners. The witness agreed, however, that the accused struck only with his hand. Weingartner also beat the kapo Lidia Sunschein till she was ill on an occasion when, at Belsen, people wanted to join the food Kommando. Grese " made sport " with the internees, making them fall down and get up for hours or crawl at an increasing speed. If anyone stopped, Grese beat them with a riding-whip she always had with her. The witness had been among the victims who were beaten. Sauer used to beat people who came to get rotten turnips at cookhouse No. 2 at Belsen. The witness knew Roth well as a night guard at Belsen, but under the name of Johanna Schmidt. She beat people terribly with a broomstick or anything that was available. She beat people who had to get up at 3 o'clock to work or sick people who went to the toilet. A certain prisoner named Ida Friedman, a sick woman, was beaten by Roth and died the following day. This beating was carried out because Ida Friedman, when going to the lavatory at night, shouted out. This victim lived in hut 199 ; the witness slept in a different block but saw the incident at 3 o'clock in the morning when assembling for a Kommando. Under cross-examination the witness confessed that she only thought the name was Friedman and was not sure ; and that she did not see Friedman die but heard about it the next day.

Hempel was the worst Overseer in Belsen. She worked in cookhouse No. 2. If anyone approached the kitchen to get food she beat them terribly with a special riding-whip which she kept in her room. If she noticed the cookhouse personnel doing anything wrong, for instance having food in their mouths, she took the food out of their mouths and beat them .Another Overseer had taken her place for two weeks when Hempel was away, but, the new Overseer told Klein, Hempel went to Kramer and said that the substitute did not beat the prisoners sufficiently. Ehlert was also among those who beat prisoners at Belsen. Kopper was an informer who denounced people and was a Block Senior.

23. *Dr. C. S. Bendel*

Dr. Bendel, a Rumanian, stated that he was arrested in Paris, and sent to Auschwitz in December, 1943. Here he worked in the crematorium, and he was able to supply the Court with a description of how the system of gassing prisoners was operated. He said that " the political department of Birkenau " directly controlled the Sonderkommando, who were the people who worked in the gas chamber and who actually did the gassing and cremating. Prisoners were made to undress in the belief that they were to have a bath, and were then forced into the gas chambers. Dr. Bendel also

spoke of experiments with lethal injections carried out by Dr. Mengele in the crematorium.(1)

24. *Roman Sompolinski*

This witness, a Jew from Poland, said that he was sent as a prisoner to Auschwitz in the autumn of 1943, and was transferred to Belsen on the approach of the Russian troops. Hoessler was the Kommandant of a crematorium at Auschwitz. (In the cross-examination and re-examination, however, it appeared that the witness had come to this conclusion because Hoessler was in charge of the transports arriving there.) On the arrival of the witness and his two brothers at the railway station near Auschwitz the accused sent the two latter to the crematorium. The witness claimed to have been employed in the cleaning of gas chambers, in undressing the bodies and taking them away and loading them into lorries.

In the course of his evidence, the witness testified that the wire surrounding the compounds at Auschwitz was never electrified during the daytime for the reason that the prisoners were away from the camp. It was only during the night that the wire was electrified.

At Belsen, three days before the liberation, the witness went to the cookhouse to get some soup for his friends. Some rotten potatoes were lying on the ground and he and others started to take some. Kramer started shooting, killed two and wounded the witness in the arm. The other two were Hungarians.

At Belsen Kraft was in charge of people dragging corpses to their graves ; he beat and shot the prisoners engaged in the task. Kraft was also in charge of a store near Block 9. The witness first saw him in the concentration camp seven days before the liberation. Schlomowicz had no particular function at Auschwitz but at Belsen he arrived about eight days before the arrival of the British and became Block Senior in Block 12 three days before the liberation. Before this he was a prisoner. When he was Block Senior he behaved very well to the prisoners. Aurdzieg lived with Sompolinski in No. 12 Block. This accused had no functions, and he and the witness brought food back to the others in the block who were exhausted. Polanski arrived in Belsen seven days before the liberation. He had no functions at all and lived in Block No. 12 together with the witness.

25. *Anita Lasker*

Anita Lasker, who lived in Breslau before her arrest, was sent to Auschwitz in December, 1943. She was transferred to Belsen in November, 1944. She claimed that she saw Kramer, Hoessler and Dr. Klein take part in selections for the gas chamber. Borman had a dog with her and the prisoners were afraid of her ; but the witness never saw her doing anything of which to complain. Lobauer collaborated with the S.S. Starotska was a Camp Senior at Auschwitz and at Belsen, and a notorious collaborator with the S.S.; people seemed more frightened of her than of the S.S. Kopper was known to be a camp spy at Auschwitz.

(1) This witness also gave evidence in the *Zyklon B Case* (See Volume I of this series, p. 96).

There were no roll-calls in Belsen until Kramer came in December, 1944. Kramer started long roll-calls and introduced Auschwitz conditions, which were very strict. Everyone, including the sick, had to attend roll-calls. Ehlert used to work with Volkenrath at Belsen but the witness had not seen her beat anybody. Irma Grese carried a whip in Belsen and a revolver at Auschwitz. The witness added, however, that she had not seen her beating anyone. The witness had seen Fiest ill-treating people who tried to steal turnips. Sauer was in charge of a kitchen at Belsen and beat people when they tried to steal from the kitchen, using a whip as well as her hands.

26. *Geria Zylberdukaten*

This witness, a Jewess from Poland, stated that she arrived at Belsen as a prisoner in July or August, 1944. She said that Hoessler took her mother from her at a selection parade and sent her to the gas chamber.

27. *Syncha Zamoski*

Zamoski, a Polish Jew, stated that he was arrested in 1941, and after being at Buchenwald and Dora was sent ultimately to Belsen, where he stayed for two weeks. He said that he first saw Calesson at Dora. He was in charge of the transport which brought the witness from Dora to Belsen. The journey lasted seven days and the prisoners were provided with no water or bread. There were 190 men in one wagon and more than 50 per cent died. The bodies were left abandoned in the wagon on the arrival at Belsen. Calesson walked along the train and when the witness asked him for some bread and water he said he would give the witness water with his pistol. Zamoski then drew his attention to the bodies, in the hope of getting more space, but the accused said: " You are going to die very soon, too, so there is no difference." When the prisoners got to Belsen the accused was dealing out blows with an iron bar. He beat a friend of Zamoski's called Maidan who, as a result, had to go to hospital. After a few days the witness took some turnips for him and the sister said he was dead. Calesson beat the witness himself because he was a Jew, and the latter had to stay in bed for three days. The accused beat everyone in the camp when he had an opportunity to do so.

An affidavit made previously by Zamoski included the words " Otto Calesson was in charge of the transport arriving at Belsen on the 7th April coming from Dora. The journey took six days, and there was great hardship. Maidan, my friend, died in hospital in Belsen on arrival."

28. *Ester Wolgruth*

This witness, a Polish Jewess, claimed to have been arrested on 16th January, 1943, and sent to Auschwitz, whence she was transferred, after two years and two days, to Belsen. She said that in April, 1943, at Auschwitz, a Polish woman had a swollen knee and could not keep up with the rest of her Kommando. She was stopped by Borman who set her dog on her. The dog first went for her clothes and then Borman made it go for her throat. The woman was killed by this treatment.

29. *Marcel Tuchmann*

Tuchmann, a Jew from Poland, stated that he spent the period from 5th November, 1943, to 30th May, 1944, as a prisoner in Birkenau. He prepared for the Court a map of that camp, which was entered by the Prosecution as an exhibit.

30. *Eva Gryka*

A Polish Jewess, Gryka claimed to have been sent to Auschwitz on 15th July, 1943. A prisoner named Grunwald went to a lavatory at a prohibited time and Lothe the kapo beat her over the head with a stick. She fainted and was missing from the parade next day. The witness saw her being taken to Block 25 and never saw her again. Lothe beat other prisoners too.

31. *Captain S. M. Stewart*

This witness introduced certain death certificates made by the German authorities at Belsen and entered by the Prosecution. They provided particulars of seven persons who died at Belsen from either general weakness, exhaustion or tuberculosis. These victims were Marcel Freson de Montigny, Maurice van Eignsbergen, Maurice de Meulenaar, Jan Markowski, Georg Johann Ferenz, Salvatore Verdure and Therese Klee.(1)

These seven certificates were among a collection which had been found in a sack and which provided particulars of the death at Belsen of 1,875 people. Captain Stewart stated that 22 were said to have died of old age, 46 from exhaustion, 31 of pneumonia, 199 of tuberculosis, 1,297 of weakness and 280 from other causes. They included French, Dutch, British, Hungarians, Poles, Belgians, Italians, Albanians, Yugoslavs, and stateless persons.

32. *Affidavits and other Statements* (2)

A number of affidavits and several unsigned statements were also entered by the Prosecution.(3) The names of their authors and the evidence provided are set out below.

Dora Almaleh, a Jewess from Greece, recognised the photograph of Egersdorf as being that of an S.S. man who was in charge of the bread store at Belsen. One day in April, 1945, the deponent was in the vegetable store and a Hungarian girl came out of the bread store with a loaf. The accused shouted, " What are you doing ? " ; the girl said : " I am hungry," and the accused shot the girl in the back of the head. Almaleh was sure that she was dead. Hilde Lisiewitz, at Belsen in April, 1945, was in charge of a working party carrying vegetables from the store to the kitchen. Two male prisoners took turnips off the cart and she then beat them and stamped on their hearts. The witness felt their hearts and was sure they were dead.

(1) These victims were all specifically mentioned in the Belsen Charge. See p. 4.

(2) Many of the witnesses who appeared in Court had also made affidavits previously, but the contents of these prior statements are not in most cases referred to here, since the witnesses usually gave testimony in Court on the same topics as were contained therein. Defence Counsel in their closing addresses, however, made a number of references to contradictions between the evidence contained in these affidavits and that of their authors when questioned in Court (see pp. 78–104).

(3) Except where stated the deponents are to be taken as ex-internees.

Arnost Basch, a Czechoslovak Jew, said that he knew Schlomowicz in Belsen. The latter was a kapo and his beatings with a stick or cable were not necessary for keeping order. The accused was very callous. On parade he said : " 50 people died to-day and unless order is kept I will see that a hundred die to-morrow." Basch had never seen anyone die as a result of his beatings.

Margarete Berg, a Czech Jewess, identified Fiest from a photograph and said, that about three days before the liberation, the accused was escorting a working party including the witness as far as the gate of the camp. As the party got to the gate a woman collapsed. The accused came out and kicked her in the back. The victim died in the deponent's presence.

The evidence of Regina Bialęk, a Polish Jewess, included the statement that, during the summer of 1943, she saw, from about 40 metres, Kraft catch a man who was speaking to a woman. Kraft battered the man's head with a stick and blood poured from his mouth and ears. She later saw his body taken away. No one could have survived this beating. She knew Ilse Forster as an Overseer in kitchen No. 1 at Belsen. She had often seen her beating prisoners with a stick in the kitchen, sometimes until they were unconscious and were left bleeding on the floor. She saw through a window beatings taking place in a room in the cookhouse. Girls were beaten because they asked for their food from the kitchen. She had seen some of these women taken on a wheelbarrow to hospital. She did not know whether any of them died as a result of their injuries, but many were covered with blood. Kopper was assistant Block Senior of Block 27 of the women's camp at Belsen, where the deponent lived. Kopper deprived people of their share of food and kept it for herself. She frequently beat women across the head and all parts of the body with a stick. She did not inflict serious injuries but there was no necessity for these beatings. Ehlert struck Kopper and set other prisoners on her.

Michael Bialkiewicz said that Aurdzieg was an orderly in Block No. 12. He killed hundreds of people and demanded valuables from prisoners and if he did not get these he beat them to death. The deponent's comrade Bauer had a gold tooth. The accused threatened to kill him if he did not give it up.

Regina Borenstein, a Jewess from Poland, said that she knew Lobauer by the name of Hilda. In February or March, 1945, she was on a working party. One girl appeared with no shoes and had a piece of wood and blanket round her feet. She was beaten for this on the head with the accused's hand. Lobauer tore her dress and made her take off her home-made shoes. The girl worked all day bare-footed. The accused was a very brutal person ; she beat women with a truncheon.

Pavel Burger, a Roumanian Jew, identified Polanski as an assistant Block Leader in Block No. 12, Camp No. 1, at Belsen, where the deponent lived. In the early morning on the 8th April, 1945, the inhabitants had to rise early to bury the dead. As they passed the accused he beat them with a leather belt and many fell down. The accused frequently beat prisoners with a wooden club. On the 15th April, 1945, when the work of burying the dead was going slowly because of the weakness of the people, the accused picked out a Pole, Jacobovitch, who was very weak, and beat him with a wooden

club. The latter sat down and said that he was too ill to go on, and later Burger saw his dead body.

Paul Cech, a Czech, recognised the photograph of Fritz Mathes as being that of an Unterscharführer and kitchen chief of No. 2 kitchen in Belsen. On about the 1st April, 1945, several men tried to steal carrots piled in front of the kitchen. Mathes fired at them with his pistol, wounding some and killing others. Two or three died and the witness and others had to take their bodies to a big pit. He estimated that over the period from that incident to the liberation Mathes shot 30 men dead.

Adelaide de Yong, a Dutch Jewess, stated that on the 29th August, 1943, she was, against her will and for no reason of health, sterilised by a Dr. Samuel, a German Jew, also a prisoner in Auschwitz. Many other persons were sterilised in this camp. The orders for the operation were given by the Kommandant of the camp named " Essler," whom later she identified by photograph as Hoessler.

The affidavit of Jadwiga Dembouska, a Pole, stated that she first met Lobauer as a Lagerkapo in 1942, at Auschwitz. She often beat women with a stick for no reason ; she was always brutal to women later when acting as Arbeitsdienst.

Jozef Deutsch, a Czech Jew, said that he had identified Polanski in person as a former Assistant Block Leader in Block No. 12, camp No. 1, at Belsen. Deutsch lived in that block, and was employed on carrying bodies with his father for two or three days before the British came. At roll-call, for no reason at all, the accused started beating the father over the head and body. The deponent believed that he died of this beating since he could not subsequently trace him. He himself had not recovered from the beating the accused gave him on that occasion. The wounds still remained. The accused also beat many persons in the deponent's working party.

Gertrude Diament, a Jewess from Czechoslovakia, stated that during 1942 she had seen Volkenrath make selections ; she would give orders that prisoners be loaded on to lorries and transported to the gas chamber. Grese was also responsible for selecting victims for the gas chambers at Auschwitz. Grese, at both Auschwitz and Belsen, when in charge of working parties, beat women with sticks and when they fell to the ground she kicked them as hard as she could with her heavy boots. She frequently caused blood to flow and in the deponent's opinion many of the people she injured were likely to die from such injuries, but she had no direct evidence of such deaths. Lobauer was not a member of the S.S. but a prisoner at Belsen. Diament had seen her savagely beating women and girls with a stick. Her ill-treatment was worse than that of the S.S. women. Many victims collapsed but the deponent had no evidence that they died. Lobauer was in charge of working parties under Grese. Hempel was an S.S. woman employed in the kitchen at Belsen. She beat people with a rubber stick for stealing. Once the deponent saw her beat a very sick man who collapsed on the ground, but she did not know whether he died of his injuries. According to other prisoners, Schreirer was extremely cruel ; the deponent identified him by photograph as a former S.S. man at Auschwitz.

Gitla Dunkleman, a Polish Jewess, said that Grese was the chief S.S. woman and that she had seen her commit many acts of brutality. When paraded before her at roll-calls the deponent had seen her strike and kick women. She was the worst of the S.S. women.

Etyl Eisenberg, a Belgian Jewess, stated that Volkenrath used to come into her block and take food and clothes from women. She was very cruel and made a habit of beating them and pulling their hair. The S.S. woman Ehlert used to deputise for Volkenrath and was also cruel and acted in the same manner.

Vera Fischer, a Jewess from Czechoslovakia, stated that Borman used to be in charge of women working outside Auschwitz and that she had a large dog which she used to set on women if they became weak and could not work. Many went to hospital and died of blood poisoning. At Auschwitz in 1942, Volkenrath was the S.S. Block Leader of the hospital. One day Fischer had pains and could not stand upright ; the accused beat her so severely that she was in hospital for three weeks. The deponent saw an S.S. cook shoot dead a Hungarian nurse named Anna Kis.(1)

Halma Furstenberg, a Jewess from Poland, said that at Belsen she had seen Kopper beating other women with a stick or strap. She made old women kneel at roll-call for a long time. A Polish Jewess, who was sick, missed her food and asked Kopper for it ; whereupon Kopper beat her again and again over the head with a leather strap. Beaten to the ground, the victim suffered from concussion and three or four days later died. The deponent saw her die and saw some other prisoner take out the body. Kopper was beaten by other Block Seniors because she had informed the S.S. that they were in possession of jewellery.

Bohumil Grohmann, a Czechoslovak national, said that, on 5th April, 1945, he was one of a party of about 650 persons going to Belsen. Dorr was second in command to Stofel on this transport. Near a stable between Herzberg and Braunschweg, he saw Dorr shoot two of six men who had escaped from a party of prisoners from Nordhausen. The next morning Dorr shot the other four men and their bodies were buried near the stable. From that time onwards Dorr began to shoot all stragglers. He shot about 46 persons. Stofel was present at some of these shootings but did not interfere.

Wilhelm Grunwald, a Czech, stated that at Belsen he saw two persons crawl through the wire round kitchen No. 2 to steal carrots piled up there. He saw Fritz Mathes shoot at them with a pistol and the prisoners fell. Twenty minutes later the bodies were collected and carried to a pile of corpses. He also recognised Herta Bothe on a photograph as an S.S. woman at Belsen. Between the 1st and 15th April, 1945, he saw weak female prisoners carrying food containers from the kitchen to the block. When they put them down for a rest he saw Bothe shoot at them with a pistol. They fell down but he could not say whether they died.

Jekel Gutman, a Jew from Poland, identified by photograph Otto Calesson as an S.S. man who was at Dora and Belsen. He corroborated from personal knowledge the sworn deposition of Syncha Zamoski.

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(1) Anna Kis was one of the victims named in the Belsen charge sheet.

Stanislaw Halota, a Polish Jew, identified Anchor Pichen as an S.S. man at Belsen in charge of kitchen No. 1. The former on 13th April, 1945, was waiting outside Pichen's kitchen when two male prisoners started to take turnips. The accused immediately shot at them at a distance of 25 metres. Two men fell and Pichen walked away. Halota assisted to put the bodies on the stretcher, and both were dead from bullet wounds.

Josef Hauptmann, a Czech, said that on the 4th April, 1945, 10,000 workers were transferred to Belsen. The journey took five days and many were shot on the way. At Bergen station, Hoessler came up and gave instructions for nine sick people to be shot. Hauptmann did not see them shot, but he did not see them again.

Elizabeth Herbst, a Jewess from Czechoslovakia, said that in August, 1942, a working party was at work near the perimeter of the camp by a ditch. The ditch was about 2 metres from the wire, about 3½ metres wide, about 3 metres deep and half filled with water. The wire was electrified. There were ten or twenty women struggling in the water, and 10 bodies, apparently dead, floating in the water. Lobauer, another kapo called Krause (now dead) and others were on the bank. Lobauer and Krause had poles in their hands. Some of the women were crying out for help, and Lobauer gave one a pole, and then pushed her back in. She was highly amused and did the same with several women. Herbst said that she watched this scene for 20 minutes and when she returned at night the ditch was empty.

The affidavit of Helene Herkovitz, a Czech, included the statement that in Belsen, about seven weeks before 3rd May, 1945, when she made her affidavit, she was caught in possession of a ring and a locket by " Ellers " and beaten with a stick until the blood came from her nose and ears. Then she was taken to a room where S.S. men beat her with a rubber truncheon. She was also three weeks in the cells and when she came out she was put on the duty of emptying the latrines. " Volgenrat " was also present and also took part in beating the deponent.

Peter Iwanow, a Russian prisoner of war, identified Ostrowski as a kapo who went with a transport of prisoners from Dora, which arrived at Belsen on 8th April. The journey took eight days ; Ostrowski beat the prisoners all the way, knocking down 15 to 20 to the ground. In Belsen, Iwanow lived in Block 19, where Ostrowski was the kapo in charge. When the prisoners rushed for their soup Ostrowski beat them with the iron handle of a broken soup ladle. People were injured on the head and other parts of their body. On 15th April, Ostrowski came into the block at about 5.15 am. and the deponent saw him tread on sleeping people and beat them with the handle to make them go out to the roll-call. He could not say what injuries were inflicted, because of the darkness.

Anne Jakubowice, a Czech, stated that she went to Belsen on 1st January, 1945. She was employed as a cook, and Josef Klippel was the cook in charge. She saw him frequently beating women with a rubber stick when they approached the kitchen for food. On two occasions in March, 1945, she saw him shoot a woman dead. Both were Jewesses but she did not know their names.

Alina Jasinska, a Pole, said that at Auschwitz she worked in the hospital. She recognised Lobauer as a Lagerkapo who took part in selections for the gas chamber. She had frequently seen her beat women with a whip or stick. She was very cruel. Once she gave Jasinska a blow with the stick which drew blood.

Vaclav Jecny, a Czech, in an unsigned statement,[1] said that he identified Schmitz as an S.S. man at Belsen. On April 13th or 14th, 1945, prisoners were attempting to get through wire to get at turnips. The accused came up on his cycle, pulled out a pistol and fired several times into the prisoners. Three men fell and the rest ran away. Jecny later heard that the three men were dead. It was the accused's custom to fire at any group of men standing near the wire.

Ladislaus Judkovitz said that in Belsen in March or April, 1945, there was a kapo called Schlomowicz, whom he had seen hit people with a big piece of wood. This treatment went far beyond what was required to obtain order. He only saw a man bleed once as a result of beating. He was an elderly man and he fainted as a result.

Alegre Kalderon, a Greek Jewess, named Franz Hoessler, whom she identified by photograph, as being responsible for repeatedly administering severe and brutal treatment to half-starved internees. She had also personally seen Juana Borman committing brutal and savage assaults on internees.

Nikolaj Kalenikow, a Russian prisoner of war, said that while he was in Belsen in Block 19, Ostrowski was a camp policeman. When the prisoners lined up for food he would go down the line beating them with a wooden stick. One morning, before the liberation, Ostrowski ordered all men in Block 19 on parade, including the sick. A Frenchman or Belgian, by the name of Albert, was too sick to move ; the accused hit him on the head and this blow caused his death.

Ivan Karobjenikow, a Russian prisoner of war, identified Ostrowski as a kapo in charge of Block 19 at Belsen, and a camp policeman. He saw the accused beat many sick persons, mostly at appel times, or when prisoners were lined up for food. One morning, Ostrowski called everyone to roll-call. One prisoner, a Frenchman, was too sick to move. Ostrowski hit him on the head with a soup ladle handle and his head was covered with blood. The deponent later saw the body of the victim dragged away and put on a heap of dead bones ; he saw that he was dead.

Zlata Kaufmann, a Czech Jewess, claimed to have seen Volkenrath at selections for the gas chamber at Auschwitz in 1942 and 1943. She also saw her throw people to the ground at selections and brutally beat them ; many died.

Rachela Keliszek, a Polish Jewess, said that Borman, in the summer of 1944, was in charge of a Strafkommando, when Keliszek's friend, a girl named Regina, was set upon by Borman's dog at her orders. When the dog had finished mauling her, she was sent to hospital. Keliszek said she thought her friend had blood poisoning as a result of the attack. About a fortnight later the nurse said that she had died.

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(1) The deponent disappeared without signing the draft affidavit.

Rolf Klink's affidavit contained further evidence regarding the death of Keith Meyer.

Sevek Kobriner, a Polish Jew, spoke of brutalities allegedly committed by Burgraf at " Camp Drütte ". (On introducing this deposition the Prosecutor said that, from the cross-examination, it had been made clear that one of the points which the Defence intended to make was that events at Belsen were such that the accused were reduced to behaving at any rate somewhat roughly. That was why the Prosecution wanted to prove that before he ever arrived there Burgraf was, in fact, behaving in precisely the same way in a camp where these conditions had not arisen. The Judge Advocate later advised the Court : " This is outside the scope of the charge, and even if you thought it true you could not punish Burgraf in respect of it. It has been introduced because the Prosecution say in the circumstances of this case they are entitled to show system and to rebut a defence which Burgraf is raising in the particular charge ".)

Alexander Kurowicki from Warsaw said that at Auschwitz he knew Schreirer who frequently ill-treated prisoners as Block Leader of No. 22 block, from about November, 1942, until the middle of 1943. He held roll-calls twice a day and during them beat the prisoners. The deponent had seen him knock people to the ground and kick them on the head and stomach; the victims were carried away unconscious. He felt sure that one particular victim had died, but had not actually seen anyone dead as a result of this ill-treatment. Kurowicki said that Schreirer was slightly knock-kneed, but that he did not require this to identify him. Zoddel he identified by photograph as a camp leader or prisoner in charge of a party of prisoners at Belsen. He had seen him ill-treating prisoners and beating them so severely with a stick that injury must have been caused.

Paul Lichtenstein, a Hungarian, said that at Belsen he was removing corpses from the blocks and had to pass kitchen No. 2. He saw Mathes, whom he recognised by photograph as chief of the kitchen, shooting at people trying to steal food. He saw three fall down, but could not say if they were dead. He saw the accused shooting prisoners from his office on several occasions.

Adolf Linz, an ex-S.S. man, said that on the march of his Kommando from Klein Bodungen to Belsen, Dorr shot 13 or 14 prisoners because they had bad feet or were suffering from other diseases and could not carry on. This was done in full view of all the prisoners on the march.

Hila Lippman, a Polish Jewess, said that at Belsen she was a cook in kitchen No. 1 in camp 1. The S.S. woman in charge was Ilse Forster. She delighted in catching men and women attempting to steal food. She would take the culprits to a small office adjoining the kitchen and beat them with a rubber stick and kick them, often drawing blood. The deponent saw her once beat a sick man so badly he had to be carried away.

Klara Lobowitz, a Czech, said that Grese was in charge of roll-calls and that she made internees go on their knees for hours and hold stones above their heads, and that she kicked people on the ground. Her roll-calls took place twice a day and lasted two hours and more often three or four hours. If a mistake was made in counting the prisoners were made to stand until the

mistake was found. No time was allowed for food and people used to faint as a result. Against the accused she also alleged beating with a rubber truncheon and kicking. Internees were not allowed to carry anything in their pockets and Grese would often stop and search internees and beat them unmercifully if she found anything. The deponent had often seen the accused with Dr. Mengele selecting people for the gas chamber and for forced labour in Germany.

Hilda Loffler, a Czech Jewess, said that she was employed as a supervisor over parties of working women at Auschwitz. Gollasch, Volkenrath and Ehlert were jointly responsible for the deaths of many people through starving, beating and overworking. Ehlert was very cruel to Helen Herkovitz, who was beaten by her and kept in an air raid shelter for two weeks with little food or drink and no bedding. The victim was ill for a month afterwards.

Irene Loffler, a Jewess from Poland, recognised the photograph of Francioh as being that of a kitchen chief in Belsen. In February, 1945, when a Russian girl was talking to a girl in the kitchen the accused shot her. The body was brought to the hospital, and the doctor told Loffler she was dead.

Izaak Lozowski, a Pole, identified Zoddel on a photograph as being a man named Erich, a Camp Senior in No. 1 camp at Belsen. He had frequently seen the accused beat prisoners. In the middle of March, 1944, the accused killed a Jew who was too sick to work. The deponent saw Zoddel striking him on the head, and the blows split his skull. Lozowski had heard that the victim died and had no doubt that as a result of this injury the sick man must have died.

Yilka Malachovska, a Jewess from Poland, said that one day at Auschwitz, in January, 1943, Borman took part in a selection from a working party of 150 girls, and Malachovska's sister was one of the 50 selected. A lorry went out that night in the direction of the crematorium outside the camp with the girls and she never saw her sister or any of the girls again.

Peter Makar, a Pole, recognised Borman as the woman in charge of a pigsty in Belsen. He saw her on two occasions in March, 1945, beating woman prisoners for stealing vegetables and clothing from the clothing store. He had frequently seen both Borman and Klara Opitz beating woman prisoners. The latter was an S.S. woman in charge of female working parties at Belsen. On one occasion he was passing a party when he saw her kicking a girl and beating her on the face and body with her fists.

Max Markowicz, a French subject, provided further evidence regarding the shooting of Keith Meyer at Belsen.

Adam Marcinkowski said that a friend, George Grabonski, from Warsaw, went to Block 19 at Belsen on the 12th April, 1945, at about 3 p.m. Burgraf, the Stubenältester (Room Senior), was standing at the door. The friend asked to be allowed to enter and was refused, and the accused struck him a two-handed blow on the head with a square table leg. He collapsed, and the deponent dragged him away with an open wound in his head. Three hours later he died. Burgraf beat people on soup parades indiscriminately with his table leg. Marcinkowski had seen the accused beat about 50 persons

to death in this way over a period of four to five days. The deponent belonged to Block 21.

Chaim Melamed said that he saw Aurdzieg beat a Russian to death in five minutes on the day the English came. The Russian was a strong healthy man.

Adam Mocks corroborated what Poppner said. (See p. 32).

Szaja Muller, a Jew from Poland, recognised the photograph of Calesson as that of an S.S. guard on the transport which brought Muller from Dora to Belsen. On the 4th April, 1945, 3,000 males left by rail for Belsen. On the third day there was a stoppage ; there were some carrots lying on the ground which certain prisoners started to eat. The accused shot a man and Muller judged him dead. The accused was an S.S. guard at Belsen. Just before the liberation he came into Muller's block, No. 87, and ordered out all Jews to clean up roads. He beat them with a stick, and one Russian collapsed whom Muller never saw again.

Katherine Neiger, a Czechoslovak Jewess, said that Grese was the chief S.S. woman at Auschwitz ; she had roll-calls lasting six hours, and during the time she made internees hold their hands above their heads each holding a large stone. She put on gloves before beating people with her fists. On the day before the British came Neiger saw Volkenrath catch a girl taking vegetables. The latter, who was very sick, pale and thin, had to kneel, holding the vegetables above her head. After four hours she was exhausted and Volkenrath beat her ; she lay on the ground until midnight. Neiger had often seen Volkenrath hitting girls on roll-calls. She beat the deponent herself in the face with a stick because her coat was open. The S.S. woman Herta Ehlert searched blocks for food and if she found any she beat the girl responsible. Neiger had seen Bothe beat sick girls with a wooden stick. Neiger named Gertrud Fiest as " guilty of great cruelty ". She made roll-calls last as long as possible, often from six o'clock in the morning till noon. The sick and the dying often collapsed. The deponent had seen the S.S. woman Gertrud Sauer frequently beat girls without reason and Haschke on a number of occasions beating sick girls with a rubber stick.

Maria Neuman, a Jewess from Poland, who described herself as a nurse, identified Francioh as an S.S. man at Belsen. In March, 1945, she saw him shoot a woman outside No. 1 kitchen. She was shot in the chest and lungs and died after 30 minutes. Gertrud Sauer was an S.S. woman who was at Belsen in March, 1945. Outside No. 1 kitchen Neuman saw her beat a man very severely on the head for taking a meatless bone from a swill tub. She then threw him in a ditch. The deponent thought that the man must have died from injuries. Sauer beat her for watching this incident.

Andreg Njkrasow, a Russian partisan, said that he was in Belsen in Block 19 and that Ostrowski was a camp policeman. When the prisoners lined up for food distribution Ostrowski beat them and heads were cut open, but he could not say that anyone was killed. Ostrowski deprived the weak of their food to give it to the strong.

Wanda Ojreyzska, a Polish national, said that Lobauer was a member of the Arbeitsdienst at Auschwitz. She forced old women to work and often

beat them. The prisoners used to call her " The S.S. woman without a uniform ". She was a prison leader in the camp.

Filo Pinkus, a Pole, said that on his arrival at Belsen he met Aurdzieg, a Pole, who was an Overseer in Block No. 12. The accused received him with blows from a stick and an iron bar. On the 12th April, 1945, a painter, Grunsweig, a Pole from Wilna, was too weak to work and the accused beat him so that he collapsed and died. The deponent had some teeth knocked out himself by the iron bar. On the 15th April, 1945, at 8 a.m. a Russian brushed against the accused, who hit him. The Russian returned the blow. The Russian was then attacked and killed by the accused. On 10th April, 1945, some hot soup was being distributed. The accused demanded from a prisoner named Lajward five Russian roubles. The accused also got a diamond from one Marx who asked for more soup, but when he had got the diamond he did not give the prisoner the soup. Pinkus had seen the accused beat hundreds of prisoners.

Ernest Poppner, a German soldier who had been in prison since 1941 on the ground of alleged sedition, said that on 5th April, 1945, he was one of a party of 613 prisoners of mixed nationalities who were on a march to Belsen. There was no food and most of the men wore clogs. On the 6th April, Dorr, who was an N.C.O., took two sick men, who Poppner thought were Germans, and another into a barn. Poppner saw him shoot two of them and the third might have escaped. The deponent thought that two others in a distressed condition were shot later, because he heard shots after they were taken aside, and he never saw them again. One was a Pole and the other was a Frenchman. Near Salzgitter, he thought two more, one a foreigner and the other a German he believed, were shot; they never came back from the wood where they were taken. The column was in the charge of Stofel who rode up and down on a motor-cycle but was not present as far as Poppner knew when these incidents took place.

Michal Promski, a Russian prisoner of war, in an unsigned statement, spoke of brutality on the part of a Polish kapo who arrived at Belsen on 5th April, 1945, and become Block Leader of Block 19. Most of the victims died as a result. He had identified Ostrowski in person as the kapo involved.

Schmul Raschiner, a Jew from Poland, said that on about the 2nd April, 1945, he arrived at Belsen in the charge of Calesson. Some persons tried to get at some carrots ; they had had no food for six days. The accused shot one of these prisoners in the leg and ordered S.S. men to finish him off. Raschiner then heard two shots and had no doubt that the victim was dead. His body was left on the ground. Ten prisoners died on the journey and they were left in the lorries.

Szparago Rozalja, a Polish national, said that Starotska was the only Polish woman to be a blockleader at Auschwitz. She chose persons for the crematorium, and killed, beat and tortured thousands of Polish women and other women.

Luba Rorman, a Jewess from Poland, stated that in March, 1945, a Polish girl, Hoffman, was outside cookhouse No. 1 at Belsen and wanted to go to the lavatory. Roth would not let her go and she beat her. Rorman protested and Roth beat her too. Rorman heard that Hoffman died.

Hanka Rosenberg, also a Jewess from Poland, said that she knew Kopper at Birkenau and in Belsen. In March, 1945, she saw Kopper beat a girl prisoner with a whip because she asked for more soup. When she ran away Kopper chased her and hit her.

Regina Rosenthal, a Polish Jewess, said that she saw Kramer set dogs on people at Auschwitz and machine-gun them.

Sofia Rosenzweig, a Polish Jewess, said that Roth was assistant Block Leader in Block 199 at Belsen, in which the deponent lived. The accused had to get the inmates of the block out on roll-calls. Rosenzweig had typhus and was too sick to rise, but the accused made her get up and beat her with a wooden lath from a bed. She saw the accused on another occasion beat an old woman who was sick and could not get up.

Engel Sander, a Jew from Czechoslovakia, said that on the 1st July, 1945, he noticed a man in kitchen No. 6, camp No. 3, at Belsen whom he recognised as Polanski, an assistant Block Leader of his block in Belsen. The accused tried to get away but was caught. In Block No. 12, camp No. 1, Belsen, in early April, 1945, at 3 a.m. the accused with others beat prisoners and the deponent himself was beaten by the accused with a rubber truncheon on the head. He fell down and the accused kicked him with his heavy boots. On the 15th April, he clubbed to death a Pole who was too weak to continue dragging bodies.

Elga Schiessl, a German Jewess, stated that Kramer, Klein, Volkenrath and Hoessler took part in selections for the gas chamber. Borman used to beat woman prisoners with a rubber stick.

Sala Schiferman, a Jewess from Poland, said that, at Belsen in January or February, 1945, a Hungarian called Eva, aged 18 years, came into kitchen No. 4 to eat some peelings. Bothe came up from a near-by working-site, saw her and beat her with a piece of wood. When the prisoners protested, the accused said: " I will beat her to death " and beat the victim all over the body. After 10 minutes she stopped and the girl was taken to a block where corpses were left. A woman internee doctor examined the body and said that she was dead.

Cesa Silberberg, a Jewess from Poland, said that Barsch was the kitchen chief of No. 1 kitchen. On or about 13th April, 1945, shortly before the English arrived, he shot a woman internee apparently for no other reason than for standing near a pile of turnips.

Dora Silberberg, also a Jewess from Poland, said that at Auschwitz on the 15th June, 1944, she was in a working party outside the camp, and with her was her friend Rachella Silberstein. The friend said she could not work that day, but Borman told her to go on. Silberberg intervened and Borman hit her in the face, knocking out two teeth. She then set the dog on the friend, and it dragged her round by her leg. Her legs became swollen and blue-black and she was carried away. On the 17th June when the deponent went to the hospital she was told the victim was dead. She saw her dead body in the yard.

Josephine Singer, a Czech Jewess, said that she was Block Leader in Block 198. She named Volkenrath as being responsible for beating many women.

She threw down the steps of a workshop a Slovak Jewess who came for work. The latter was old and died at once from her injuries.

Alexandra Siwidowa, late of Rostov on Don, recognised Volkenrath and said that the accused was in charge of all the S.S. women and beat many woman internees across the head with a rubber truncheon. On 70 or 80 occasions she beat people into unconsciousness. The deponent was certain that death sometimes occurred as a result of these beatings as the victims were not seen again. Lisiewitz, as a supervisor of a Belsen cookhouse, was often seen by Siwidowa to beat women with a rubber truncheon for trying to steal extra food. She knocked prisoners down, then kicked them. Borman beat prisoners for wearing good clothes. She stripped women prisoners and made them do strenuous exercises ; when they were too tired she beat them all over the body with a rubber or wooden stick. Walter was the S.S. woman in charge of the parties engaged on gardening round the S.S. quarters at Belsen. She often beat many women for attempting to steal potatoes and she struck the deponent on the cheek because of her German in March, 1945, causing it to swell. She had seen her beat women with a part of a wooden spade.

Tolla Stempler, a Jewess from Poland, identified Hahnel as an S.S. woman at Belsen. In February, 1945, the accused was in charge of the bath-house. Because the girls did not dress quickly enough she beat them with a whip when they were naked. The beatings were very severe and drew blood in many cases.

Eva Stojowska, a Polish Jewess, said that Dr. Klein and Kramer sent prisoners to the gas chamber. She identified Walter Otto as an Unterscharführer and Block Leader at Belsen. One day in January, 1945, she went to get a bed in Block 213, which was empty. She obtained leave to take one, but Otto saw her and accused her of stealing the bed. He beat her and she was badly bruised. Two days later Otto came into Block 201 carrying a big stick. A Block Senior, a Hungarian Jewess, was knocked to the floor and beaten. The deponent believed she had ribs broken, as she could not breathe properly. Presumably Otto suspected that she had got a bed improperly. The victim said she had got the bed from outside with the consent of the Camp Senior. At Belsen, Kopper was Block Senior of Block 205 and later of 224. In March, 1945, Kopper was beaten in kitchen No. 1, by other Block Leaders because of information given to the S.S. that the Block Leaders were in possession of jewellery.

Mevrouw Nettie Stoppelman, a Jewess from Holland, said that Volkenrath made a habit of compelling girl prisoners to " make sport " (Sport machen). Volkenrath made girls run round fast and fall down and get up for between half an hour and an hour in the office where the woman chiefs lived. She took away their cigarettes, clothes and bread.

Vladimir Sulima, a Russian, said that Ostrowski went to Belsen with him ; they were both in Block 19, and Ostrowski was kapo. A sick Frenchman who could not go on roll-call had his head smashed by the accused and was killed. Sulima had been beaten at Belsen by Ostrowski, when sick with typhus he asked for food.

Maria Synowska, a Pole, said that Starotska was Block Leader of Block 7. She saw the accused punish women under her command. She used to make them kneel with their hands in the air holding a stone. She beat women until they lost their senses, thus causing their death. She placed a woman between live electric wires and killed another by forcing her head under water. She was perfect in causing slow death. She sent ill and old people to the crematorium.

Czeslawa Szymkowiak, a Polish national, said that he was sent to Block 26, where Stanislawa Starotska, called " Stania ", was Block Leader. She beat the prisoners on every occasion, mostly on their heads. She denounced them to the Germans when she could. All feared her. At roll-call for the slightest noise she made prisoners kneel for half an hour holding up their hands.

Erika Thuna, an Austrian Jewess, said that Kramer and Grese both took part in selections for the gas chamber at Auschwitz. Volkenrath was personally responsible for many brutal assaults on exhausted women on parade. Klein was responsible for selecting victims for the gas chamber.

Edith Trieger, a Slovak Jewess, stated that Volkenrath beat prisoners with a rubber stick. She was once selected for the gas chamber herself by her, but escaped. In August, 1944, she saw Grese shoot a Hungarian Jewess, aged 30, through the left breast. The deponent later went up to the victim and found that she was dead. Trieger had also seen Grese forcing back with blows and kicks prisoners who were trying to escape from a gas chamber selection. Lobauer selected people for working parties and sometimes beat them with a wooden stick. She was very sadistic and would beat people for not lining up properly but Trieger had not seen her kill anyone. She identified Frieda Walter as an S.S. woman supervisor of kitchen No. 2 at Belsen. She had seen the accused practically every day beating women who approached the kitchen. She beat them over the head and hands with a hosepipe. Sometimes she kicked them. Trieger had not, however, seen anyone killed or rendered unconscious by her.

Luba Triszinska, a Russian Jewess, said that when woman internees gathering herbs fell behind Grese set her dog on them. Lobauer selected people for working parties, and beat them if she found vegetables on them. She had seen both Lobauer and Grese outside Block 25 chasing into the lorries people selected for the gas chamber. Charlotte Klein was responsible for beating prisoners to death. Internees pulled the cart of bread from the main store to other stores under her supervision and were beaten for stealing bread. The deponent accused Bothe of having frequently beaten internees and caused their deaths. She was in charge of a vegetable Kommando. Frieda Walter and Irene Haschke beat internees, causing their ultimate death. Hempel caught a male internee stealing turnips and she beat him with a rubber truncheon. She then called the supervisor, a Rottenführer, who kicked him into unconsciousness.

Estera Wajsblum, a Polish Jewess, recognised Pichen as an S.S. man, kitchen chief of No. 1 kitchen at Belsen. Three weeks before the English came she saw the accused search a prisoner near the wire. Pichen brought back foodstuffs which he had found on him and later shot the man. She was told later that the man was dead. About the 13th or 14th April, 1945, when

the accused and another man, Joseph, returning from an S.S. parade, saw 50 prisoners stealing turnips, they opened fire at about 30 metres range and many fell. About 10 or 15 men were shot by them, and prisoners dragged away those who had been shot.

Sonia Watinik, a Jewess from Poland, said that she saw Lothe, who was a kapo, beat her friend, Gryka, with her fists, making her nose bleed. The accused also beat Ruschla Grunwald because she left her work to go to the lavatory. Watinik heard Lothe ask Grese to set her dog on Hanka Rosenzweig, and the dog bit the latter in the shoulder. She had seen Lothe beat many prisoners. Some prisoners could not work and they went to Block 25. It was common knowledge in the camp that those who went to Block 25 were destined for the gas chamber.

Miriam Weiss, a Yugoslav Jewess, recognised Volkenrath as an S.S. woman at Belsen. On the 16th April, 1945, she saw the accused strike a prisoner who was in poor health and could not walk, because she was out of her block when the prisoners were all confined to their blocks. She fell to the ground and did not move. Lobauer beat the deponent so hard in March, 1945, that she had ear trouble. She recognised the photograph of Zoddel as that of an internee at Belsen who did police duties for the S.S. in the camp just before the British came.

Dr. Zdenek Wiesner, an internee doctor at Belsen, said that at Belsen at night, owing to hunger, people tried to get into the food stores and were shot. Kramer was said to have taken part, and bodies lay about the scene afterwards. On one occasion Dr. Wiesner personally saw 45 bodies. He estimated that during the last three months at Belsen there were 25,000 deaths. In many cases half of the prisoners were dead in the railroad carriages that brought them.

Miriam Winter, a Jewess from Poland, said that Barsch was the kitchen chief of No. 1 kitchen at Belsen on or about 13th April. She saw him shoot a girl, possibly because she was standing near a pile of turnips.

Benec Zuckermann, a Jew from Poland, said that Zoddel, Camp Senior in No. 2 camp, Belsen, was always very brutal and carried a wooden stick for beating prisoners. In March, 1945, after the food was served out in the open in No. 1 camp the deponent tried to get a second helping. Zoddel, who was watching, jumped on him and struck him several times with his stick on the head. Zuckermann started to run away but could not go fast enough. Zoddel ran after him beating him all the time. He was bleeding badly and had to remain in bed for three days. Zoddel often beat sick internees. Some of them died and Zuckermann saw their corpses removed.

Affidavits made by various of the accused were also entered by the Prosecution.[1] These accused were Kopper, Ehlert, Grese, Hoessler, Dr. Klein, Lobauer, Volkenrath, Aurdzieg and Kramer. Klein admitted selecting prisoners who, he knew, would go to the gas chamber. He only acted on the orders given to him by Dr. Wirts ; he could not say who gave the latter his orders. He never protested against people being sent to the gas chamber though he never agreed with the system ; one could not protest when in the army. Ehlert stated that Lisiewitz was always well behaved and treated

[1] See also p. 134.

prisoners decently. Lobauer made the admission that she frequently hit women with her hand to keep order. She also stated that she had seen Sauer, Bothe, Weingartner and Fiest beating prisoners. Volkenrath said that Kramer told her on the 20th March that he had made a report about the state of the camp and that the visits of Obergruppenführer Pohl and Dr. Lollinge at the end of that month were the result of that report. Hoessler said that he heard from certain prisoners that several other prisoners had been shot on a transport arriving at Belsen from Dora, but that both Dorr and Stofel, who were in charge, denied this to him.

In her affidavit Kopper said that Francioh was chief cook at Belsen just before the British came. She saw him shoot a girl who was pregnant. She went to hospital where she died, though she was only shot in the arm. Kopper saw the accused repeatedly shooting at internees, who fell down and were flung on a heap. (In Court she said that the victims were more than ten and that Francioh was shooting, from the steps of his cookhouse, prisoners belonging to Block 224, which was about 20 metres away.)

Kopper said that she knew Schreirer as an Oberscharführer at Auschwitz in the winter of 1942–1943. She also saw him several times in Belsen. Grese was in charge of the Strafkommando (Punishment Kommando) working in a sand pit from 1942–1944. (In Court Kopper changed this period to seven months.) It was the practice of Grese to pick out certain of the Jewish woman prisoners and order them to get something from the other side of the wire. When the prisoners approached the wire they were challenged by the guard, but as Grese usually picked out non-Germans they did not understand the order and walked on and were shot. She was responsible for at least 30 deaths a day resulting from her orders to cross the wire, but many more on occasions. Volkenrath not merely acted as a guard at selections ; she personally picked victims for the gas chambers.

Kramer's affidavits covered much the same ground as his evidence in Court.

Several of these documents contained other serious accusations against various other accused, but on appearing in Court their authors contradicted their previous statements on a number of points ; this was true for instance of the accused Ehlert.

G. THE OPENING OF THE CASE FOR THE DEFENCE

All of the Counsel defending individual accused delivered opening remarks which were of varying length and largely devoted to summaries of the evidence against the accused and of the evidence which they intended to call.

Major Winwood also said that it was the very foundation of Kramer's case that he was a member of the National Socialist Party, and that it was the National Socialist regime which was in power at the time when the alleged crimes took place. National Socialism demanded implicit obedience and trust on the part of a person carrying out orders. Counsel proceeded to trace the steps whereby Hitler became the source of law in Nazi Germany, and whereby the powers thus provided were used in the campaign against the Jews, first in Germany then in the territories occupied by Germany. This campaign culminated in the chimneys of Auschwitz. Himmler was the

head of the whole system of concentration camps and delegated the Concentration Camp Department to a person called Obergruppenführer Pohl, who held the position of Inspector General of concentration camps and was responsible for all camps in greater Germany. Under him was a Gruppenführer Glucks, who was the administration officer for all concentration camps. He had to deal with all questions of personnel and transport, and with such decisions as which internees went to which camps. Among the sub-departments under him was Department D.5, the medical department, which was presided over by a Dr. Lollinge.

Major Winwood went on to claim that Kramer had no control over the selections and the gassings, even though they took place in his camp, Auschwitz No. 2, since these operations came under the control of the political department, which was responsible partly to the Kommandant of Auschwitz No. 1 and partly to Himmler directly. Conditions at Belsen were largely outside the control of Kramer, who protested in vain against the continued arrival of new transports of prisoners from other camps. Those responsible, men like Pohl, Glucks and Dr. Lollinge, were not available. Kramer should be regarded, not as the Beast of Belsen, but as the Scapegoat of Belsen.

Major Munro associated himself, on behalf of his accused, with what Major Winwood had said as to the effect of the National Socialist system on the actions, behaviour and moral outlook of all those gathered in by its tentacles, because the principle of blind and implicit obedience applied fundamentally from top to bottom, and increasingly the farther down the scale one went.

Major Cranfield submitted that his accused must be judged as warders and the wardresses in a properly constituted prison, legal under German law, and all political aspects of the matter must be ignored altogether. The Court must apply International and not English law, and should remember that English standards regarding corporal punishment in prisons were not observed in modern times in a number of other countries. To throw up one's hands in disgust at corporal punishment in a prison, even for women, was not a proper course for a judicial body to take. The Court must consider what was reasonable conduct in the circumstances, and must consider the allegations of cruelty and ill-treatment in the light of what was standard behaviour throughout Europe on those points.

Throwing doubt on the soundness of the affidavit evidence before the Court, Counsel said that he would seek to prove his point by putting in affidavits of witnesses who had testified in person, and inviting the Court to compare what they had said in their affidavits with what they said in the witness box. For instance, Litwinska in her affidavit accused Ehlert of shooting, but when she came into Court she made no mention of it. Ehlert stood up before the witness, who was invited by a defending officer to accuse her, but she completely failed to do so. Again there was the incident when a woman was made to kneel in the snow and according to Guterman's affidavit Ehlert said: " It is enough". In Court, Guterman said that it was not Ehlert who said this.(1)

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(1) See p. 19.

Regulation 8 (ii) of the Royal Warrant could only have effect where it was proved that the accused planned together, or were so closely associated that the inference of joint enterprise could properly be made. The Court would have to decide whether the appalling conditions which were found in Belsen were the concerted act of anyone at all, much less of the accused in the dock.

Major Cranfield did not suggest that his accused at Auschwitz did not know there was a gas chamber, or that they did not know that people disappeared in circumstances which made it extremely probable that they had been killed. What he was claiming was that before a parade took place they did not know its purpose, and that they had no part whatever in selecting or in deciding who was to be selected.

H. THE EVIDENCE FOR THE DEFENCE

1. *Major G. A. J. Smallwood*

On 26th September, 1945, the hearing of the evidence for the Prosecution was interrupted and the examination of Major Smallwood as a witness for the Defence was interposed. Major Smallwood stated that in April, 1945, he was on the staff of the Judge Advocate General's Department and was put in charge of a small team to start making investigations at Belsen into the atrocities alleged to have been committed there. Some investigations had already been made by members of the Military Government but they had not taken any sworn affidavits. According to the procedure which he first followed, witnesses were brought in and the officers explained to the interpreters that what they wanted was evidence of definite acts committed by definite people on as far as possible definite dates. Major Smallwood devoted himself substantially to framing affidavits from statements taken by other people. Rough notes were taken of a deponent's evidence and then Major Smallwood put those notes into ordinary affidavit form. The witness then came back and the affidavit was read out to him or her and translated in Major Smallwood's presence by the interpreter. Sometimes various small alterations were made ; then the witness was sworn, and signed. At first there were no photographs available, but later Major Smallwood obtained them and when a witness came into his room he would hand him a collection of photographs and say : " Look at those and tell us if you recognise anyone in these photographs who has done a particular act or more than one particular act."

2. *Joseph Kramer*

Kramer said that he joined the S.S. in 1932, and began to take part in concentration camp work in the autumn of 1934. On the 10th or 15th May, 1944, he became Kommandant of Auschwitz No. 2, otherwise called Birkenau. The Kommandant of the whole of Auschwitz was Obersturmbannführer Hoess. The latter gave him written orders that the gas chambers and incoming transports were not his (Kramer's) concern. Orders on these matters always came from the political department in Auschwitz No. 1. The Sonderkommando which worked in the crematorium was under the command of Hoess, who was later replaced by Baer. Kramer admitted that he was sometimes present when transports of prisoners arrived since their place of arrival was usually situated in his camp. Selections for the

gas chambers or working-camps were carried out only by doctors, and Auschwitz No. 1 was responsible for keeping order on these occasions. He took no part in any selections, and denied also having used violence to load victims on to lorries. When asked what was his personal reaction to the use of gas chambers, he said: " I thought and I asked myself, is it really right about these persons who go to the gas chambers, and whether that person who signed for the first time these orders will be able to answer for it." Under cross-examination he admitted having gassed 80 prisoners previously at Natzweiller camp.

Accommodation, supplies, transport and all such administrative matters, he claimed, were under the control of Auschwitz No. 1. Kramer was a Lagerführer rather than a Kommandant.

He was later transferred to Belsen, understanding it to be a convalescent camp for sick people, and arrived there on 1st December, 1944. The food position was good at first, but deteriorated as new transports arrived. Owing to the breakdown in supplies he did not get enough food for these people, and the stores in the Wehrmacht camp were not open for him to draw upon.

The transports coming from Natzweiller brought spotted fever with them; the transports coming from Eastern Germany brought typhus. When spotted fever appeared he closed the camp, and reported his action to Berlin. He was told to open it again and to keep it open and to receive all prisoners arriving at Belsen. He gave orders that ditches were to be dug by each block for the purpose of sanitation, and for concrete ponds to be cleared and filled with drinking water. He had written a letter to S.S. Gruppenführer Glucks at Oranienburg on 1st March, protesting against the dispatch of any further transports of internees to Belsen in view of the overcrowding, the lack of food and the current rate of mortality due to typhus and spotted fever. A purported copy of this letter was entered as evidence. On 19th or 20th March, the camp was inspected by Obergruppenführer Pohl, with whom Kramer discussed means of improving conditions, including the cessation of further arrivals. Despite these steps and despite Kramer's imploring the area commander to prevent further overcrowding, a further 28,000 prisoners arrived between 4th and 13th April, and 17,000 more were expected.

The S.S. guards and Overseers were allowed to carry guns at Auschwitz, but he forbade the carrying of sticks by S.S. men; corporal punishment could be administered only with the assent of the authorities at Oranienburg.

He denied Rosenthal's allegation,(1) saying that it was only the S.S. guard Company which was armed with machine guns. He also denied the charges made by Glinowieski, Sunschein, Sompolinski, Dr. Wiesner, Stein and Hammermasch.(2) He was not at Auschwitz at the time mentioned in Glinowieski's story. All charges of ill-treatment were untrue except in so far as he once slapped a Russian girl who was brought back after attempting to escape.

He stated that he never saw Grese with a dog in Birkenau on or off duty. Grese was never at any time an Oberaufseherin. She discharged her duties

(1) See p. 33. (2) See pp. 14, 15, 16, 21 and 36.

very seriously and very well. It was untrue that she shot or maltreated internees. Kramer said that he did not know Kraft at Auschwitz.

Kramer had never seen Schmitz or Schreirer until he was taken as a prisoner to Celle jail. The latter was not a member of his staff at Belsen. When Kramer arrived at Belsen in December, Mathes was working in the S.S. kitchen. In January, 1945, he went to the bath-house. During Kramer's time he never worked in the camp cookhouse. Francioh first came to Belsen between the middle and end of March, 1945. Kramer gave him ten days' detention for leaving camp without permission in April.

3. *Dr. Fritz Klein*

This accused, a Roumanian, said that he was at Auschwitz from December, 1943, to November, 1944. He admitted that he took part in selections, and that he knew that they constituted murder. He disagreed with the system, but to protest would have been useless. On the first selection in his experience Dr. Wirtz, the senior doctor, had told him to divide a transport of prisoners into the fit and the unfit for work ; the latter included the aged, the weak, the unhealthy, children up to the age of 13, 14 or 15 years, and pregnant women. The selection was done exclusively by doctors, but it was not a proper medical examination. The doctors simply looked at the prisoners, who were dressed, and asked them a few questions if they looked ill. Dr. Klein said that he had heard that some of the unfit went to the gas chamber.

He first came to Belsen at the end of January, 1945, to replace Dr. Schnabel for about ten days, but his duties were not heavy. Doctors chosen from the prisoners looked after the hospitals ; the latter were rather primitive. When he came back to Belsen about the middle of March, Dr. Horstmann was his superior. The latter did not give him any part of the camp to look after because he said that Klein would only stay two weeks and should care for the S.S. troops. He often went into Belsen camp with Dr. Horstmann, however, and kept advising Horstmann to send reports to Berlin complaining of the state of affairs and thus to lessen his responsibility ; the situation was deteriorating every day. The camp was inspected in March by Dr. Lollinge and by Pohl from Berlin. About three days before the arrival of the British, Dr. Horstmann went away and Kramer told Dr. Klein to take over his duties. In the stores he found a surprisingly large supply of medical goods, and he called a meeting of internee doctors to find their requirements. He also found a large supply of milk, meat and biscuits. He distributed the food to the children and to really sick people who were undernourished. Impressed by the dreadful conditions, he told Kramer that the bodies should be disposed of and that water was most important since the internees were suffering more from thirst than hunger. Kramer, however, said : " You can't give me any orders ". Belsen, said Klein, was not a camp for sick people. It was a death camp ; a torture camp. The officials from Berlin, having seen the camp, were in Dr. Klein's opinion wholly responsible for these conditions, because they were sending thousands of people into the camp without providing them with anything which they needed. The witness testified that Lisiewitz was ill, with a high temperature, at some time in March or April, 1945.

4. *Peter Weingartner*

This accused, a Yugoslav, said that he went to Auschwitz in October, 1942, and, after doing weapon training for three months, was a concentration camp guard until November, 1943. In December, 1944, he was in charge of a Kommando which was digging trenches for regulating the river and had a thousand women employed under him. There were about 30 male guards, and three or four wolf hounds accompanying the Kommando but not under his command. His sole concern was to supervise the women. He never beat any of the women ; if he had beaten people while on the Vistula Kommando he would have done it against orders. The women in the Kommando were working from 7.30 in the morning to 3 o'clock in the afternoon ; they had to march four or five kilometres to their work and then back again in the evening.

Before the Kommando duty, he was Blockführer of the women's compound doing telephone duties. He never saw any selections and did not know anything about them. He left Auschwitz on about 19th January, 1945, and went to Belsen near the beginning of February. Apart from once beating Sunschein with a piece of hose on the back, he never struck anybody except with his hand, and caused no harm by these blows. He did not recognise Shreirer as being in Birkenau in the autumn of 1942. He could remember neither the witness Glinowieski nor his brother : the former's story (1) was untrue.

5. *Georg Kraft*

A Roumanian of German descent, Kraft claimed that he was never at Auschwitz but was at Belsen from 11th April, 1945. The first time he went into the actual concentration camp, however, was on the 22nd April, 1945, under British guard. As far as he knew, the accused Schmitz was not in the S.S. ; he joined Kraft quite naked while in prison.

Speaking of the transport of which Stofel was in charge,(2) he said that, at Gross Hehlen, front line S.S. troops lined up the prisoners, guarded them, and marched them off themselves. As he had to stay behind with the food trucks he did not know whether any of the prisoners were killed. He saw no shooting of internees on this journey to Belsen.

6. *Franz Hoessler*

Hoessler said that he was at Auschwitz from July, 1943, until 6th February, 1944, during which period he was Lagerführer (Camp Leader) in the women's compound. There were many cases of typhus. He went round the block and tried to improve conditions. He saw the commander of the whole camp, Hoess, and Dr. Wirtz and succeeded in securing a delousing plant.

He did attend selection parades, under orders from Hoess, but did not make any selections. The selections were made by doctors and he was there to see that the internees were guarded. Hoessler did not think that the gas exterminations were right, and when first ordered to attend he protested. He saved several hundred people from being gassed by falsifying the roll. The witness Sunschein (3) must have thought that people who were being

(1) See p. 13. (2) See p. 53. (3) See p. 17.

sent by him to the quarantine block to get fit again, and then to go on to other work than the Union Kommando, were actually intended for the gas chambers. All selections were not for the gas chambers ; some were intended to recruit working parties or to find who was suffering from scabies. He attended three types of selection parades : parades on the arrival of prisoners, parades in the hospital and parades in the camp.

He returned to Auschwitz during June, 1944, becoming Lagerführer of Auschwitz No. 1. He left Auschwitz for the last time on the 18th January, 1945, and after a period at Dora he went to Belsen, arriving on April 8th or 9th.

He was not the Kommandant of the crematorium as stated by Sompolinski or Kommandant at Auschwitz, as stated by Adelaide de Yong. The allegations of both were untrue, as were also those of Alegre Kalderon, Sunschein, Klein and Litwinska.(1) He did not give any order for the hanging described by Hammermasch,(2) but he did read out the judgment on that occasion. The girls executed were responsible for a fire which burnt down one of the crematoria in, he believed, October, 1944. They were hanged at the end of November or beginning of December. In reply to Hauptmann's allegation (3) he said that it was true that he was on the platform when the train arrived and that it was reported to him that it had come from Herzberg. He did not see anyone shot there, however, and no orders were given by him to shoot prisoners.

Szafran's story about Grese's shooting two girls (4) was untrue ; windows could not be opened in the block in question and Grese was incapable even of loading and firing a pistol. Grese worked in Hoessler's camp and did not have a dog. As an Overseer she worked in the post office and at night she had to help Block Leaders on their roll-call. She was very reliable.

Calesson came to Belsen on a transport under Oberscharführer Hartwig, on about 9th April, 1945. He was responsible for several blocks. Kraft came to Belsen in a transport about the 10th or 11th April, 1945, from Dora.

Hoessler believed that he first saw Schmitz on the 11th April, in Belsen, in his own camp, No. 2. He was a camp prisoner wearing prisoner's clothes. Later when both were prisoners of the British he saw Schmitz, wearing only his underpants ; he was given an S.S. uniform to wear and the British guards mistook him for a member of the S.S.

7. *Juana Borman*

This accused denied that she was ever present at any gas selections. She agreed that she had a dog at Auschwitz, but she never made this dog attack internees. Another Overseer named Kuck was very like her, and also had a dog. In any event, she was not at Birkenau until the 15th May, 1943. The allegations of Wolgruch, Szafran, Vera Fischer, Kalderon, Rozenwayg, Keliszek, Silberberg, Kopper and Stein were all untrue.(5) Replying to them she stated that she never went with Kommandos outside the camp but always worked inside, and that in the summer of 1944, she was not in

(1) See pp. 12, 16, 20, 21, 25 and 28. (2) See p. 14. (3) See p. 27.
(4) See p. 13. (5) See pp. 13, 14, 16, 22, 26, 28, 33, and 67.

Birkenau, which she left at the end of the previous December. She would have been severely punished had she set her dog on prisoners and the beating of prisoners by an Overseer was strictly forbidden.

After being at Birkenau from 15th May to the end of December, 1943, she came to Belsen in the middle of February, 1945, and was engaged in looking after a pigsty. At Belsen she did not come in contact with prisoners beyond her own party of prisoners. The evidence of Dr. Makar regarding her conduct there (1) was untrue. When prisoners disobeyed orders she boxed their ears or slapped their faces but never violently.

8. *Elizabeth Volkenrath*

This accused stated that she arrived at Auschwitz No. 1 in March, 1942, and was transferred to Birkenau in December, 1942, where she worked in the parcel office and bread store till September, 1944. From then till 18th January, she was in charge of a working party in Auschwitz No. 1.

Volkenrath denied having herself made selections. She attended selections during August, 1942 ; she had to be present as she was in charge of the women's camp, but she had merely to see that the prisoners kept quiet and orderly and did not run about. Her answer to the allegations of beatings made against her was that she only slapped faces.

Diament's story (2) was untrue ; Volkenrath had seen lorries on the road, but whether they went to the gas chamber she did not know. Nor was Vera Fischer's allegation (3) true. Volkenrath claimed that she was ill in hospital in August, 1942. She also denied the truth of the accusations made by Kaufmann, Siwidowa, Trieger and Kopper.(4)

She arrived at Belsen on the 5th February, 1945. She had only been there a few days when she went to hospital, returning to work on the 23rd March, 1945. At Belsen she was Oberaufseherin and had to detail the Overseers to their various duties. Here again she never did more than slap prisoners' faces. Her explanation of the events referred to by Hammermasch (5) was that a prisoner was brought back from an attempt to escape and was beaten by Kramer. She was present but did not beat the girl. She knew nothing of the beating referred to by Herkovitz.(6) Neiger's story (7) was untrue, as were those of Singer and Miriam Weiss.(8) After the 15th April, 1945, when the British took over, it was ordered that entry into Belsen camp was forbidden and she never went there. In connection with Stoppelman's accusation (9) she said that she only took the food away when the prisoners had too much. She did not remember taking away any cigarettes. The punishment referred to by Stoppelman was known as " making sport ". Prisoners had to exercise as a punishment for wrongdoing, for instance the possession of something forbidden. The sport lasted only a short time, and she had not seen any sport in Belsen.

The accused remembered Kopper at Auschwitz in the punishment Kommando. She knew Grese, who, at Auschwitz and Belsen, served under her. She never saw Grese with a dog. Starotska was a Camp Senior at both camps.

(1) See p. 30. (2) See p. 25. (3) See p. 26. (4) See pp. 28, 34, 35 and 37.
(5) See p. 14. (6) See p. 27. (7) See p. 31. (8) See pp. 33 and 36. (9) See p. 34.

Ilse and Ida Forster worked in kitchens at Belsen, as did also Frieda Walter. Klara Opitz was in Belsen for only two days. Fiest went to see Volkenrath and the doctor more than once about the overcrowding in the women's compound, to try to secure an improvement, and about medical stores and cleaning material. Sauer worked with Fiest in compound 2. Lisiewitz had been ill for a considerable time during the period that Volkenrath was at Belsen. Hahnel arrived in the first days of April, 1945, possibly the 5th or 6th. She was never in charge of the bath-house. Bothe was in charge of the distribution of wood. Volkenrath said that women's working parties were always taken from women's compound No. 1 at Belsen and not from No. 2.

9. *Erika Schopf*

This witness, an ex-internee of Auschwitz, said that it was quite easy to tell when a selection was for the gas chamber, because only Jews were paraded. Everybody knew that Block 25 was kept specially for people who were going to the crematorium. She had never seen any Overseers in Block 25. As far as she knew Hoessler did not attend selections, and the accused saved several people from the gas chamber.

10. *Herta Ehlert*

This accused said that she was called up on the 15th November, 1939, joined the S.S., and went to Ravensbruck. She was sent from Ravensbruck to Lublin as a punishment because she was too kind to the internees. She went to Auschwitz in November, 1944, for a short period and finally arrived at Belsen at the beginning of February, 1945. She later became assistant to Gollasch who deputised for Volkenrath when the last mentioned was away.

The conditions at Belsen when she arrived were the worst she had ever seen and deteriorated further. She went to the Kommandant several times in an attempt to improve matters. She paraded the Block Seniors and they said that there had been no fat in the food for several days. She went to the kitchen and talked to the Overseers in charge and they said that they had had no fat from the stores. She then saw Unterscharführer Muller, the storekeeper, who said that all the wagons were shattered by bombing and that he could not do anything about it. She happened to meet Kramer and told him that the prisoners could not keep alive on vegetable soup. He gave an order for potatoes to be mashed and put in the soup so that the prisoners would feel that they had something in their stomachs. In March she saw Dr. Horstmann about sanitation and he said he had no disinfectants to put into the latrines. Kramer said : " Let them die ; we cannot do anything about it ; my hands are bound ". She asked Kramer to require fewer roll-calls, and he said that there should only be two roll-calls per week. She gave food to the women and small children and she helped the prisoners.

She was not cruel to prisoners. She admitted that she slapped prisoners' faces but only when there was a serious need for it. To cut up blankets to make clothes was not allowed, and if she caught Sunschein or Klein doing that sort of thing she would of course slap their faces.(1) She denied being

(1) See pp. 17 and 20.

implicated in the beating of the escaped Russian girl alleged by Hammermasch. She never beat Herkovitz but simply reported her to the political department for having jewellery.

She said that Frieda Walter worked in a kitchen at Belsen and that she had never seen her beating anyone. There was an Overseer called " Orlt " at Belsen who bore some resemblence to Sauer. Ehlert remembered Ida Friedman at Belsen as being a Jewess from France who had told her fortune on the Saturday before the British arrived. Kopper was a spy for the Gestapo, and well known for her untruthfulness. She was assaulted by her fellow prisoners because of the suffering she caused them. Bothe was in charge of the distribution of wood and had nothing to do with the vegetable Kommando.

11. *Jutta and Inga Madlung*

Jutta and Inga Madlung, two sisters, came forward on their own initiative to give evidence on behalf of Ehlert, and dealt with the time when she was in the concentration camp at Ravensbruck. Jutta Madlung said that the accused was very good to them as prisoners, and did not harm them or beat them. She gave Jutta Madlung bread for her sister who was ill, and apples. She never saw her ill-treat anyone. She was also very nice to the Russians. The sister in substance corroborated what Jutta Madlung said.

12. *Irma Grese*

This accused said that she went to Auschwitz in March, 1943, and remained there until 18th January, 1945. At first she did telephone duties in the Block Leader's room. Then she was put in charge of the Strafkommando (Punishment Party) for two days. After this she worked on another Kommando and later censored mail. Then she became an Overseer in lager C. She only carried a revolver because she was ordered to do so. She never struck anyone so as to cause bleeding or unconsciousness, nor did she kick any prisoners on the ground, or shoot at prisoners. She never took part in selections at Auschwitz, but agreed that selections were made. Szafran's allegations were untrue.(1) Jews were nearly always paraded naked for the gas selection. Her duty at these parades was to keep order, and she admitted that she beat prisoners for running away. She did not know at the time the purpose of the parades. She did not remember the events described by Stein.(2) She admitted that she beat people in Lager C with a whip made of cellophane and with a stick, and that even carrying whips was against Kramer's orders. She gave Overseers under her orders to beat prisoners in order to keep discipline and to prevent stealing in the camp of which she was in charge, but she was not authorised to do this. When prisoners tried to evade parades she thrashed them.

Her answer to Rozenwayg's story (3) was that she had never been with Lothe on an outside working party, and she never had a dog. Ilse Lothe did not work under her as a kapo. Grese denied the truth of the stories told by Watinik, Diament, Kopper, Lobowitz and Trieger,(4) and thought that Dunklemann's account (5) of an alleged beating was, if true at all,

(1) See p. 13. (2) See p. 14. (3) See p. 16. (4) See pp. 25, 29, 35 and 37. (5) See p. 26.

grossly exaggerated. She denied that she made prisoners hold their hands up above their heads with stones in them. She said that the deponent Catherine Neiger (1) was never in her camp.

She came to Belsen in March, 1945. Transports were arriving almost daily, the camp was overcrowded and the prisoners were dirty and ill. Roll-calls were held twice a week. She took over the duty of Arbeitsdienstführerin and went into the woods with working parties, and performed various other duties. She did not beat anyone in Belsen except a kapo who did not work but lay in the sun. She never had any kind of weapon at Belsen, and only struck with her hand. Regarding Sunschein's and Klein's allegation,(2) she said that she once saw two parcels which contained meat being thrown away by someone in a group of prisoners. She asked who had done this, and as they would not answer she said that they must make sport until they did. The prisoners made sport for half an hour and then she was told who had thrown the parcels away. She did not report this incident as she thought that the prisoners had been sufficiently punished. Frieda Walter and Irene Haschke, said Grese, worked in No. 3 kitchen at Belsen.

13. *Ilse Lothe*

This accused said that she went as a prisoner to Auschwitz No. 1 in March, 1942, and that in June, 1943, she went to Birkenau. She was appointed a kapo in February, 1944 ; she was not consulted on the matter, and merely had to take the job or be punished by receiving 25 strokes. In December, 1944, the Kommandant put her into a punishment Kommando, the Vistula Kommando, and she ceased to be a kapo. In January, 1945, she was sent to Ravensbruck and on March 4th or 5th she came to Belsen. At Belsen she was ill for about three weeks, and then she became a kapo in the vegetable Kommando ; she was given this job by Volkenrath. Neither at Auschwitz nor at Belsen did she carry a weapon or stick, beat a prisoner with a stick, knock one down or kick one while on the ground. While a selection was taking place all kapos were put in one block and forbidden to leave. Kapos were punished more often than other prisoners and received no extra food. Lothe had herself received severe punishment from the S.S.

She did not recognise Rozenwayg ; (3) she was never in her Kommando. Lothe denied ever having worked in the same Kommando as Grese. Rozen-wayg's account was untrue as was also that of Gryka.(4) Nor did she remember the incident referred to by Watinik.(5) She was not a kapo in the summer of 1943.

On the Vistula Kommando, of which Weingartner was in charge, a halt was made at the top of the hill to allow stragglers to catch up ; the dogs were intended to prevent escapes. Stragglers might have been slapped but not beaten. Those who did not work hard were beaten.

Lisiewitz worked on a vegetable Kommando on the first day of Easter at Belsen, but she went off at noon because she became ill. She did not carry a stick on that occasion. Lothe testified that she knew Ida Friedman, whom she believed to be a Polish Jewess. Ten days after the arrival of the British,

(1) See p. 31. (2) See pp. 17 and 20. (3) See p. 16. (4) See p. 23. (5) See p 36.

Friedman was in hospital ; the accused thought she had typhus. Roth was in hut 199, but as room orderly not night guard.

14. *Hilde Lobauer*

This accused said that she went to Auschwitz No. 1 as a prisoner in March, 1942, and after four weeks to Birkenau, where she stayed till February, 1945. She was a kapo for four weeks around Christmas, 1942, and lost this position because she was not severe enough to the prisoners. She became a member of the Arbeitsdienst at about the end of 1943. She did not ask for the post ; she did not want it, but she could not refuse it. She had no duties in regard to roll-calls in the Arbeitsdienst but was concerned with the working parties going in and out of the camp. When the parties working outside had left she had to see that the working parties remaining inside did their work and that the camp was tidy and clean. She had 25 to 30 kapos under her command. In March, 1945, after a period at Ravensbruck, she went to Belsen with Lothe. Here after being sick for a time she again became a member of the Arbeitsdienst.

At Auschwitz she carried a wooden stick, but she did not carry this stick after she left Auschwitz. She denied that she ever carried a rubber truncheon since it was forbidden to do so, and she never used a whip. She agreed that she did strike the prisoners with the stick, but never so as to draw blood. She had never beaten a person for no reason, and she had never so beaten a prisoner that she was left in a dying condition. She would not have dared to do the latter ; as a prisoner she would have been reported and punished. Nor had she ever beaten anybody into helplessness or kicked a prisoner on the ground. She herself had been punished by the authorities for not working sufficiently hard. Being a prisoner she had nothing to do with gas parades, although she took the numbers of those selected for working parties. Quite different orders were issued when a selection for the gas chamber was intended, and prisoner officials were not allowed to attend.

She characterised the stories told by Jasinska, Trieger, Triszinska and Herbst (1) as untrue. Regarding the last accusation, the accused said that the kapo Krause, who was said to be dead, was alive and that in August, 1942, the accused was in hospital with typhus. The ditch mentioned was not so deep that anyone could be drowned in it ; it was intended to prevent people reaching the barbed wire which was electrified.

Ehlert was in charge of the convoy with which she (Lobauer) and Lothe arrived at Belsen. Miriam Weiss's story (2) might possibly be true ; on the March inspection everyone was ordered to remain in the blocks. In reply to Borenstein's allegation (3) she agreed that she took away blankets from women who put them round their feet, but they did not have to go barefooted as they still had their shoes on.

15. *Josef Klippel*

Josef Klippel, a Yugoslav of German descent, said that he arrived at the Bergen-Belsen Wehrmacht barracks at about 5 o'clock on the 11th April,

(1) See pp. 27, 28 and 35. (2) See p. 36. (3) See p. 24.

1945, as a member of the S.S. He was told on the 13th April, by Hoessler, to take charge of kitchen No. 24. He carried on with his duties there until the 16th April, when he was arrested by the British at 9 o'clock at night. Up to this time he had never been in Belsen concentration camp itself, and the first time he saw Kramer was in Celle prison. There were no woman prisoners in his kitchen. He had never beaten a woman with a rubber stick, or killed a woman.

Klippel said that he knew Kraft in Mittelbau camp, and that the latter was there until January, 1945, and arrived at Belsen a few hours before Klippel. Klippel slept in the same room as Kraft in the Wehrmacht barracks until the 16th April. Klippel said that he saw Calesson in the barracks at Bergen-Belsen. Klippel claimed to have been in the Kommando B.12 at Dora, but he could not remember Ostrowski being there.

The accused saw Schmitz in March, 1945, in the clothing store in Mittelbau, dressed as a prisoner. He saw Schmitz next on the 17th April, when a British guard brought him into a room wearing only a pair of pants. To Klippel, who was also in the room, Schmitz explained that he had had a fight and had escaped to the area occupied by the British guards. Schmitz was never a member of the S.S.

16. *Paul Kreutzer*

This witness, a member of the S.S., said that he had seen Klippel as late as 5th April, at Mittelbau Camp.

17. *Emmi Sochtig*

This witness, an ex-employee at Mittelbau, stated that she knew Klippel as having worked in the camp at Mittelbau, and that she saw him regularly there between January, 1945, and the 5th April, 1945. She last saw him on the 7th April at Tettenborn station.

18. *Emil Kltscho*

Kltscho, an ex-Rottenführer in the S.S., said that he arrived with Klippel at Bergen-Belsen from Mittelbau on 9th, 10th or 11th of April. He said that he slept in the same room as Kraft and Klippel in the Wehrmacht barracks until the 16th April.

19. *Stefan Hermann*

Also a member of the S.S., this witness said that he saw Klippel at Mittelbau regularly until 5th April. Hermann also said that Kraft was at Buchenwald between July and September, 1943, and then went to Mittelbau.

20. *Oscar Schmitz*

Schmitz, a German, born in Cologne, stated that he was arrested and was eventually sent to Bergen-Belsen, arriving at No. 2 camp in the Wehrmacht barracks on the morning of the 10th April, 1945. Here, he claimed, he was made a Camp Senior by the prisoners. He went to Hoessler and insisted that something must be done about food ; as a result, food was prepared.

All during this time he was wearing the striped clothing of a prisoner and he had no arms. After being in charge of 28 prisoners, he then became Camp Senior over 1,500 and between the 12th and the 15th April, 1945, he was engaged in supervising the segregation of these prisoners into different nationalities and advising Hoessler on this matter. On the 17th April, after the British arrived, he was attacked by a band of internees, who made him get undressed until he wore only his underpants and socks. He escaped to the protection of the British guards, found an S.S. uniform, and put it on, finding that it was a reasonable fit. Then he tried to explain the position to the guards, but they did not understand German. In the same room were Klippel, Kraft, Kltscho and a certain Stephan. Because of the S.S. uniform the British guards detained him and he was treated as an S.S. man.

21. *Karl Francioh*

This accused said that he was drafted into the S.S. on the 17th April, 1940, coming from the Wehrmacht. He became a cook and went to Auschwitz. He came to Belsen between the 10th and 15th March, 1945. On about the 27th or 28th March, he was given a job in kitchen No. 2 in the women's compound. He worked for two days and was then arrested because he had been to visit his wife in Bergen without permission ; he was under arrest for two days, and then went to kitchen No. 3. Then he served a ten days' sentence, being in prison from the 2nd April to the 12th April. He was sentenced to this punishment by Kramer. After this he went back to kitchen No. 3. He had to cook for about 16,300 people and tried to get more food from Unterscharführer Muller but could not. After the liberation, a Brigadier spoke with a kapo in charge of the prisoners, who said that the prisoners were satisfied with Francioh. Then the British officer told the accused to carry on, and he did so until he was arrested on the 17th or 18th April. When the British troops came in he was not in the camp : he was standing with his wife in front of Kramer's office, and he then went to Bergen with her. They had prepared to go away with her luggage, and he could have escaped with her if he had wanted to. He was so fond of the prisoners, however, that he thought it was his duty to stay and look after them.

Francioh denied all the accusations made against him. He had a pistol but he did not carry it on duty. He carried it only off duty when he went to Bergen to see his wife. He did not know Dr. Bimko, and Szafran did not work in his kitchen.(1) He estimated the distance between his kitchen and Block No. 224 at 150 metres.(2)

The accused stated that Frieda Walter worked in No. 3 kitchen and, like Irene Haschke, was an Overseer there. He did not recognise Sauer as an Overseer from kitchen No. 2 ; Hempel held that position but did not beat prisoners in the kitchen. Ida Forster was an Overseer in No. 3 kitchen, but not in his part. In kitchen No. 3 no S.S. woman had a rubber tube or beat prisoners. After the food had left the cookhouse and went to the blocks, its distribution was left to the internees.

22. *Affidavit of Raymond Dujeu*

This deponent said that he knew Schmitz. He never saw him beat anyone,

(1) See pp. 11-12 and 13. (2) See p. 90.

but his friends told him that the accused often beat them. The deponent said that Francioh was always kind and never beat anyone.

23. *Ladislaw Gura*

This accused, a Slovak, said that he was a member of the S.S., at Auschwitz, was put under arrest in June, 1944, and went on 17th February, 1945, to Belsen. He denied the allegations made against him. He had seen both Block Seniors and S.S. beating prisoners at Auschwitz though not often. He believed that Francioh was released from prison two or three days before the 12th April, 1945.

24. *Fritz Mathes*

Mathes said that he arrived at Belsen as a member of the German army, on the 22nd or 23rd November, 1944, and worked in the S.S. kitchen until the 10th or the 15th January, 1945. After this he was employed in the bath-house till the 15th April, 1945. On 1st February, his pay-book was withdrawn and he received a new pay-book from the S.S. and was given an S.S. uniform. He was never in the prisoners' part of Belsen except once, about Christmas. He never worked in cookhouse No. 2 and consequently could not have committed the offences allegedby Cech, Grunwald and Lichtenstein.[1] Cech may have mistaken the accused for Henkel, chief of the kitchen, whom he resembled. He never shot or ill-treated prisoners.

Egersdorf was with him in the bath-house on occasions ; the former did not have anything to do with the bath-house, but only slept there and worked in the food store.

25. *C.S.M. J. Mallon*

This witness came forward as a volunteer on behalf of Schmitz and said that, while on guard duty at Belsen after the liberation, he saw outside Headquarters a man, naked from the waist upwards, dressed only in underpants, and being threatened by a crowd of internees. The man was put into a room along with S.S. prisoners for safety, but the witness had the impression that he was a prisoner himself. The man obtained German clothing from somewhere. The witness thought that the incident started in the mid-afternoon. He identified Schmitz as the man involved.

26. *Johanna Therese Kurd*

In a letter which was entered as evidence, Johanna Kurd said that she was employed in the S.S. kitchen at Belsen when Mathes was an Overseer there. He was at first a Wehrmacht man who cursed the Hitler regime, and later was made an S.S. man and spoke of this with disgust. He treated prisoners well and gave them extra food, and told Kurd the allied radio news.

27. *Gisela Koblischek*

This witness said that she was employed in kitchen No. 2 as an Overseer. The chief of that kitchen was Oberscharführer Heuskel. Mathes worked in the bath-house and she never saw him in kitchen No. 2.

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[1] See pp. 25, 26 and 29.

28. *Otto Calesson*

Calesson said that he was forced to join the S.S., and was eventually sent to Bergen-Belsen, arriving on the 10th April, 1945. He said that he was not in charge of the train which brought him, but had a coach to himself because he had to look after some equipment. There were also about 124 S.S. men on the train, and he was not responsible for the security of the convoy. Zamoski's, Gutman's and Muller's allegations were untrue.(1) His answer to Raschiner's allegation (2) was that on the 2nd April he was not in Belsen but Nordhausen. He hit a prisoner on the backside with a broom for not cleaning out a room in Block 88 in the Wehrmacht barracks, but that was the only violence he ever perpetrated against any internee.

29. *Karl Egersdorf*

This accused said that he was conscripted into the S.S. on the 13th March, 1941, and went to Auschwitz No. 1, working in the cookhouse. He left Auschwitz on the 21st January, 1945, and arrived in Belsen on about the 7th or 8th April, 1945. Here he worked in a food store. There was a girl Dora employed in the store, who came from Salonika. He believed she was the girl who made the statement under the name of Dora Almaleh.(3) He dismissed her because she would not work, two days before the British arrived. He never shot or ill-treated any prisoner. If prisoners stole food he simply took it away from them.

He slept in the bath-house at Belsen, where Mathes was employed. He did not know when the latter ceased to be employed there, but he was there when the British arrived.

30. *Anchor Pichen*

Originally a Dane, this accused claimed that he later became a Polish national and was conscripted on the 25th May, 1940, into the German army. On the 20th November, 1942, he was wounded and crippled in his left arm. He arrived with Francioh at Bergen-Belsen on about the 10th March, 1945. He never wore S.S. uniform, and never knew whether he was accepted for the S.S. On the 27th March, 1945, he started work in kitchen No. 2 under Heuskel. After four days he took charge of cookhouse No. 1 and worked there until he was arrested on the 17th April, 1945. He was never in charge of a bath-house. He had an unloaded pistol at Belsen, but did not carry it in the kitchen. He used to carry it on his way to and from the kitchen but never used it. He was on good terms with all the internees working for him, and never had any need to beat prisoners. He denied the allegations of Halota.(4) He agreed that there were always turnips in front of kitchen No. 1, but he said that nothing was ever stolen from kitchen No. 1 because it was outside the compound. In answer to Litwinska's allegation,(5) he said that, all the S.S. men being called away to parade he locked up his kitchen, and that after the parade he did not go back to the kitchen but went to his own barrack room. The parade of S.S. men was on the 13th or 14th April, 1945.

(1) See pp. 22, 26 and 31. (2) See p. 32. (3) See p. 23. (4) See p. 27. (5) See p. 12.

Mathes was never in kitchen No. 1 at Belsen while Pichen was there. Ilse Forster was an Overseer in kitchen No. 1 for a few days. Lisiewitz was in the peeling department for a short period in No. 1 kitchen. Hahnel worked in kitchen No. 1, during the last week before the arrival of the British troops. Pichen did not know Opitz. Barsch was not in No. 1 kitchen during Pichen's time ; nor did the latter think that Barsch was ever on the staff of any of the Belsen kitchens.

31. *Walter Otto*

This accused stated that he joined the German Forces on the 15th October, 1940, and was then conscripted into the S.S. and sent to Auschwitz, where he remained until the 21st January, 1945. He came to Belsen on the 4th February, 1945. When he arrived he was told to start work as an electrician, and he started on the next day. He was never a Block Leader. He had never been near Block 213 which was closed to him ; he did once work in Block 209 with Dr. Horstmann, and on the 10th or 11th March he was in Blocks 195 to 203, on repair work. In Block 201 the Block Senior was called Aldona, and she was Polish. He never beat internees at Belsen. On April 6th, he did some work in the bath-house : Mathes was present.

32. *Franz Stofel*

This accused, a member of the S.S., said that he and Dorr left Klein Bodungen on the 5th April, 1945, with a convoy of internees, with Neuengamme as the probable ultimate destination. In the event it was forced to go to Belsen. Stofel was in charge and Dorr was second in command. There were 610 prisoners in good physical condition and 45 guards. At Salzgeitter, a roll-call revealed 5 prisoners missing. Later, at Gross Hehlen, on 10th April, the prisoners were put in a big barn at about 6 p.m. and ten minutes later a field officer told Stofel to leave at once, as the village was in the fighting area. The accused refused several times, and then an S.S. officer with 30 men was told to move the prisoners. The S.S. went to the barn and shooting started at once. Some prisoners had had some food, some had not. The S.S. took the prisoners away at the double. Everything was in confusion. Stofel later found the prisoners in a wood three or four kilometres from Gross Hehlen. When he reached them a Block Leader, Kunertz, reported that four or five prisoners had been shot partly because they tried to escape and partly because they could not keep up the pace. The shooting had been done by men of the field unit. His guards were not with the prisoners during the shooting ; they were in the village and only reached the convoy later on. The convoy arrived at Belsen on the 11th April at about 4 p.m. and a roll-call showed 590 prisoners present. Apart from the incident related there were no shootings by anyone during the journey. Grohman's story regarding Dorr was untrue.(1)

33. *Heinrich Schreirer*

A Roumanian of German descent, this accused said that he was called up into the Luftwaffe on the 10th October, 1941, and that he had served in the

(1) See p. 26.

Luftwaffe at all material times. He was never anywhere near Auschwitz and was never at Belsen till after his capture by the Allies. He worked as a medical attendant in Block 29 and never in 22. He first saw Diament (1) when he was confronted with her in prison, but Diament took along with her a friend who was supposed to be able to identify him and could not. With regard to a photograph which he acknowledged as having been found on him when he was arrested, he said that when he was with his fiancée and a friend they exchanged uniforms and he was photographed in S.S. uniform. He stated that he was wearing in the box the uniform in which he was arrested and explained that the S.S. trousers he acquired from a wounded man on the way from Schwerin, where he surrendered, to prison. He acknowledged that a second photograph had been found in his wallet on capture ; this bore the likeness of a girl, and on the back was the inscription: " My dear Heinz, for permanent memory of a night in Soltau ". The accused stated that he met this girl in February or March, 1945, but maintained that he had never been in either Soltau or Belsen (which were very near to one another) and could not say why the former was mentioned on the photograph.

34. *Maria Schreirer*

This witness, the mother of the accused, also claimed that he served in the Luftwaffe from his call-up onwards.

35. *Wilhelm Dorr*

This accused said that, as assistant to Stofel, he helped to take a convoy of prisoners from Klein Bodungen on 5th April, 1940. The convoy consisted of 610 people. They arrived at Gross Hehlen at about 6 p.m. and were distributing the rations by a big barn when an officer from the field force arrived and spoke to Stofel. The officer said that this was a fighting area and that the convoy had to move. On Stofel's refusing the prisoners were chased away by soldiers and there was some shooting into the air. Dorr heard further shooting from the direction in which the prisoners were chased. The latter were later collected together again. The next day, the 11th April, 1945, they went to Bergen. On arrival there were 590 in the column. The allegations of Grohmann, Linz and Poppner were untrue.(2)

36. *Gertrud Neuman*

This witness said that she was one of two S.S. women accompanying Stofel and Dorr with the transport. When they arrived at Gross Hehlen, they noticed Waffen S.S. in the village. While food was being distributed to the prisoners, someone came from the S.S. and told Stofel that the prisoners must leave the village as it was a defence position. Stofel protested unavailingly and eventually the prisoners were ordered to line up ; somebody then fired in the air, causing a panic amongst the prisoners, and the prisoners moved off. They could not go as fast as the Waffen S.S. wanted and when they went shots were fired. Neuman and others tried to catch up but could not. They saw at least eight dead prisoners lying by the side of the road.

(1) See p. 25. (2) See pp. 26, 29 and 32.

They eventually caught up with the prisoners. At no stage in the journey did she see the guards of the prisoners shooting the latter.

37. *Ilse Steinbusch*

This witness said that she was an S.S. woman who accompanied the convoy under Stofel. She corroborated substantially everything that was said by Neuman.

38. *Erika Ceconi*

Ceconi, an inhabitant of Gross Hehlen, said that she remembered the prisoners from a concentration camp being marched out of the village on 10th April, in good order though apparently tired. She heard two shots but did not know where they came from. The firing took place just before the prisoners marched off. It was about seven or eight o'clock, at dusk. In the village at the time were infantry, S.S. and Panzer units.

39. *Heinrich Brammer*

This witness, a civilian of Gross Hehlen, said that on 10th April, 1945, a party of prisoners was in Gross Hehlen and left at 9 p.m. This party was the only party of concentration camp prisoners he had ever seen. A commission found three bodies, about a kilometre from Gross Hehlen, some six or eight weeks after the prisoners had gone. The bodies were disinterred in his presence and buried in the churchyard. The bodies when found were clothed in striped prison clothing and wrapped in blankets. He did not know how the men died. He did hear some gunfire on the 10th April, but he did not see any German troops in the village. The witness stated that he became Burgomaster of Gross Hehlen at the end of the following May.

40. *Albert Tusch*

This witness, a farmer at Gross Hehlen, said that there were German troops in Gross Hehlen in April, 1945, and that they left on the 11th April. On the 10th April he saw a party of concentration camp prisoners arriving at Gross Hehlen; they looked tired and weak. They left at about 9 p.m. on the same day but he was not present when they left. He had seen no bodies and heard no shots.

41. *Dr. Ernst Heinrich Schmidt*

This witness, an S.S. doctor, said that Calesson might have travelled on a transport going to Belsen from Mittelbau from 5th–8th or 9th April, but that he was not in charge of it. He never saw any of the guards on the transport shoot prisoners. Nor did he see the accused shoot or beat anyone in Belsen. From 8th or 9th April onwards Barsch was a medical orderly in No. 2 camp Belsen, under the witness's command. During the last few days before the British arrived the accused was sick with stomach trouble under the witness's care.

42. *Dr. Alfred Kurzke*

This witness said that he worked as a doctor at Belsen, where he was

assisted by Barsch as a medical orderly. The accused arrived at Belsen early in April, but was ill with gastritis rather later.

43. *Erich Zoddel*

This accused said that he came to Belsen as a prisoner on the 27th March, 1944, and remained until the 18th April, 1945. After three days he became a Block Leader in the hospital, and stayed in this post until January, 1945, when he became third Camp Senior of compound No. 1. As Camp Senior he had, for instance, to supervise the camp and see that food came from the cookhouse and was sent to the blocks. From the beginning of March, 1945, all working people were in his compound and no one died of starvation, though in the last four weeks they were having little bread. If he was short of rations he simply asked for more and was given them.

He beat people but never after they had fallen to the ground, and never so that he drew blood. Glinowieski's allegation (1) was untrue. Sometimes the accused assisted in the food distribution, though it was not his responsibility ; it was that of the kapos or the Block Senior. When people behaved like animals to get at the food he might have struck them with his hands or a stick. He had never beaten people to or on the ground or kicked them. He agreed that he had a walking-stick, because he had a lame leg, but he did not always carry a stick. The evidence of Lozowski and Zuckermann (2) was not true. The accused denied ever being Camp Senior of compound 2. Mathes was employed in the bath-house on the 14th or 15th April ; Zoddel often saw him there.

44. *Ignatz Schlomowicz*

Schlomowicz, a Viennese Jew, said that after being arrested several years previously, he eventually arrived at Belsen at about 11 p.m. on the 8th April, 1945. Barsch and Glinowieski were with this party. Ede the Camp Senior appointed him as Block Senior for Block 12 because all the German prisoners and S.S. had marched away from Belsen on the 12th April, 1945. He had not been a Block Senior before. His main duties were in connection with the distribution of food and the maintenance of discipline inside the block, but the latter was impossible. There were 800 internees in the block, to which his transport added 300 more. He distributed the little food that was available and never beat anyone. He had suffered much hardship and pain in concentration camp life himself and he gave strict orders to the people working under him for his two days in office that beatings must cease. He denied ever having beaten anyone with a rubber cable or a stick, and pointed out that out of the hundreds of people in his block only two had apparently heard the words alleged.(3) He continued as Block Senior until the 20th April, by which time he was suffering from typhus, and later he was removed to hospital. He told of a visit which was paid to him in hospital by his two accusers Judkovitz and Basch (4) who brought him cigarettes and chatted with him. He suggested that they had themselves been so ill with typhus that they were in a low state mentally and physically, which must have been the reason for their making these accusations.

(1) See p. 15. (2) See pp. 30 and 36. (3) See p. 24. (4) See pp. 24 and 28.

The accused said that he never saw or heard of any Russian being killed by Aurdzieg. He had seen Aurdzieg beating people on food distribution but not with any weapon. He denied that Polanski was ever assistant Block Senior during his, Schlomowicz's time at Belsen. He did not know Jozef Deutsche,(1) but Polanski could not have beaten anyone while Schlomowicz was Block Senior in No. 12.

45. *Deposition of Daniel Blicblau*

Blicblau, a Polish Jew, said that he came to Belsen as a prisoner on the 6th April, 1945, and that Schlomowicz was the Camp Senior in room 12. He had not seen him beat anyone, but had heard of him hitting prisoners with his hands. The accused only punished people who stole, and behaved well as a kapo at previous camps at which the deponent knew him.

46. *Ilse Forster*

This accused said that she arrived at Bergen-Belsen with Hempel on the 17th or 18th February, 1945. For two or three days she worked in the bath-house and then she went into kitchen No. 1 in the men's compound. Here her duty consisted in the general supervision of staff. She tried to get more bread for the internees from Charlotte Klein and succeeded in doing so. The kitchen staff always got the food they required but many internees who did not get enough food came round the kitchen and tried to steal it. If they did not go away when told she beat them with her hand and sometimes with a stick. She never had a rubber truncheon and had never even seen one till she went to prison after capture. The people who came to the kitchen were mostly men and she could do nothing with them except hit them. She denied that she ever beat prisoners until they were unconscious or bleeding or that she left anyone bleeding on the floor.

Litwinska's story (2) was untrue. Ilse Forster remembered a Russian girl; she had some kind of a beating but returned to work the next day. The accused was on good terms with her staff in the kitchen and she never beat Litwinska or anyone else on her staff.

She agreed that if Bialek (3) stood at the door she could have seen beatings such as she described but she denied taking prisoners into a special room and beating them. Lippman's story was untrue.(4) So was Ehlert's.(5)

The accused said that she visited the bath-house on the 13th or 14th April, 1945, and saw Mathes there in a billet where he slept; at about 3 or 4 p.m. she saw him in bed there. Pichen was in charge of kitchen No. 1; he had a pistol but never carried it in the kitchen; it was kept in a locked drawer. She had never seen him shoot anyone or heard that he had done so. The relations between Pichen and the internees in the kitchen were intimate. He never beat them. She had never seen Barsch in kitchen No. 1.

Ilse Forster believed that Lisiewitz came to Belsen at the end of February, 1945. She worked in kitchen No. 1 in the peeling department. In the

(1) See p. 25. (2) See p. 12. (3) See p. 24. (4) See p. 29.
(5) See p. 37. Ehlert's evidence regarding Ilse Forster is an example of the contradictions mentioned.

middle of March for a few days she was ill, then came back for a short time, was sick again, and never returned. When she was ill another Overseer called Lippman took her place. Hahnel worked with Ilse Forster in No. 1 cookhouse. She arrived at Belsen the first week in April and worked there until the British came. She was never in charge of the bath-house ; she always worked in the kitchen.

Under cross-examination the witness said that there was a concrete pond close to kitchen No. 1 at Belsen, but she never saw any bodies in it. She heard of a male body being pulled out, in March, 1945.(1)

47. *Ida Forster*

Ida Forster said that she came to Belsen on the 28th February, 1945. For a fortnight she had a small working squad taking offal from the kitchen, and then she went to work in No. 2 part of No. 3 kitchen as an Overseer. She had the duties of general supervision but had nothing directly to do with the feeding of the internees. Stein's story (2) was untrue ; she never beat anyone. Frieda Walter worked in the same kitchen. In the other part of the kitchen was the accused Francioh. Ida Forster claimed that she never saw anyone shot or beaten at Belsen and that the people who worked in her kitchen had a pleasant time. She knew an Overseer named Orlt who worked in kitchen No. 3 at Belsen, and who resembled Sauer.

48. *Klara Opitz*

This accused stated that she arrived at Belsen on the 13th April. During the two days before the British came she was working in the kitchen in Block 9 peeling vegetables near the bread store, but for her first three days at Belsen she did nothing. She never saw any prisoners beaten and denied that she herself ever beat prisoners at Belsen.

49. *Charlotte Klein*

The accused Charlotte Klein said that she went to Belsen between the 20th and 26th February, 1945, with Bothe. Her duties commenced in the bath-house and the wood Kommando, and then she went into the bread store for a week. She was ill for four days, and went back to the bread store until 29th March, 1945. She became ill again and returned to the bread store again on the 5th April, 1945, where she remained until the day the British came. The bread was taken round in carts to various parts of the camp. She went with the carts, but she never had to beat the prisoners on the bread Kommando. They worked well and she always treated them well. Stealing by other prisoners happened very frequently, partly from the hand-carts and partly from the store when the door was open. If she found anyone trying to steal bread she merely took the bread away and slapped their faces. She never had a stick or a rubber truncheon at Belsen. The people in her Kommando never stole bread because there was plenty of bread and they could eat as much as they liked. Until the 11th April, 1945, bread was still being brought from Soltau, though not regularly. She never beat anyone till they died.

(1) See Rozenwayg's assertion regarding Haschke on p. 16. (2) p. 14.

During her period in the bread store Egersdorf never came to the store, and she could remember no shooting. She did issue extra bread to Forster at her request. She said she wanted some bread as her prisoners worked long hours. Bread was scarce, but she gave her some. Klein shared her room with Bothe but she never saw Bothe with a pistol. She said Hempel went to her for more bread, and she gave Hempel some.

50. *Herta Bothe*

This accused said that it was between the 20th and 26th February, 1945, when she came to Belsen. On her third day she did some duty in the bath-house. For a few days in February she was working at the kitchen in the men's compound carrying away swill, and about the middle of March she was put in charge of a wood Kommando with sixty or sixty-five prisoners in it. She had nothing to do with the ordinary run of prisoners in the camp and she never had a pistol. Everybody had to work their share on the wood Kommando, but she would not say that it was really too much for their strength. The accusations made by Schiferman, Triszinska and Grunwald (1) were untrue. Kitchen No. 4 was opposite where the wood Kommando worked, but she never went into kitchen No. 4. She had never beaten anyone to death. She had beaten internees with her hands for stealing, and when she found that the internees had stolen articles from the S.S. men's billets. She has never beaten anyone with a stick, rod or truncheon. There was a vegetable Kommando in Belsen, but she had nothing to do with it. She delivered wood to the bath-house where Mathes was the S.S. man in charge. She thought she saw him working there ; the last time she delivered fuel to the bath-house was about the 9th or 10th April, 1945. Bothe said that Charlotte Klein shared her room with her.

51. *Gertrud Rheinholt*

This witness said that she joined the S.S. on the 1st July, 1944, and went to Belsen between the 20th and 25th February, 1945. She knew Herta Bothe at Belsen and slept in the same room as she did. She confirmed that the accused was ill part of the time at Belsen. She never saw Bothe with a pistol, but she was not sure whether she had one or not. She did not see Bothe during the day at all. The witness became ill on the 7th March and was in hospital from the 10th to the 29th.

52. *Frieda Walter*

Frieda Walter claimed that she arrived at Bergen-Belsen on the 24th or 25th February, and worked at various times in kitchen No. 3, a Kommando which was putting stones into ditches, the gardening Kommando and kitchen No. 2.

Her reply to Siwidowa's accusation (2) was that she certainly hit a woman with her hand, because she stole potatoes just as others did. She hit with her hand prisoners who stole, but she confessed that she had no right to do so. Triszinska's story (3) was untrue. She never had a stick or a rubber truncheon.

(1) See pp. 26, 33 and 35. (2) See p. 34. (3) See p. 35.

Francioh was put in prison in about the middle of March and was in kitchen No. 3 from the 25th March, 1945, until the 11th April, 1945. She had seen Francioh beating prisoners with a stick. She saw Kopper some five or six times in the women's compound in front of kitchen 3, in Belsen. Kopper was in the camp police who had to see that prisoners did not crowd in on the kitchen. She never saw her beat anyone or carry a stick.

53. *Irene Haschke*

The accused Irene Haschke testified that she arrived at Belsen on 28th February, 1945, and, among other functions, she worked three days in kitchen No. 2, then in kitchen No. 3, which had two portions. The S.S. man Francioh was in charge of her portion and another Overseer called Ault also worked there.

The allegations of Stein, Rozenwayg, Neiger and Triszinska (1) were untrue. Although beating was forbidden, she admitted that she had beaten prisoners when they took food from others, and she had beaten them with her hands sometimes. She used also an ordinary wooden stick, but she would hit people only once or twice. She denied that she ever had a rubber stick or that she kicked prisoners.

Francioh came about the middle of March, 1945, to kitchen 3, and he often went away to his wife. His story of his being in prison in April was untrue. He, like Haschke, when he beat prisoners, did it openly.

54. *Gertrud Fiest*

The date of Fiest's arrival at Belsen, she said, was the 28th February, 1945, and among other duties she took roll-calls twice per week in the women's compound. She counted the prisoners with the Block Seniors and a clerk. The roll-calls lasted about one and a half hours to two hours. She never made them last longer than was necessary and it was untrue to say that they lasted six hours. The sick and dying were not forced to attend. They were counted inside the block and it was left to the female doctor to decide who was fit to attend roll-call or not. She agreed that she had on occasions hit prisoners with her hand. Anita Lasker's and Berg's accusations (2) were untrue. Once she made four women prisoners kneel on the order of the Overseer Gollasch, when the four had been caught stealing. She did march a party to the gate but none of the party fell down, and she never kicked anyone.

55. *Gertrud Sauer*

The accused Sauer said that she came to Belsen on the 28th February, 1945. She worked, among other places, in kitchen No. 2 of the men's compound and in the women's compound No. 3. She was in kitchen No. 2 on the 9th, 10th and 11th April taking the place of Hempel who was ill. She had hit prisoners near kitchen No. 2 with her hand when she caught them stealing vegetables. She always endeavoured to make the regulations more lenient for prisoners. She never saw a riding whip at all. She merely

(1) See pp. 15, 16, 31 and 35. (2) See pp. 22 and 24.

slapped girls' faces and only when she caught them stealing vegetables. She denied that she ever pulled anyone's hair or that Sunschein (1) was beaten in her kitchen. She never beat girls without reason. Neuman's story (2) was untrue ; the accused had never been near No. 1 kitchen and never worked in kitchen No. 3. She never beat anyone with a stick. Before relieving Hempel she was in charge of the bath-house. She testified that Hahnel was never seen by her to take a bath parade, and was never in charge of the bath-house.

56. *Hilda Lisiewitz*

This accused said that it was the 3rd March, 1945, when she arrived at Belsen, where she performed various functions. From the 13th to 20th March, she was employed in bringing vegetables to various cookhouses, and later spent a week in the cookhouse No. 1 in the men's Lager. She denied the truth of Almaleh's and Siwidowa's allegations.(3) If she found anyone stealing she took what they had from them and smacked their faces. Her Kommando had enough to eat, but she admitted they did eat raw turnips. She had no stick. Working under her in her working party were only Russians and no Greeks.

She said she knew Pichen. When in kitchen No. 2 he did not carry a pistol, but kept it in a locked drawer. His relations with the internees in the kitchen were good and she had never heard of his shooting anyone.

57. *Johanne Roth*

Roth claimed that she came to Belsen on the 27th January, 1945, as an ordinary prisoner and remained so throughout her stay in the concentration camp. She first went to Block 213 and was in the block for six weeks, and was transferred to Block 199 on the 6th March, 1945, and made a Stubendienst, a sort of orderly. She did not want the job and she did not ask for it, because it was a hard and thankless task. She had to get up at six in the morning and go to roll-call but the Block Senior was responsible for discipline on these occasions. Block 199 received sufficient food ; they received more soup than other blocks, because the kapos claimed for 300 persons when they should have claimed for only 250.

Her answer to Helene Klein's allegation (4) was that she, Roth, was never a night guard. She remembered Ida Friedman in Block 199 but she never beat her and had nothing to do with her death. Friedman was a Polish Jewess and the accused saw her two days before the British arrived. The allegations of Rorman and Rosenzweig (5) were untrue : she never beat prisoners for no reason at all, and never beat any old woman who was lying in bed. She did beat people in Belsen, mostly during the food distribution, when they tried to get a second helping, or crowded round the containers. She never carried a stick or rubber truncheon. She only beat prisoners with her hand, except on occasions, when she used a small leather belt.

58. *Anna Hempel*

Hempel said that she arrived at Belsen on the 17th February, 1945. She

(1) See p. 17. (2) See p. 31. (3) See pp. 23 and 34. (4) See p. 20. (5) See pp. 32 and 33.

was soon sent to kitchen No. 2 in the men's compound, of which Heuskel was in charge. She was an Overseer working at first alone and later joined by Overseer Rosenthal. In the cookhouse there were about 34 female internees and 18 men cooking for 17,000 people. The rations were not enough for the prisoners. She approached Charlotte Klein, who worked in the bread store, and got some extra bread from Klein. She also secured some extra ingredients from Muller, so as to make the soup thicker. She had to work for 14 or 16 hours every day in the cookhouse. She stopped working in kitchen No. 2 on the 8th April, because she was ill with typhus, and she went to hospital on 9th April, 1945, in the Wehrmacht barracks. She was arrested there on the 16th April, 1945. Sunschein's evidence was untrue: she never beat anyone in her private room, because she did not have one. She never had a rubber truncheon. She agreed, however, that when it was necessary in cases of stealing she beat prisoners, but not the staff in her kitchen. They worked very well, but she had to drive them hard. If she caught any of them stealing they asked her not to send them away from the kitchen but to beat their faces. She beat internees with her hands except in the case mentioned by Triszinska.(1) Regarding Triszinska's evidence she said that she did catch a man stealing turnips. She hit him with a stick, but she did not call for anyone else and he did not collapse. The evidence of Helene Klein (2) was quite untrue and the accused never had any riding-whip. Diament's evidence (3) was also quite untrue. Mathes was never employed in No. 2 cookhouse; he was employed in the bath-house.

59. *Stanislawa Starotska*

This accused claimed that she was arrested on the 13th January, 1940, by the Gestapo because she was a member of the Polish underground movement. On the 28th April, 1942, she was sent as a prisoner to Auschwitz No. 1; in Auschwitz she was badly treated and almost starved to death. She eventually became a Block Senior because of her knowledge of German, and in August, 1942, she went to Birkenau. Conditions at Birkenau were terrible. There was no light and no drainage system throughout the autumn and winter. She continued to be Block Senior for some time, going from block to block, and she found it difficult to control some of the inmates because they were criminals who had long sentences to serve and had no moral principles. She tried persuasion, but that had no effect; she had therefore to resort to beating.

She ceased to be a Block Senior on July, 1943, when she went to hospital, but when she came out of hospital she was promoted to Camp Senior in August. She did not look forward to the job, but she put herself forward in an attempt to help her fellows. Her friends also advised her that this step would help in the fight against the Germans. She said that officials were punished like anybody else if they did not do their duties, including the Block Seniors. She agreed that she was responsible for making arrangements for parades. At gas chamber parades, a doctor chose the sick and the unfit cases. Her duties were the same in almost all the parades in which she took part, gas parades or otherwise. She had to look after the parade and

(1) See p. 35. (2) See p. 20. (3) See p. 25.

see that the prisoners stood properly and were behaving themselves. During these selections she did not help the staff of the concentration camp. She did everything she could to help prisoners. She tried to secure that people in hospital were not called out on parade, she helped hard-worked prisoners to get extra food, she helped certain prisoners to obtain easier jobs and she used to change Block Seniors or kapos if they were cruel. Prisoners in Auschwitz were badly treated and had lice and bad accommodation. Most of the Block Leaders carried sticks and used them, and some of the aufseherin had whips and sticks. Dogs were set on the prisoners; Borman regularly walked around with a dog.

Starotska mentioned what she called " general selections ". If only Jews were ordered to parade everybody knew what was happening and, therefore, there was utter chaos and confusion. It was, therefore, the practice later to turn out the whole camp with the Jews on one side and Aryans on the other and only Jews were selected.

Of Szafran's testimony (1) she said that she could not, on sentimental grounds, apart from humane reasons, make selection on her own, and that she had not the requisite authority. She might have selected a working party or found out which prisoners had scabies or some lesser skin disease. This action might have confused the witness. It was true that beatings were frequent, but she only resorted to them in Block 21 when she was a Block Senior. She never beat anyone while acting as Camp Senior and it was then that she worked on bath parades. Glinowieski (2) could not see her on parades because the parades of men took place at the same time as the women. Regarding Rozenwayg's evidence,(3) the accused admitted that she wrote down the numbers of prisoners selected for the gas chamber. She tried to secure this job, which was normally done by a clerk, as she knew she could strike out some numbers from the list, not very many but just a few. Her comment on Lasker's accusation (4) was that she had to pretend to work for the authorities in order to gain their confidence. Her activities were really a fight for the prisoners but she could not tell the prisoners so.

Rozalja's statements (5) were wholly inaccurate. It was a great exaggeration for Szymkowiak to say that she beat people on every occasion, or without grounds. She never denounced prisoners to the German authorities because she knew that hundreds would be punished by a sort of collective punishment. She admitted to making prisoners kneel on parades but this was done on a superior order. Of Synowska's evidence (6) she said that everybody knew that there was a deep ditch full of water in advance of the electric wire. The wire was not electrified by day, and it would be most difficult to get to at night because of the ditch. She denied that she beat prisoners until they collapsed, but she might have slapped their faces when it was necessary. It could have happened that she deloused a woman's hair by putting her head in water.

She came to Belsen on about the 4th or the 5th of February, 1945. She was Camp Senior of the large women's compound from the 5th or 6th onwards. Block 213 was never empty. She never heard of a Block Senior being beaten in Block 201 and she would certainly have heard if this had

(1) See p. 13. (2) See p. 15. (3) See p. 16. (4) See p. 21. (5) See p. 32. (6) See p. 35.

happened.(1) Mathes was responsible for part of the bath-house at Belsen. He was employed there, but she could not say for how long ; at any rate until the 10th April, 1945. She said she knew Kopper at Auschwitz and she found Kopper at Belsen as Block Senior, she thought, of Block 205. Kopper was not suited to be a Block Senior as she was on the point of a nervous breakdown owing to her long stay in the camps. Starotska asked Gollasch to put her on camp police and this was done.

Hoessler, as Lagerführer at Auschwitz, looked after the interests of the prisoners very well.

60. *Anna Wojciechowska*

This witness said that she was a prisoner who was selected for the gas chamber and sent to Block 25. After the selection Starotska approached her, and asked why she was not with her Kommando. The witness said it was because she had no shoes. Whereupon Starotska took 20 girls, including the witness, to the stores and issued them with shoes and they were sent to work. Further, she was caught by the accused reading a letter for which she would have been punished if caught by the camp staff, but Starotska advised the witness to destroy this letter and to run away.

61. *Krystyna Janicka*

This witness said that Starotska behaved very well in Auschwitz. She was very energetic and tried to maintain order and obtain a fair distribution of food. Once when the prisoners were ordered on to parade the accused told the witness and others to look their best and, as a result, no one was selected from their block. From other blocks many people were chosen and later it was found that the parade was for the gas chamber.

62. *Stanislawa Komsta*

Komsta said that she attended many selections and that Starotska was always present as Camp Senior. She never held selections on her own initiative ; she was not entitled to do so as she was also a prisoner herself. On the contrary, when a selection was held she was able to save some people chosen during these selections ; she did her best to do so. The accused did beat people but such action was necessary under the circumstances.

63. *Sofia Nowogrodzka*

This witness said that Starotska behaved very well to the internees, especially to the Poles. Nowogrodzka remembered when 20 Polish women were chosen for the gas chamber. They were sent to Block 25 and Starotska went there and brought those women back. She never made selections on her own initiative but had to attend parades to write down the numbers of those selected. The accused obtained permission for prisoners to wear their winter clothes for a longer period.

(1) See p. 34 for an accusation made against Otto.

64. *Antoni Polanski*

This accused, a Pole, claimed that he was sent to Belsen as a prisoner, arriving about 10 or 11 o'clock at night on the 7th or 8th April, 1945. He was in Block No. 12 for two days and then went to Block No. 16. He took no part in helping to get people on to parades, and he did not help in the food distribution. The people in Block No. 16 were engaged in digging graves, and when these were ready they all had to drag corpses to the graves. Deutche's story [1] was false because during his stay in the camp he never beat anyone and held no office. Burger's and Sander's [2] evidence was also untrue.

Aurdzieg, he thought, distributed food very fairly and he had never known of his demanding any money for soup. His block was No. 16. The only roll-calls which took place in either Block 12 or Block 16 were in the latter place before the prisoners left for work on mornings.

65. *Ziegmund Krajewski*

This witness said that he had known Polanski in Auschwitz and was with him in a number of concentration camps. He corroborated that the accused was in Block No. 12 for two or three days, perhaps four, and then in Block No. 16 until the liberation. The accused, he said, " did not do anything". He and the accused were both dragging corpses themselves on the 12th, 13th and 14th April.

66. *W. Rakoczy*

Rakoczy said that in his experience Polanski behaved very well. The accused was a few days in Block 12 and then went to Block No. 16, holding no functions in the camp at all as far as the witness knew. He and the accused both took part in dragging the corpses.

67. *Lt. M. Tatarczuk*

This witness claimed to have known Polanski very well because they were in the same block. He was a decent man, a good friend and self-controlled, and he used to try to help people by getting extra food from the Block Senior. The witness corroborated the statement of the accused that he lived in Block No. 12, then Block No. 16. He had never heard of any allegation made against Polanski, even while he, Tatarczuk, was a member of a Polish committee formed, after the liberation, to investigate alleged atrocities in the camp.

68. *Helena Kopper*

This accused stated that she went as a prisoner to Auschwitz on the 21st or 22nd October, 1942, and that she was there until the 20th December, 1944. She was employed " in a normal block " at Auschwitz for two weeks and then was sent to the punishment Kommando, where she stayed up to the time when she went to Bergen-Belsen. She was not too badly treated therein because she knew what she should do and should not do.

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[1] See p. 25. [2] See pp. 24 and 33.

After moving to Belsen on the 27th or 28th December, 1944, she was first sent to Block No. 27 in camp No. 1, and then to Block No. 205 when Kramer came. She was Block Senior until the 5th February, 1945. She was too nervous to carry on the work and therefore asked the Camp Senior to remove her. She was then appointed a camp policewoman and she remained in the police until the 1st March, 1945, when she received a beating from Ehlert and she was taken to prison. She was in prison with Francioh and left prison with him on the 25th March. After her release she became an ordinary prisoner until the British came. She went to Block No. 224 and she was completely exhausted and ill. When she got to Block No. 224 she became Block Senior. In Block 224 the percentage of sick was very high and she persuaded Gollasch to agree to count the strength of the prisoners inside the block instead of having them out in the open ; the same had been the case in Block No. 205. She was arrested by the British on the 8th June, 1945.

She admitted that she was an informer and a spy, but claimed that she only informed truthfully. When she saw one prisoner stealing from another she thought it her duty to report the matter.

Guterman's allegations (1) were untrue. The accused said that the deponent was her assistant. During her absence Guterman gave internees water instead of jam or altered the quality of it. Kopper gave her a beating to undermine her prestige. Gollasch was the woman who passed by and made the enquiry when Kopper made the internee kneel. On hearing the explanation Gollasch told Kopper to dismiss Guterman from her job. The next day Guterman became an ordinary prisoner and went to another block. She had to kneel for 20 minutes, and Kopper never beat her, because she was a functionary in the block. Fischer was still alive in Belsen, claimed the accused. The allegations of Synger (2) were untrue. Kopper's explanation of the incident related by Koppel (3) was that she told Koppel that she could not have any soup but could have a double ration the next day. Koppel became aggressive and Kopper, therefore, had to resort to beating her. Kopper said she was told the next day that she fainted, but it was for a different reason. She put on a light in an air raid and a guard shot into the block.

Bialek's account (4) was untrue. Kopper denied ever having beaten anyone with a stick. She only used a belt, because she had suffered so much as a prisoner. The belt was a narrow one made of dress material. She had nothing to do with keeping order in alerts. She agreed that she beat prisoners while she was Block Senior of Block 205 when she had to get the prisoners on roll-call, but rarely. She shouted more often. On one occasion only did she order a woman to kneel and she was her own Stubenälteste (Room Senior), Guterman. It was untrue to say that she beat a woman until she died. She caused no harm by her beatings. She denied that she was ever beaten by fellow-prisoners. Of Rosenberg's allegation (5) Kopper said that at the relevant time she was in prison or on police duty and so had nothing to do with food.

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(1) See p. 19. (2) See p. 19. (3) See p. 19. (4) See p. 24. (5) See p. 33.

Kopper said that she was bitten by Borman's dog, which was dark brown, and whose marks were still on her arm. Kopper made an allegation that she was beaten by Ehlert because she was in possession of leaflets dropped by British planes. She never heard that Otto had beaten anyone. He was the only S.S. man who was good to prisoners. Block 213 was never empty.(1)

Kopper said that collective punishments, for a whole block or the whole camp, were commonly inflicted at Belsen ; they took the form of deprivation of food.

69. *Vladislav Ostrowski*

This accused, who was born at Lodz, stated that after periods at various prisons and camps he went with a transport to Belsen, arriving there on the 10th April, 1945. He claimed that the whole of his time at Belsen until the British arrived was spent in Block 19, that he was sick throughout the whole time and that he performed no duties but was attended by an internee doctor. The stories of Iwanow, Kalenikow, Karobkjenkow, Njkrasow, Sulima and Promsky (2) were, therefore, untrue. If he had no functions to perform in the camp he had no need to try to keep order and discipline and therefore, to beat anyone or get them out on roll-call. He could not influence the distribution of food.

70. *D. Soloman*

This witness said that Ostrowski was ill in Block 19 between arriving at Belsen and the liberation by the British. He had no function but the witness had seen him fetching water to the block because of the lack of a supply.

71. *Medislaw Burgraf*

Burgraf stated that he was born in Poland and was arrested by the Germans in 1940, and was eventually sent to Drütte concentration camp. At this camp he became a foreman, at the end of May, 1944, and his duties were to see that the prisoners worked and that none got away. He left Drütte on the 7th April, and arrived at Belsen about 4 p.m. on the 9th April, 1945. Here he went first to Block 16 and the next day to Block 19. In Block 19 he was employed as an ordinary prisoner, but he was appointed privately by the Block Senior to assist him in the food distribution. He was given the job of stopping prisoners in the block from getting a second helping and of preventing people from other blocks from getting food in Block 19. He did beat people if he had grounds, but he did not admit that he was a kapo at Drütte or a Stubendienst (Room Orderly) at Belsen.

Burgraf did not know a man called Grabonski and he did not know anything about any incident of the kind related by Marcinkowski.(3) Marcinkowski came to his block and asked for a second helping of soup ; he refused it and then he was told by the deponent that he was a bad Pole because he only looked after other nationalities and not Poles. Marcinkowski became aggressive and Burgraf had to hit him ; there followed a fight in which the deponent was beaten. All of Marcinkowski's and Kobriner's (4) allegations were untrue.

(1) See p. 92. (2) See pp. 27, 28, 31, 32 and 34. (3) See p. 30. (4) See p. 29.

72. *J. Trzos*

This witness said that he arrived at Belsen six or seven days before the British came. He was put into Block 19 and was joined a day later by Burgraf. The latter was first of all in the camp police and later an assisting Stubendienst as well. The accused was very keen on securing order, and therefore, had sometimes to beat prisoners, for instance when they tried to push forward for food. It was difficult to keep people in order at Belsen. They were hungry and even a beating with a stick would not keep them back.

A week before he gave evidence in Court he met the deponent Marcinkowski in Luneburg, and asked him why he was accusing Burgraf. The deponent replied that once, when unloading grenades, Burgraf had hit him in the face. Trzos then said : " For one blow you accuse a man ? " and the reply was : " Yes, because apart from that I saw Burgraf hit a man on the arm so that he died ". Marcinkowski did not say who the victim was.

The witness said that whenever he saw Ostrowski in hut 19 he saw him lying on a bed in the room where the other prisoners slept. He never saw the accused taking part in food distribution.

73. *Antoni Aurdzieg*

This accused, a Pole, said that he was sent as a prisoner to Bergen-Belsen, where he arrived on the 22nd or 25th March, 1945. He was put in Block No. 12, where the Block Senior was a French Jew. He stayed in this Block until the British came. One day the Camp Senior, who was not Zoddel, came up and said that he must assist the Stubendienst, especially with sweeping the floor. He also helped to serve the food. He was never Stubendienst or Block Senior.

In Hannover, after the liberation of the camp, he was stopped by the deponent Pinkus,(1) who said to him : " Do you remember me from the camp ? You refused to give me a second helping. I did not starve as a result of it, and now I am going to take my revenge." The accused was arrested on the same day, the 4th July, 1945, by the German police. He was taken to prison and there was forced at the pistol-point by two officers who sounded French to make a statement in the nature of a confession, which was quite untrue.

He admitted that he did beat people. The prisoners at the time were like wild animals, and if food was not being distributed fairly they would have killed the functionaries. He never used a bar or a rubber truncheon. The allegations of Pinkus were untrue. The Russian who was mentioned was punished by two strokes for trying to eat part of a body ; he was later molested by two gipsies who thought the punishment insufficient. Pinkus had asked for two portions of soup and the accused told him that he was entitled to only one ; this was why he had made the allegations against Aurdzieg and " got the others to join him in doing so ". The accounts told by Bialkiewiez and Melamed (2) were untrue ; the accused said that he was too young and too small to kill people.

(1) See p. 32. (2) See pp. 24 and 31.

74. *M. Andrzejewski*

This witness said that he never saw Aurdzieg in Belsen getting money or jewels in exchange for food. The accused did beat prisoners who were fit and who tried to take food from others who were unfit, but only with his hand. He was sweeping the floor at the other end of the block when the Block Senior and others killed a Russian on the day the British arrived.

75. *Hermann Muller*

This witness, previously an Unterscharführer in charge of the food stores at Belsen, stated that, according to the records, meat and bread were being sent there even on 11th April.

Grese never had a whip or a stick at Belsen. Cross-examined by Captain Roberts, the witness said that when standing at Block No. 224 one could not see what was happening in kitchen No. 3 because of trees in the way. The distance between the block and the kitchen was 250 to 300 metres. He knew Francioh as the cook in No. 3 kitchen, who up to the 29th March when the witness left Belsen had worked in the cookhouse for two or three days and had then had six days' punishment which started on about the 22nd or 23rd March, 1945. Charlotte Klein did her work well. Muller had to reprimand her because she was too familiar with her bread Kommando and used to give them extra food.

I. THE CLOSING OF THE CASE FOR THE DEFENCE

1. *Colonel Smith's Closing Address on Behalf of All the Accused* (1)

From the outset of the trial the Defence felt the need of the services of an expert on International Law. For instance, they wished to attack the Charge Sheet, but they thought that they could not do so until they had had expert advice.

On the first day of the trial the Court decided that it was desirable to hear the evidence and that they would preserve the right of the Defence to object to the validity of the charge at some suitable time during the proceedings, when the Defence felt competent to deal with the argument in law.

On 27th September, 1945, one of the Defending Officers applied for Colonel H. A. Smith, then Professor of International Law at London University, to be made an additional Defending Officer.

The spokesman of the Defending Officers explained that if this application succeeded, Colonel Smith would become a Defending Officer. At a time to be arranged, he would exercise the right, which the Defence had reserved, and which had been granted, to object to the charges as disclosing no offence. He would also deal with certain other legal matters on behalf of all the accused.

(1) Since Colonel Smith's remarks were made on behalf of all the accused no reference is subsequently made in these pages to points at which Counsel defending individual accused adopted, *in toto* and without further treatment, Colonel Smith's remarks on various questions discussed by him.

Reference was made by the Judge Advocate to Regulation 6 of the Royal Warrant, according to which the accused was not entitled to object to the President, any member of the Court or the Judge Advocate, or to offer any special plea to the jurisdiction of the Court. He added, however, that he was not clear what the particular objection of the Defence was going to be. The spokesman of the Defence replied that Regulation 6 had been present in their minds, and that the original application was to reserve the right to object to the charge, on the grounds that it disclosed no offence. It was upon Rule of Procedure 32 that the argument would be based.(1)

The Judge Advocate quoted the marginal note to Rule 32 (*Objection by Accused to charge*) and added that to Rule of Procedure 34, providing for another type of objection, there was a marginal note *Special Plea to the Jurisdiction.* The wording of Regulation 6 of the Royal Warrant was the same as that in the marginal note to Rule of Procedure 34. There seemed then to be some force in the argument put forward by the Defence and adopted by the Prosecution, that the Defence could attack the charge, but could not attack the jurisdiction of the Court to try war crimes.

The Court decided that it was prepared to hear Colonel Smith as a Defending Officer representing all the accused, provided that the Defending Officers first obtained the sanction of the Convening Officer to this request. An order adding Colonel Smith as an additional Defending Officer was made by the Competent Commander and the former delivered his address immediately after the close of the evidence for the defence.

Colonel Smith began his address by reminding the Court that it was concerned solely to determine whether the accused were guilty or not guilty of a war crime. Any decision that one or more of the accused were not guilty of a war crime under the Law of Nations did not prejudice any future proceedings in which they were charged upon the same or similar evidence in Courts administering other law. Every case which originated in Poland, at Auschwitz, could be tried by a Polish Court as an offence against Polish law. It could also be tried under German law under the control of the Military Government.

Furthermore, no acquittal could in any way limit the responsibility of the German Government. The German Government remained liable, under Article 3 of the Hague Convention No. IV, for all the acts done in its name, and the German Government was responsible for paying the fullest compensation to every non-German subject who had suffered in the concentration camps, or to the dependants of those who had perished.

Expounding his view that the Court administered only International Law, Counsel submitted that the Court was exactly similar to a Prize Court which sat in time of war to decide upon the legality or illegality of captures made by His Majesty's ships. The Prize Court was constituted by the King's Commission, it was a British Court, but did not administer a law laid down

(1) Under Rule 32 of the Rules of Procedure, 1926, which, under Regulation 3 of the Royal Warrant, also applies in Military Courts for the trial of war criminals, the accused, when required to plead to any charge, may object to the charge on the grounds that it does not disclose an offence under the Army Act (in this case under the Royal Warrant) or is not in accordance with the Rules of Procedure.

by the King or by Parliament ; it administered the Law of Nations. The present Military Court was constituted by Royal Warrant which laid down the procedure to be followed by the Court, just as the Order in Council laid down the procedure to be followed by the Court of Prize. But neither Court took its law, as distinct from its procedure, from the King or from Parliament. Parliament could intervene, but Parliament did not. The principle involved was made clear in the case of " The Zamora " ([1916] 2 A.C. 77), in which the question in issue was whether the Prize Court was bound by certain rules laid down by Order in Council, and the Privy Council said that the Prize Court could not be bound by an Order in Council so far as the law was concerned ; it could be bound like every other Court by Acts of Parliament, but there were none in issue. So too it was clear that the present Court must use its own judgment independently of the *Manual of Military Law* or of any other such authority.

The next point which Counsel emphasised was that, generally speaking, it was a fundamental principle of all criminal law in civilised countries that a man could not be punished for a crime which was not definitely a crime under the relevant law at the time when the act in question was committed.

No one would disagree with that outside Germany ; indeed, the first law of the Military Government had laid this down : " No charge shall be preferred, no sentence imposed or punishment inflicted for an act, unless such act is expressly made punishable by law in force at the time of its commission."[1]

The argument that International Law was progressive and that, whatever it was according to the books, the Court should if desirable create a new precedent was most dangerous. By a law of 10th May, 1935, Hitler, very impatient with the irritating tendency of the German judges to decide cases according to law, laid it down that people were to be punished, although they committed no offence against the law, if what was called sound public opinion demanded their punishment. That German law meant the abrogation of the rule of law. The Court was in danger of following the same course. It was no function of the Court to ask itself whether the law was a good law or not, or whether it was adequate. Drawing a contrast with the forthcoming trial at Nuremberg, Counsel claimed that nobody pretended that that was to be a trial under the law existing in 1939. It was a special case governed by special international agreement of all the Powers concerned. The present Court, on the other hand, did not rest upon any international agreement ; it was constituted by purely British authority, and its duty was purely to administer the law as it found it at the time of the alleged offence.

Turning to his main argument, Colonel Smith said that he would deal, first with the question of what is and what is not a War Crime, and secondly, with the question of responsibility.

The first problem was what is and what is not a War Crime ? In every crime one had to consider three elements : the Act, the Perpetrator, and the Victim. In each case the Prosecution had to prove the accused guilty in all three respects. In most cases the last two elements did not matter, but there

[1] The first sentence of paragraph 7 of Article IV of Military Government Law No. 1.

were some crimes which could be committed by some people only, and certain crimes could only be committed against certain people.

Pursuing his argument along these lines, Counsel asked first what acts constituted war crimes ? He directed the attention of the Court to Chapter XIV of the *Manual of Military Law*. That chapter was technically not an authority in the sense in which lawyers understood the word ; that is to say, as something which was legally binding. It was not meant for lawyers but for serving officers, as a practical working instruction. He thought, however, that for the most part it was perfectly sound in law. Paragraph 441 of Chapter XIV of the *Manual* which was substantially the same as the relevant provision in the American Basic Field Manual, *Rules of Land Warfare*, said : " The term ' War Crime ' is the technical expression for such an act of enemy soldiers and enemy civilians as may be visited by punishment on capture of the offenders. It is usual to employ this term, but it must be emphasised that it is used in the technical military and legal sense only, and not in the moral sense." Paragraph 442, which enumerated four classes of war crimes, in sub-paragraph 1, specified : " Violations of the recognised rules of warfare by members of the armed forces."

When one read " Violations of the recognised rules of warfare by members of the armed forces " and then read paragraph 443, which gave a long list of examples of violations, it could be seen that they had only one thing in common ; they all had something to do with war. They were all concerned with military operations, ending with treatment of the inhabitants of occupied territory. Counsel claimed that when the Prosecutor quoted Paragraph 442 (1) he had overlooked the words " by members of the armed forces ".

In its general arrangement, the *Manual* corresponded, broadly speaking, to the rules of warfare attached to the Hague Convention No. IV Relative to the Laws and Customs of War on Land. The greater part of this chapter was devoted to explaining what could and could not be done in actual operations. If the chapter were read as a whole, it could be seen in the right perspective. The only purpose in making a war crime punishable on the individual was to secure legitimate warfare ; without this terror hanging over individuals there was no certainty that mere international action on the intergovernmental level would secure legitimate warfare.

Colonel Backhouse had quoted paragraph 383 of the *Manual*, which said : " It is the duty of the occupant to see that the lives of the inhabitants are respected, that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with. . . ." That passage was a paraphrase of Article 46 of the rules attached to the Fourth Hague Convention. He had failed to see that the words " It is the duty of the occupant " refer only to the enemy state. Throughout the Hague Convention the words : " The occupant " were always used in the sense of the enemy state. When it was a question of making a case against individuals these provisions concerning the duties of the occupant were entirely irrelevant. It was the duty of the occupying power to see that everything was done properly in occupied territory ; and if the occupying power failed in that duty it had, under Article 3 of the Convention, to make compensation.

It was easy to misunderstand these sections if one did not bear in mind

that the primary purpose of the rules was to secure the responsibility of the enemy government, and that it was only in certain exceptional cases, which were carefully defined in the *Manual*, that responsibility rested upon the individual.

These paragraphs were all bound together by the common principle that all the acts cited were directly connected with the operations of war, and the purpose of the punishment of war crimes was to secure the legitimate conduct of the operations of war. In the present trial, however, Counsel submitted that the Court were dealing with incidents, which certainly occurred in time of war, but which had no logical connection with the war whatever. They were done in accordance with what was begun in peace as a peacetime policy and was intended to be carried on as a permanent and long-term aim until its purpose was achieved, the extermination of the unfortunate races involved. The only difference which the war made to this long-term policy was to increase the geographical area over which it could operate. In what way did it assist the security of the British forces to punish someone who had been guilty of misbehaviour in a German concentration camp ?

The American Manual was in this respect substantially the same as the British, and there seemed to be a substantial general agreement among the various military manuals as to what a war crime was. They all had this in common, that it must be a crime connected with the prosecution of the war in some way or another, either with hostilities which were still proceeding, or with resistance against occupation in a territory under Military Government.

Counsel referred to the fact that the Court was, under Article 8 (iii) of the Royal Warrant, instructed to take judicial notice of the Laws and Usages of War. He suggested that what he had been trying to define was in fact what every soldier would regard as a war crime.

When a member of the Court pointed out that in modern total warfare between nations everybody was involved, Colonel Smith replied that the point which he had been explaining was a completely different matter from the distinction between combatant and non-combatant. He agreed that the circumstances of modern war made it much more difficult to draw the old distinction between combatant and non-combatant. It was, however, irrelevant whether the perpetrators were combatant or non-combatant. The important point was that whatever was done in these camps had nothing to do with the operations of the war, because it began long before the war and would have continued long after it. Probably the tasks on which the unfortunate people were employed had something to do with the war effort because all work was connected with the war effort, but the accused were not being tried in connection with tasks performed, but with ill-treatment in the camps, which was entirely another matter.

Colonel Smith dealt next with the positions of the perpetrator and the victim. Concerning the perpetrator, he drew the attention of the Court again to paragraph 442 of Chapter XIV of the British *Manual* (which was substantially identical with the provision contained in the American Manual) of which the first sub-paragraph was : " Violations of the recognised rules of warfare by members of the armed forces ". Civilians could commit war

crimes such as espionage, war treason, and marauding, and a civilian could be guilty of the murder of a prisoner of war, but that was all. If he committed any of these acts he would be committing an act of hostility and an illegitimate act of hostility, for which he could be punished under the second sub-paragraph(1), but none of the acts charged in the charge sheet before the Court, except possibly one, came under that head.

In one of the few instances charged where the victims were prisoners of war, a British subject who had been captured as a prisoner of war was transferred to the concentration camp. This was a clear international wrong, but the wrong consisted in ceasing to treat him as a prisoner of war, in taking him out of the camp where he was protected by the Geneva Convention, and putting him in a concentration camp where he was exposed to the same treatment as any other inmate. The responsibility rested with those who sent him to Auschwitz or Belsen, but the responsibility of the people at Auschwitz and Belsen was the same in regard to that man as to any other inmate. Counsel did not know whether they even knew he was a prisoner of war. In any case they had no option but to treat him as anyone else. That was why he emphasised the importance of drawing a clear distinction between the responsibility of the German state and the responsibility of the individual in each particular case.

The victims must be Allied nationals. It was no part of the business of the Court to punish crimes committed by one German against another, or to punish Germans for crimes committed against their allies. There were references to Hungarian and Italian victims who were certainly not Allied nationals, even though some of them had changed sides. The words " Allied Nationals " had a definite meaning and related only to those who were nationals of the countries known as the " United Nations ".

Among the victims, Poles were, he thought, in the large majority together with some Czechoslovakians and possibly Austrians. Paragraph 443 of the *Manual* included among war crimes the ill-treatment of the inhabitants of occupied territory. The British Government regarded Poland and the greater part of Czechoslovakia as territory occupied by the Germans in the sense of the Hague Convention. Yet what were the accused to do ? Should they obey the law of their own country or act upon International Law ?

Counsel submitted that wherever there was a conflict between International Law and the law of a particular country it was the duty of the citizen of that country to obey his national law. For that there was overwhelming legal authority from which he selected two cases. The first was that of *Mortensen* v *Peters* heard in 1906 in the Scottish High Court of Justiciary (8 Sessions Cases, 93 : 43 Scottish Law Reports 872). The British Parliament had passed an Act prohibiting certain forms of fishing in the whole of the Moray Firth in Scotland, including a considerable area beyond the recognised limits of territorial waters. A Norwegian fished outside territorial waters, but within the area covered by the Statute. He was convicted in a Scottish Court and the High Court of Justiciary on appeal unanimously held that they were not concerned as to whether the Statute violated Inter-

(1) Which specifies that war crimes include, " Illegitimate hostilities in arms committed by individuals who are not members of the armed forces."

national Law or not. The Law of the land, expressed in an Act of Parliament, was binding on the court and they had to uphold the conviction. Counsel commented that if Parliament inadvertently overstepped the limits of International Law that was a matter not for the individual citizen or judge, or policeman, but for discussion between the governments concerned.

The facts of the second case, *Fong Yare Ting* v. *United States* (93,149 United States Reports 698) heard by the Supreme Court, were that Congress passed legislation restricting Chinese immigration in direct violation of a Treaty with China. The decision was that the provisions of an Act of Congress passed in the exercise of its constitutional authority must, if clear and explicit, be upheld by the Courts, even in contravention of the stipulations in an earlier Treaty.

The attitude of the German Courts was exactly the same. The principle that where there was a conflict between International Law and municipal law the citizen was bound to obey his municipal law did not diminish the responsibility of the State towards the offended State for its failure to make its internal law correspond with its international obligations.

Naturally Great Britain did not recognise the annexation of Poland or of the greater part of Czechoslovakia, but by German law, which Kramer and all the other defendants had to consider, part of the western half of Poland was German territory ; it was formally annexed to Germany. The annexation of the western part and the establishment of the so-called " General Government " in the eastern part of German-occupied Poland were both equally permanent ; the Polish State, from the German point of view, had ceased to exist, and German law with minor variations was equally applied to both. Every German in those territories, including Auschwitz which was in the annexed part, was bound by German law. It was no longer temporarily under military occupation in the sense of the Hague Convention. German law was applied by German authority, and the Polish State and Polish nation had ceased to exist.

It might be that the annexation was premature. A precise parallel had occurred during the South African War. In May, 1900, about eight months after the beginning of war, the British Government prematurely published a proclamation annexing permanently the Transvaal and the Orange Free State. Would any officer of the Court, if he had been an officer serving in South Africa at that time, have ventured to say to his superior : " I am afraid the Government has been premature in annexing these countries, and I am afraid I cannot obey your orders " ? They would, suggested Counsel, have had to obey the articles of the proclamation and leave it to the higher authorities to settle the question in the normal way on the international level.

So far as all the accused were concerned, Auschwitz was Germany, and the people in it were German subjects. They were not German citizens because the citizenship in Germany belonged to a privileged class by virtue of the Nuremberg law of 1935, which restricted German citizenship to pure Germans, but they were subject to the full force of German law, and owed allegiance to Germany. This analysis applied also to Czechoslovakia. The dismemberment of Czechoslovakia was piecemeal but the substance of the matter was the same, and from the point of view of any German that country,

except the parts ceded to Hungary or Russia, was German territory either by direct annexation or by a Protectorate ; between which there was only a technical difference.

It might be argued by the Prosecution that by the books or by the authorities the alleged acts were not war crimes, but that it was necessary to bring the law up to date. International Law was not static ; it was continually developing. It had to adapt itself to meet new situations as they arose. Therefore, the Prosecution might say, something which was not a war crime according to the books and according to the precedents of history was about to be a war crime from the time the Court gave its decision.

Counsel admitted that International Law was not static, but submitted that its development always took the form of the application of accepted principles to new situations and never of a reversal of these principles. For instance, at the beginning of the war Britain had made a proclamation which treated almost everything as contraband. Certain neutrals objected and pointed out, quite rightly, that Britain had never gone so far before. The answer which his Majesty's Government put forward was also perfectly sound. The principle of contraband, however, argued Counsel, was that the belligerent was entitled to stop and capture any cargoes which were going to help its enemy in carrying on the war, and the technical and physical requirements of modern armed forces had brought practically every article of commerce within the principles of contraband.

Did the same principle apply to the present case ? Could it be said that some circumstance had arisen which compelled the Court to treat as a war crime something which had nothing whatever to do with the war ? The Court was not faced with a new problem. The facts, unfortunately, were not new except in their intensity and atrocity and if it were said that modern International Law ought to punish maladministration in concentration camps in a country conquered, the Court was faced with the fundamental principle that it must not make its law after the event.

Turning to the question of individual and state responsibility, Counsel asked whether the accused could be individually punished for the various things they were accused of doing. In International Law the general principle was that the State and not the individual was responsible. For an example, when a British ship made a capture which was subsequently proved to be illegal and was condemned as such by the Prize Court, the result was not that the captain of the vessel was punished. Instead, the Government must pay compensation for the ship and its cargo. The general principle involved was well established and for obvious reasons. To it there were a few exceptions, of which one was that of the pirate. International Law had always permitted a pirate to be punished by anybody who caught him because he was an enemy of the human race. There were other exceptions created by a large number of treaties which dealt with such things as the opium trade and white slave traffic. Another exception was that of the war criminal, the reason being that in the absence of a right to punish a war criminal on the spot it would be impossible to carry on operations of war in security. No such reason applied to the case now before the Court. It was dealing with these cases only after the war was ended, and nothing that had happened in

concentration camps had affected British operations in the slightest degree while the war was still in progress.

Counsel next suggested that, in so far as the accused obeyed orders, all these orders were legal. There had been in Germany a most extraordinary situation in which there was not and could not normally be any conflict between a legal executive order and one illegal in the sense that a law did not permit it. In the very first stages of Hitler's regime the Reichstag abandoned all its powers and Hitler became the Executive and Legislator in one. Not only did Hitler himself combine all these powers but he also delegated them to certain persons who were directly responsible to him. The orders of each of these had the force of law within his limits, and among their number was Himmler. By various stages Himmler became head of the police, including the Gestapo and S.S., and in 1943 he became Minister of the Interior. Under the German legal framework he could issue an order which as such had the force of law. That was reinforced by a law of 10th February, 1936, which put the Gestapo and, in fact, all police activities beyond the reach of the law in so far as they were of a political nature. The substance of it was that no action undertaken by the Gestapo or by any police, in so far as it had a political character, was subject to any control of the courts; and, Counsel commented, the word " police " had a wide meaning in German. Neither could any police action be questioned by anybody except at the peril of his life. Counsel could not produce a law legalising the gas chambers at Auschwitz, but submitted that all that was needed was an order from Himmler saying: " Have a gas chamber ". That order was a law which every German had to obey in so far as it concerned him. In the case of the average German it was impossible to have the kind of conflict which might arise in England, where a man might question the order of his superior officer and say: " You cannot give me that order under the Army Act."

Kramer had stressed the fact that all decisions on matters of policy, including those regarding the gas chamber for instance, came from above, that he was a mere administrator who carried on the routine work of the camp, and that it was outside his power to decide, for example, who was to be put into the camp or taken out of the camp, for death or for any other purpose. Kramer's evidence on this point was not, Counsel believed, contradicted anywhere.

At Auschwitz, Kramer was merely the head of one section of this vast camp. Colonel Smith submitted that from the evidence it seemed that the Kommandant of the camp held a very humble rank indeed, and, *a fortiori*, that all the people under him were nothing more than the humblest kind of administrators.

Turning to the defence of superior orders, Counsel pointed out that the original text of paragraph 443 of the *Manual of Military Law* stated: " It is important, however, to note that members of the armed forces who commit such violations of the recognised rules of warfare as are ordered by their government, or by their commander, are not war criminals and cannot therefore be punished by the enemy. He may punish the officials or commanders responsible for such orders if they fall into his hands, but otherwise he may only resort to the other means of obtaining redress which are dealt with in this chapter." In April, 1944, the provision was altered, so as not

to destroy, but greatly to weaken, the defence. Counsel submitted that the original text was right and the amendment wrong, and repeated that the Court was its own judge of law and was not bound to take it from the War Office, the Privy Council, or any other authority. The original text was in accordance with the ordinary experience of the necessities of military discipline and was, moreover, in precise agreement with the American Manual. In paragraph 347 of the American Manual it was said that " Individuals of the armed forces will not be punished for these offences in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall". It would surely be most unfortunate if the Court were to condemn people, in cases where the defence of superior orders was pleaded, by virtue of an amendment to the British *Manual.* The text was at variance with the American and other official manuals, as a result of a change introduced in April, 1944, whereas the dates in the Charge Sheet began in October, 1942.

2. *Major Winwood's Closing Speech on Behalf of Kramer, Dr. Klein, Weingartner and Kraft*

Major Winwood did not dispute the fact that Kramer, Klein and Weingartner were for certain periods members of the staff at both camps and therefore, to a certain degree, responsible for their administration. The degree of their responsibility should be considered according to the period during which they were at the camps and the positions which they held. He would, however, invite the Court to say that Kraft was never at Auschwitz, that he spent three days in the Wehrmacht barracks at Bergen, and that he was never a member of the staff of Belsen concentration camp. Any remarks that he would make with regard to the conditions and responsibility at Auschwitz or Belsen should therefore be considered as confined to Kramer, Klein and Weingartner.

He drew a distinction between Auschwitz and Belsen. At Auschwitz thousands of people were killed in the gas chamber ; at Belsen thousands of people died.

Counsel submitted that orders regarding the gassing of victims at Auschwitz came, not from Kramer as Kommandant of Birkenau but from the Kommandant of Auschwitz No. 1. There was a political department at Auschwitz No. 1 which was responsible for the incoming transports and there was evidence that a member of this department used always to be present at the selections of the incoming transports. The political department was the organisation responsible within the camp Auschwitz, under the Camp Kommandant of Auschwitz, for bringing internees into the camp and for their ultimate disposal. Over this disposal, Kramer had no authority, and his real position should be compared with that of a Commanding Officer of a transit camp, whose responsibility was confined to the administration of the people inside the camp until a posting order was received. Reference was made to the evidence of Kramer, Dr. Klein, Dr. Bendel and Hoessler in this connection.(1)

(1) See pp. 20, 36, 39, 41 and 42.

On behalf of Klein, Counsel pleaded superior orders. The accused had admitted that, acting on orders by his superior officer, he made the selections of the incoming transports. He further said that he never protested against people being sent to the gas chamber, although he had never agreed with it. One could not protest when in the Army. The order which he was given and which he carried out, was in itself lawful, namely to divide prisoners into those fit for work and those unfit for work. If he had refused to make the selections himself other doctors would have done it. A British soldier could refuse to obey an order and he would face a Court Martial when he had an opportunity of contesting the lawfulness or unlawfulness of the order which he had been given. Dr. Klein had no such protection.

The names of many doctors had been mentioned in connection with experiments but nowhere had the name of Dr. Klein been mentioned, and he himself had said that he had no direct knowledge of such experiments.

Klein had said that the actual selecting was done exclusively by the doctors. Kramer admitted that he often, in the course of duty, stopped and watched the selections, and he denied categorically that he himself made the selections, and he also denied that on behalf of his S.S. staff.

As to the extent of Kramer's responsibility, Counsel said the quarter-master side of the administration of Birkenau was carried out by Auschwitz 1. The issue of food, clothing and everything else was the responsibility of the Kommandant of Auschwitz No. 1. What could be laid at the door of Kramer was what actually happened inside Birkenau from the point of view of the administration of that camp. The evidence of Grese, Borman and Weingartner(1) showed that beating was done without his authority and without his knowledge. Counsel invited the Court to consider the many difficulties that arose in the course of roll-calls and the people who had to cope with them, and to accept Kramer's word against the uncorroborated allegations contained in Rosenthal's affidavit(2) Counsel denied that the accused was at Auschwitz at the time alleged by Glinowieski.(3)

Regarding the allegation of Glinowieski against Weingartner, (4) Counsel said that there was evidence that Glinowieski's brother had committed twice in quick succession a very serious offence against camp orders, namely being in possession of unauthorised articles. There was a reasonable doubt that it was Weingartner who was responsible for the beating ; the witness had not actually seen it happen.

Counsel asked the Court to remember, when considering Sunschein's allegations,(5) the difficulties which Weingartner would have to contend with while having to supervise 1,000 women.

The evidence of Hermann, Klippel and of Kraft himself (6) indicated that the last was never at Auschwitz.

As to Kramer's responsibility for conditions at Belsen, Counsel maintained that the Court had had placed before it sufficient evidence to have a picture of Belsen during the period of December, 1944, until the liberation, when the order which Kramer established changed into disorder, and when disorder

(1) See p. 42. (2) See p. 33. (3) See p. 15. (4) See p. 15. (5) See p. 16.
(6) See pp. 42 and 49.

changed into chaos. Belsen, in itself, was an example of what was happening to Germany as a whole country. More and more people were sent to the camp and Kramer was inadequately provided with medical facilities. Even when he closed the camp in order to avoid further sick people from contracting typhus, which existed in the camp, he was ordered to keep it open. On the 1st March, he realised that nothing was going to be done, and so he wrote a dispatch to his superior officer, Glucks, telling him what the present position was at the date and prophesying a catastrophe. Volkenrath's evidence supported Kramer's claim to have written this letter.(1) Counsel submitted that if blame could be attached to anybody in these chaotic months before V.E. day, it should be laid at the feet of the men at Oranienburg who left Kramer in the lurch.

If the evidence regarding food shortage was analysed it would be clear that the witnesses were nearly all speaking about the period from about the last week in March to the date of the liberation. At the beginning of April, food was scarce in Germany as a whole ; transport had broken down and chaos had started. The numbers entering Belsen were meanwhile ever increasing ; Muller issued the food to the cooks who cooked it and issued it to the internees, and once it left the cookhouse it became the responsibility of people other than the S.S. to distribute it, as Francioh, Bialek and Szafran had shown.(2)

The Court had heard that when Kramer came to Belsen the roll-calls began. Roll-calls were a part of concentration camp life and it was the only way of being able to make out a strength return for rations, and the return which had to go to Oranienburg, especially when transports were coming in at the rate at which they were coming in. Counsel pointed out the evidence of Grese, Ehlert, Synger, Kopper and Polanski which showed that roll-calls were not unreasonably frequent or oppressively administered(3).

Regarding beatings, Counsel claimed that certain force was necessary to restrain the internees, particularly when the shortage of food came.

He suggested that the story of Bimko and Hammermasch (4) with regard to the kicking of the four Russians and the possible death of one was a pure invention thought out by these two witnesses for the sole purpose of exercising revenge on Kramer, their former Kommandant. It was also for this reason that these two witnesses accused him of taking an active part in the selections at Auschwitz.

Klein was a locum at Belsen for ten days in January and when he returned he was under Horstmann's orders. He was not the senior doctor. He had said that Dr. Horstmann specifically allocated to him the task of looking after the S.S. troops and S.S. personnel and that it was only three days before the British came that Dr. Klein did become the chief medical officer and the only medical officer at Belsen concentration camp.

The beating alleged by Sunschein against Weingartner (5) was in the circumstances reasonable and Counsel suggested that the extent of the beating and the injuries caused were grossly exaggerated by the witness.

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(1) See p. 37. (2) See pp. 13, 24 and 50. (3) See pp. 19, 45, 47, 65 and 66.
(4) See pp. 11 and 14. (5) See p. 16.

Against the evidence of Sompolinski (1) Counsel submitted that there was overriding evidence that Kraft did not arrive at Belsen until the night of the 11th–12th April. The accused Klippel had said that he met him at the aerodrome on the night of the 10th–11th April. The accused Schmitz had said that, because of typhus, the ordinary S.S. men could not go from Camp No. 2 to Camp No. 1. Apart from Sompolinski there was no evidence that Kraft ever set foot in No. 1 Camp.

Another Defence Counsel would deal with the question of concerted action and all that Major Winwood wished to say was that there could not have been any concerted action in the chaos of Belsen.

3. *Major Munro's Closing Speech on Behalf of Hoessler, Bormann, Volkenrath and Ehlert*

Major Munro began by submitting that it was not the task of the Court to judge the policy of the extermination or persecution of the Jews. The Court had to judge people called upon compulsorily by their government to undertake the execution of its policies, just as he and the members of the Court had been called upon by their Government under the emergency powers granted to it by Parliament. When there was a conflict between Municipal and International Law, a man was not presumed to know International Law and apply it in defiance of his own law.

Counsel submitted that, while hearsay evidence was admissible before the Court, when hearsay evidence appeared in an affidavit it ought to be discounted altogether.

The witnesses who claimed to have seen Hoessler taking part in selections might have seen him sorting out people on parade, for what they would not realise at the time were quite different purposes. Witnesses, because they knew that there had been gas chamber selections, jumped to the conclusion that if people were picked out on parade and never seen again that they were sent to the gas chamber. It was clear that on these parades people were also selected for working parties and that those thus selected were sometimes sent away from the camp to work somewhere else and were never seen again. There were also selections of those suffering from scabies. There was positive evidence that the persons did not know what a parade was for. A panic or stampede would be the inevitable reaction if they had such knowledge, and there was no satisfactory or convincing evidence that any scenes of this kind did occur.

Counsel submitted that Hoessler's reply to Sunschein's allegation (2) was a reasonable explanation. Counsel pointed out that the witness Helene Klein did not say that it was Hoessler who selected her. Did the Court believe that if the circumstances had been as described by this witness, and Hoessler had actually taken the attitude described, this girl would and could possibly have escaped so easily ? Or that if she had done so she would not have been recaptured again very quickly ?

There was evidence before the Court that Hoessler did everything he could, not only to save as many people as possible from death, but also to improve the conditions in the camp and the lot of the prisoners.

(1) See p. 21. (2) See pp. 17 and 42.

Some weeks elapsed between the revolt in the crematorium (1) and the executions alleged to have been ordered by Hoessler. It was impossible to tell from the evidence whether the women executed were given a trial or not. It could not be assumed that during that long period there was no trial, in the absence of Prosecution evidence. The accused was in exactly the same position as a public hangman and he could not be held liable for carrying out what the Court could not say was not a lawful sentence of death.

Counsel's comment on Adelaide de Yong's affidavit (2) was that Hoessler was not the Kommandant of the camp. The Kommandant of the camp was either Kramer or his predecessor, or more likely Bauer, the Kommandant of Auschwitz No. 1. How could the accused have given such orders ? The deponent had been confused on the matter of the identity of the camp Kommandant. Regarding Hauptmann's allegation (3) Counsel said that it was usual in all courts of criminal law, when somebody was charged with murder, to prove that the alleged victim was in fact dead.

Borman had suggested that witnesses had confused her with a certain Kuck. This confusion over identity did not arise only from a suggestion made by the accused herself ; for instance some witnesses said that she had a black dog and some said it was a brown dog.

The accounts of Wolgruch and Szafran (4) of the incident of April, 1943, at Auschwitz were suspiciously alike and if the latter was arrested on May 9th, 1943, as she said, then the attack which she alleged must have taken place before she was arrested. Why, further, was the incident not mentioned in the witness's original affidavit, in which she was recorded to have recognised the accused ? The Court was entitled to wonder whether this girl's evidence was not the result of a conversation between her and Wolgruch. In any case the accused insisted that she did not arrive in Birkenau until the 15th May, 1943, a month later. The learned Prosecutor had not cross-examined her on this date, and it would seem therefore that her evidence must stand.

Bormann admitted that she did keep discipline by hitting with her hands. The Prosecution witnesses admitted this was sometimes necessary. Counsel made the general observation that the English word " beat " could have rather a different meaning from that of the German word " schlagen " which could signify anything from a single blow up to a beating. The English word " beating " involved repeated blows and severe blows.

In relation to alleged selections by Bormann, Counsel's argument was the same as that for Hoessler, namely that she must have been seen on some parade or other sorting people out and sending them away and that the deponents made a mistake. Did the affidavit of Malachovska (5) prove anything beyond the fact that the selection involved was not a gas chamber selection ? There were no doctors present. Only 50 girls were taken out of a party of 150 and they were sent outside the camp. It was perfectly obvious that they were being transferred from one Kommando to another.

Borman admitted that she was on gas chamber parades a few times but only to keep order, and she took no selecting part. As with Hoessler, there was no satisfactory proof that she did any selecting. Counsel also applied

(1) See p. 43. (2) See p. 25. (3) See p. 27. (4) See pp. 13 and 22. (5) See p. 30.

to her the defence of acting under coercion in so far as she was present on parade at all.

It was true that technically Ehlert was at Auschwitz, in so far as she was at a sub-camp called Raisko. The only connection which that camp had with Auschwitz was that it was administered from the Headquarters at Auschwitz No. 1, and it had no connection whatsoever with Birkenau, with which that Court had been largely concerned. It would further appear from the evidence that she had no connection with the gas chamber, and no evidence had been produced against her in respect of Auschwitz.

If Herkowitz (1) was beaten, in Counsel's submission she was beaten in the political department with which the accused had nothing to do. The first part of Loffler's affidavit (2) could not be accepted, since it did not specify what part the accused took in the alleged offence.

Counsel concluded by examining the question of " concerted action " in relation to Regulation 8 of the Royal Warrant. First of all, what was " concerted action " ? The dictionary meaning of " concerted " was " planned together," " contrived " or " mutually arranged " and he submitted that the word could have no other meaning than its " normal, common-sense dictionary meaning."

Where was the evidence in this case of any such " planning ", " contriving " and " arranging " ? There was none. Could it be said, for instance, that it was mutually arranged and planned to send all these millions to the gas chamber, or that Hoessler, Borman, Volkenrath and Ehlert planned and contrived in Belsen to bring about a course of deliberate and homicidal starvation ? If the court were satisfied there was no such evidence, the accused could not be held responsible for anything other than what they had been proved to have done themselves.

It seemed that each of his four accused were entitled to a favourable verdict, but if the Court found them guilty, it was Counsel's submission that they could " only then be held collectively responsible for other acts of a similar type and nothing higher ". If they were found guilty of having beaten people they could not be collectively responsible for having shot people.

Evidence of collective responsibility would only be *prima facie* evidence, and could be rebutted. In answer, the Prosecution would then have to show what the accused could have done and failed to do to prevent the use of the gas chamber or the starving of prisoners at Belsen.

4. *Major Cranfield's Closing Address on Behalf of Klippel, Grese, Lobauer and Lothe*

Directing the Court's attention to the parts of the Charge Sheet which alleged the killing of Allied Nationals, Major Cranfield asked why there were included in this charge the names of specific Allied Nationals, and why it was not sufficient to charge the accused with causing the death of Allied Nationals whose names were unknown. He suggested that the answer was that, unless the killing of a specifically named person was included, the charge would be a bad one on grounds of vagueness and generality. Counsel

(1) See p. 27. (2) See p. 30.

proceeded to examine the names of the persons alleged in the Belsen charge to have died in that camp, reminding the Court that his accused were charged with being together concerned in causing their deaths.

He submitted that the evidence proved that Meyer was shot by a man not before the Court. The evidence proved that Anna Kis was killed deliberately by a man not before the Court. She was a Hungarian and, in his submission, if she was a Hungarian she could not be an Allied National. It was a matter of which the Court must take judicial notice that a state of war existed between the United Kingdom and Hungary, which had not been terminated by a peace treaty. Some reference had been made to an armistice. Counsel argued however that there was an armistice with Italy, but it could not be suggested that an Italian was an Allied National. It was, he thought, agreed that the names of Kohn, Glinovjechy and Konatkevicz had been wrongly included in the Belsen charge.

Referring to the death certificates relating to the remaining seven victims Counsel said that in each case the cause of death was stated to be death from natural causes. The dates of death were given, and the dates when these persons were alleged to have died were in a number of cases dates before his accused came to Belsen. One of the seven, Klee, was said by the Prosecution to be a British subject from Honduras, but Counsel for the Defence called for further proof of her nationality since the death certificate stated that she was born at Schwerin in Germany. The evidence that these seven persons were ever in Bergen-Belsen concentration camp was extremely flimsy. It seemed that he had now struck out of the Belsen charge all the specific persons whose deaths his accused were alleged to have caused, and the charge now read: " Allied Nationals unknown," which was, as he had already submitted, insufficient.

The affidavit of Anna Jakubowice said of Klippell: " I have seen him frequently beat women ". She arrived at Belsen on the 1st January, and the British arrived on the 15th April. Counsel's submission was that the allegation of frequent beating must relate to the whole period from 1st January to the 15th April. Again, the alleged shootings were said to have taken place during March, 1945. A number of witnesses supported Klippel when he said that from the 1st January to the 5th April, so far from being at Bergen-Belsen, he was over one hundred miles away in Mittelbau. Counsel denied that Klippel was part of Hoessler's unit, or of Kramer's staff.

The evidence of Diament against Grese (1) regarding the latter's responsibility for selecting victims for the gas chamber was vague. Regarding Lobowitz's allegation against Grese (2), Counsel asked whether, however conscientious the accused was, it was not absolute nonsense to suggest that roll-calls went on from six to eight hours each day ? He also threw doubt on the credibility of Neiger's words.(3)

Apart from the question of the truth of Trieger's evidence (4) Counsel pointed out that the victim of the alleged shooting by Grese was a Hungarian and not an Allied National.

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(1) See p. 25. (2) See p. 29. (3) See p. 31. (4) See p. 35.

As against Triszinska's allegation concerning Grese's dog,(1) the Court had heard the accused deny that she ever had a dog, and that has been corroborated by others of the accused and by other witnesses from Auschwitz.

Regarding Kopper's story of the punishment Kommando,(2) Counsel referred to Grese's evidence that she was in charge of the punishment Kommando for two days only, and in charge of the Strassenbaukommando, which was a type of punishment Kommando, for two weeks. The allegation of Kopper in her affidavit was that she was in charge of the punishment Kommando in Auschwitz from 1942 to 1944, but in the box she said that the accused was in charge of the punishment company working outside the camp for seven months. In the box she failed to reconcile those two statements. Was it probable that Grese would be in charge, the only Overseer, of a Kommando 800 strong, with an S.S. man, Herschel, to assist her ? If 30 prisoners were killed each day, should there not have been some corroboration of this story ?

Counsel asked the Court to disbelieve Szafran's story about the shooting of the two girls,(3) in view of Hoessler's statement that the windows of the block in question were fixed windows. The story was told neither in Szafran's affidavit nor even during her examination ; she produced it on re-examination.

Commenting on the allegation of Ilona Stein,(4) Counsel asked whether the Court believed, in view of the evidence, that an Overseer had any power to give an order to an S.S. guard ? He pointed out that the witness, in her affidavit, said : " I did not hear the order ". He doubted also whether Grese could have beaten anyone with a belt as flimsy as that worn by an Overseer at Auschwitz, one of which was produced as an exhibit.

Eleven witnesses had recognised Grese in Court. Of these eleven five made no allegation of any kind against her. This fact threw doubt on the evidence of those witnesses who said that she was notorious, a ferocious savage and the worst S.S. woman.

Regarding Jasinska's allegation that Lobauer helped in selections, Counsel asked how did she help ? It was quite impossible for Lobauer to defend herself against the allegation of such a vague sort. Counsel doubted whether many of the offences alleged against this accused were sufficiently serious to be war crimes. Of the accusation made by Borenstein,(5) Counsel said that cutting up a blanket was an offence against the camp regulations ; Lobauer had said that if she found her doing that she very likely would have beaten her with her hands, which was all that was alleged against her.

Turning to the evidence of Gryka, Rozenwayg (6) and Watinik (7) against Lothe, Counsel said that the Court would remember the circumstances in which their affidavits came to be made. He had found these circumstances from Gryka and Rozenwayg in cross-examination, and the accused Lothe had also told the Court her account. Over a month after the liberation of the Belsen camp Lothe was one of the very few Germans left in Belsen. One

(1) See p. 35. (2) See p. 37. (3) See p. 13. (4) See p. 14. (5) See p. 24.
(6) See pp. 16 and 23 for their evidence in Court. (7) See p. 36.

day she was walking through the camp when she was accosted by the three deponents, who started to shout at her, saying she was a kapo at Auschwitz, and to abuse her. They then told a British soldier that the accused was a kapo at Auschwitz, and thereupon the soldier took the entire party off to the War Crimes office. Counsel's submission was that the intention to accuse Lothe did not arise in the minds of these three deponents till they found themselves in the War Crimes office where they made up their story together.

The witnesses against Lothe were all young, and mostly uneducated. Further, the Court should consider what the mental condition of an internee at Belsen was after the liberation. The evidence given by a large number of Prosecution witnesses was embroidered and exaggerated. Counsel quoted a number of examples of evidence which had proved to be much less damning on cross-examination than it had seemed at first. For example, Dr. Bimko had talked about beatings, which later turned out to be a box on the ear.

Turning to a general discussion of the documentary evidence before the Court, Counsel said that a large amount of documentary hearsay evidence and opinion had been admitted by the operation of the Royal Warrant, and that it was for the Court to decide what weight should be afforded to that evidence. He drew attention to a passage in the Chapter on Evidence on page 70 of the *Manual of Military Law* which ran as follows : " The answer to the question why particular statements, verbal or written, should be excluded from evidence in judicial inquiries is that their exclusion has been found by practical experience useful on various grounds, and notably on the following :—

1. It assists the jury
2. It secures fair play to the accused
3. It protects absent persons
4. It prevents waste of time

" It assists the jury by concentrating their attention on the questions immediately before them, and preventing them from being distracted or bewildered by facts which either have no bearing on the questions before them, or have so remote a bearing on those questions as to be practically useless as guides to the truth, and from being misled by statements or documents, the effect of which, through the prejudice which they excite, is out of all proportion to their true weight. It secures fair play to the accused because he comes to the trial prepared to meet a specific charge, and ought not to be suddenly confronted by statements which he had no reason to expect would be made against him. It protects absent persons against statements affecting their characters. And, lastly, it prevents the infinite waste of time which would ensue if the discussion of a question of fact in a court were allowed to branch out into all the subjects with which that fact is more or less remotely connected."

In Counsel's submission the Court should be slow to consider the secondary evidence which was rendered admissible by the Royal Warrant, and should only take that into account where there were special reasons for so doing.

Beyond any doubt in a Crown prosecution the case presented against an accused carried with it a certain amount of authority, because non-military

cases were first investigated by the Director of Public Prosecution and cases before a court martial were investigated by the commanding officer. In the present trial Counsel asked the Court to proceed on the assumption that no proper preliminary investigation had been carried out.

Counsel then suggested that the accounts of incidents which had been put forward by Prosecution witnesses were very probably a confused telescoping together of experiences undergone by them during the whole of their time in concentration camps. When accusations had to be made at Belsen there were only a limited number of S.S. personnel to accuse. A large number had gone away, and when these witnesses, having suffered so much, were given the opportunity of accusing somebody, then the incident, probably telescoped, had to be pinned on to one of the people available in custody. When the photographs were shown around the camp, and evidence was asked for, there was a great temptation for these young ill-educated girls to make accusations. That seemed to Counsel a likely explanation of the quite obviously wrong identifications which had been made.

An affidavit should only be accepted by way of corroboration. An affidavit alone, providing that the accused went into the box on oath and denied it and appeared to be reliable, could not be taken as being of any weight.

Turning to the question of the gas chamber parades, Counsel suggested that general knowledge among the people paraded of the purpose of the parade was out of the question, because there would have been a stampede, however many sentries there were. It could not have been easy to discover from the procedure adopted when a gas chamber parade was intended, because when choosing working parties, as Starotska said, sometimes only Jews were called out. On other occasions when the weak or ill people were selected it was for quarantine or special blocks in another camp ; sometimes the authorities took people with infectious or contagious diseases, such as scabies.

From the evidence it appeared that the usual ground for inferring that people had been gassed was that they disappeared. If they had been sent away to a factory, or to another camp, the same would have happened. Those who were chosen for the gas chamber could have had no idea what was in store for them. Otherwise it would have taken all day to get them to Block 25. Counsel suggested that, apart from being a cage for those intended for the gas chambers, it might well be that Block 25 was used as a staging block for any party that was to leave the camp after a selection. When a party had been chosen they would obviously have to be kept segregated until they were sent away. There were witnesses who spoke of people staying in Block 25 for days. (1)

Block 25 was walled in and out of bounds to the Overseers ; and Erika Schopf said that she had never seen an Overseer at Block 25. Grese, Lobauer and Lothe, once a selection was over, would have nothing to do with the prisoners selected.

The ill-treatment at Auschwitz must be judged according to the general standard subsisting among the people in the camps. Account must be taken of the punishment meted out officially or semi-officially by the political party and, particularly in the case of Lobauer and Lothe, of the punishment which

(1) Regarding Block 25, see pp. 11, 13, 16, 17, 23, 35, 64 and 110-11.

they underwent themselves. Account must also be taken of the difficulties of the accused ; there were few people in authority compared with the mass of prisoners. Kramer and others said that beating prisoners in any degree was against the German Regulations. A distinction should be drawn very sharply between a deliberate, wanton and cruel flogging and a quick cut with a stick delivered because the prisoner had done something wrong. Any regulation against the latter would be a dead letter, and Counsel doubted whether the latter could be regarded as a war crime.

There are four killings alleged against Grese and one against Lobauer. All allegations were made by affidavit except one made against Grese which was produced as an afterthought in re-examination. None of these shootings were corroborated.

Counsel pointed out that the three women accused whom he was defending were only at Belsen a very short time ; they arrived together in the middle of March. The camp was in a chaotic condition ; disease was everywhere. Owing to the chaotic conditions of the camp there were very few working parties, and his three accused were all concerned with working parties. Counsel's submission with regard to the question of their responsibility for the general conditions at Belsen was that what was going on at Belsen during March and April, 1945, was beyond anybody's control. The camp was hopelessly and increasingly overcrowded. The whole district was rapidly becoming a battle area. Transport and communications must have been in absolute chaos, and to attempt to make local purchases of foodstuffs for the extra thousands who were coming into the camp and to attempt to get extra doctors to cope with the typhus was quite beyond Kramer or anybody else on the spot. The three accused were one Overseer aged 21, and two prisoner functionaries in the camp, and he invited the Court to accept the proposition that they were in no way responsible for conditions at Belsen.

Towards April, 1945, various concentration camps were being approached by the Allied armies, from both the east and the west, and they had to be closed. The number of concentration camps grew less and less, until Belsen was almost the last. Not unnaturally, the limited number of concentration camp personnel converged on Belsen. There was no conspiracy on the part of Kramer and others to run Belsen on the same lines as Auschwitz.

Regarding " concerted action " and the Royal Warrant, Counsel claimed that the Warrant could deal only with the admission of evidence, and it could not affect in any way the amount of proof which must be put forward by the Prosecution to establish a condonation among the accused.

5. *Captain Roberts's Closing Address on Behalf of Schmitz and Francioh*

Captain Roberts opened his final address by examining the meaning of the term " concerted action " contained in Regulation 8 (ii) of the Royal Warrant. He pointed out that the word " concert " had been defined in Court as meaning " plan ", " contrive ", " pre-arrange ". It seemed to him quite clear from what the Prosecutor said, when replying to the Defence's applications for separate trial, that the Prosecution were trying to maintain that common action was the same as concerted action. Counsel quoted two almost consecutive passages in which the Prosecutor had in fact used the

term " common action ", then the term " concerted action " in the same connection. The words " concerted action " must imply two things, some prior planning with a view to a definite end, and full knowledge of the plan and of the end in view by those carrying it out.

At Belsen it was clear from the scenes which have been so graphically described by Mr. Le Druillenec and by Brigadier Glyn-Hughes that there was chaos and disorder on a colossal scale, quite the reverse of concerted action. In Counsel's submission, in order to prove that what occurred at Belsen was the result of concerted action, it would be necessary to show that, when each member of the staff arrived at Belsen, he was told: " Here in this camp we mean to kill many people as painfully as possible. To that end we have introduced typhus into the camp; to that end, we have, with the co-operation of the Royal Air Force, ensured that prisoners receive little food and no water, to that end we are asking all the other camps in the district to pour as many prisoners as possible into this camp; will you not become a partner with us in this joint enterprise?"

By inference, the Prosecution, claimed Counsel, had said that the mere presence of the accused during the commission of a war crime in itself made them guilty of that crime. Archbold, dealing with principals in the second degree, on page 1429, read, however, as follows: " There must also be a participation in the act; for even if a man is present whilst a felony is committed, if he takes no part in it and does not act in concert with those who commit it, he will not be a principal in the second degree, merely because he did not endeavour to prevent the felony, or failed to apprehend the felon." (1) In Counsel's submission, this passage relating to felonies under English law must be adopted by the Court when trying war crimes. He asked the Court therefore to consider only the evidence specifically relating to each accused.

Counsel pointed out that Dujeu's deposition said that " although I never myself saw him beat anyone my friends have told me that he often beat them." He did not say where or when or how he knew Schmitz, and although he mentioned his friends as saying they had often been beaten it seemed to Counsel strange that those friends never came forward themselves to give their own evidence.

The draft deposition of Vaclav Jecny (2) was no more than hearsay upon hearsay with the added confusion of interpretation. The document alleged that Schmitz was an S.S. man, whereas the evidence of C.S.M. Mallon, of Klippel and of others of the accused (3) made it clear that he was never a member of the S.S. Further, from his own past criminal record and from the fact that he was a deserter from the German Army, it was obvious that he would never have been accepted by the S.S. or any other force. None of the Prosecution witnesses had recognised Schmitz in Court. His presence there depended solely upon an alleged photographic identification.

Counsel pointed out that in two depositions made by Dr. Bimko, the victim alleged to have been shot by Francioh was a man. In Court, the witness said that the victim was a woman. Asked in cross-examination

(1) *Archbold: Pleading, Evidence and Practice in Criminal Cases*, 31st Edition, p. 1429.
(2) See p. 28. (3) See pp. 43, 49 and 51.

why she had changed the sex of the victim, she said that she had always said it was a woman. Counsel suggested that the whole episode was imaginary. In her evidence before the Court, Dr. Bimko admitted that she never knew the name of the accused and she also admitted that she never saw his photograph until after she had made her first statement. How then could she possibly know the name of the person to whom she was referring ? Furthermore, her first affidavit contained a simple statement that Francioh shot a man dead ; according to the second, he had been shot through the stomach ; finally in Court she said that the victim had been shot in the head as well as the stomach. She had had time to think over her story and Counsel suggested that it had occurred to her that perhaps the Court might think it peculiar that a man internee should be shot dead outside the cookhouse in the women's compound and so the witness had turned the man into a woman in her story.

Counsel pointed out that Szafran's deposition and her evidence in Court (1) were conflicting as regards the person or persons who, along with Francioh, were alleged to have committed the shooting mentioned, the number of the victims, the time of the shooting and the direction from which the offence was carried out. Furthermore, if this incident did take place was it not remarkable that no other witnesses had been produced to corroborate it ? Counsel also pointed out discrepancies between Stein's affidavit and her evidence in Court.

In Counsel's submission all three of these witnesses, who had suffered so long under the harsh hand of their oppressors, could not be otherwise than violently prejudiced against any and all of the accused. In view also of the fact that the sworn evidence given by these witnesses in their depositions differed so materially from that given by them in Court as to amount to a complete contradiction, and that they had given no satisfactory explanation of this, it was necessary to reject their evidence completely.

The affidavit of Irene Loffler (2) was the only instance in the whole of the evidence against Francioh where the nationality of the victim was mentioned. Counsel pointed out that as Francioh came to Belsen between the 10th and 17th March, a fact which the Prosecution had not challenged, he could not have committed the offences alleged by Loffler and Sunschein.(3) Furthermore, Sunschein had made no allegation against Francioh in the deposition and her evidence in court was the first mention of an accusation.

Maria Neuman (4) was a nurse, but it was impossible to find what she was doing in the men's compound, and why she was in the vicinity of the kitchen ; if she was a nurse it was unlikely that she was a member of the kitchen Kommando. Since her evidence took the form of an affidavit there was no opportunity of questioning her on these points.

Kopper's evidence (5) could not be true, since, as Muller had pointed out, the distance between the cookhouse and Block No. 224 was much greater than Kopper had said, and an intervening belt of trees would have prevented the latter from seeing the alleged shooting.

(1) See p. 13. (2) See p. 30. (3) See pp. 17 and 30. (4) See p. 31. (5) See p. 37.

It was clear that the accused was in prison in Belsen for a period of eight to ten days, and exactly when was not material.

Counsel explained why so many people had made accusations against Francioh. Like all cookhouse personnel, he was very well known. The cookhouse was the most important part of the lives of these prisoners, and if they went short of rations or did not get any food it was Francioh whom they blamed above anybody else. Was it not strange that of over 70 internees employed in his cookhouse, only one had given any evidence against Francioh ? Francioh had denied that that one was ever in his cookhouse at all.

Recalling his remarks on Loffler's evidence, Counsel said that the Prosecution had failed to produce acceptable evidence that Francioh had ever ill-treated any Allied national.

6. *Major Brown's Closing Address on Behalf of Mathes, Calesson and Egersdorf*

Major Brown submitted that it was unreasonable to suggest that these three men, considering the short time they were at Belsen and their minor capacities and positions, could be found guilty of having acted in a concerted manner to bring about the prevailing conditions.

In the case of Mathes and Egersdorf the only evidence produced had been in the form of affidavits, and in fact against Egersdorf there was only one paragraph in one affidavit. Neither of these two men was recognised by any witness brought before the court.

The evidence of Pichen, Hempel, Egersdorf and others showed that Mathes did not work in cookhouse No. 2 ; there was sufficient evidence to show that at the times of the alledged incidents he was not in the prisoners' part of the camp and was employed in the bathhouse.

Raschiner (1) must be mistaken in his evidence against Calesson. The accused arrived at Belsen on about the 9th or 10th April, according to Hoessler and Schmitz. He travelled by train and he was not in charge of the transport.

Zamoski (2) had stated in evidence that he was told that his friend was dead by a sister from the hospital, but Dr. Schmidt and Dr. Kurske both stated that there were no sisters employed in the hospital for internees in Belsen. Further, Calesson was not employed in an administrative capacity in a cookhouse.

Charlotte Klein had said that Egersdorf never came to the bread store and that she could not remember any such incident as that described by the affidavit accusing Egersdorf. Further, Hungarians were not, in April, 1945, Allied nationals, and at that time a German could not commit a war crime against a Hungarian.

7. *Captain Fielden's Closing Address on Behalf of Pichen, Otto and Stofel*

Captain Fielden began his remarks by submitting that the three accused whom he represented had not been shown to have displayed agreement with

(1) See p. 32. (2) See p. 22.

any plan to ill-treat prisoners at Belsen. They had not, therefore, taken part in " concerted action " and could only be judged according to their own individual acts.

He went on to argue that, according to German law, Poland as a sovereign state had ceased to exist and that previous Polish nationals from that part of Poland annexed by Germany were, as a result, German nationals. With very few exceptions, about which his accused might or might not have known, the internees at Belsen came from countries annexed by Germany by conquest. These countries became German nationals. The accused were therefore not guilty, since it was a necessary ingredient of the *mens rea*, the guilty knowledge, to be proved in establishing the perpetration of a war crime, that the accused must have known, or could reasonably have been expected to know, that the nationality of the victim was that of an Ally. A German could not commit a war crime against another German. A war crime was essentially an act which the victor punished to safeguard the lives of his own nationals or of his allies. Punishment of war criminals was intended not to avenge the alleged crime but to act as a warning and a deterrent to others not to act in a similar way in the future.

Counsel pointed out that Litwinska had inspected Pichen in the dock but did not recognise him as being the man concerned in the incident which she had described.(1) He had enquired whether either of the S.S. men had any physical deformity while her attention was still directed towards this incident. The Court had seen the result of the war wound in Pichen's left hand, a very obvious disfigurement, yet the witness was unable to say whether or not any of the men whom she connected with the alleged incident had any physical deformity.

The incident alleged in the affidavit of Halota (2) was supposed to have taken place at the very time when Pichen was on the S.S. men's parade. Litwinska, who worked continuously in No. 1 kitchen, never knew anything about this incident. There was no proof that the two men whom Pichen shot were dead ; four hours later two bodies were found outside No. 1 kitchen. There was nothing specific in the allegation of Halota to connect Pichen directly with these two bodies.

Counsel's comment on Wajsblum's allegation (3) was that three weeks before the arrival of the British, Pichen was not in No. 1 kitchen. From the 27th March until the 31st March he was in camp No. 2.

Dealing with the allegations made against Otto, Counsel said that Dr. Bimko had corroborated the accused's statement that he was never a Block Leader. Starotska and Kopper had both said that Block 213 was never empty. The former had testified that she would certainly have heard about the incident if a Block Senior of Block 201 had been beaten, because that functionary would have come to her and complained ; Dr. Bimko said that she had never heard of such an incident.

Otto was in Auschwitz from October, 1940, until the January of 1945. Yet there was not a single allegation of ill-treatment against Otto in respect of Auschwitz.

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(1) See p. 12. (2) See p. 27. (3) See p. 35.

Of the evidence against Stofel, Counsel confined his attention to the affidavits of Grohmann and Poppner. The affidavit of Mocks was merely corroborative of that of Poppner. Counsel pointed out the discrepancies between the first two affidavits regarding the number of prisoners in the transport, the circumstances of the alleged shooting and the number shot. These three affidavits were not read over to the deponents before they were sworn. The only evidence as to their truthfulness which the Court had was a statement by the interpreter that the affidavit was a correct translation of the evidence previously given by the deponent. The documents must therefore be suspect. Major Smallwood had said that it was sometimes necessary to make alterations to draft affidavits before swearing. A very striking fact about the allegations made by the Prosecution as regards this march was that there was no mention of any shooting of prisoners at Gross Hehlen. Here the accused, together with other witnesses, confirmed that certain prisoners were shot. The Court had heard the evidence of Brammer, who later became the Burgomaster, who was present when the bodies of three men dressed in concentration camp clothes were disinterred. He and other witnesses from the village said that this was the only party of concentration camp prisoners to go through Gross Hehlen in April of 1945. The only occasion when it was definitely established that prisoners were killed was not mentioned by any of the Prosecution witnesses. Counsel submitted that the deponents knew of this shooting at Gross Hehlen, but because they knew that it was not done by S.S. guards commanded by Stofel they took the opportunity of accounting for the losses which occurred at Gross Hehlen by inventing stories of other shootings on the line of march.

Stofel could not be held responsible for the safe keeping of the transport from the time it left the barn where the prisoners were about to be fed until the time he took command again later. Consequently the deaths of the shot prisoners could not be laid at his door. The evidence showed that the officer and the men of the Waffen S.S. unit who were in charge of the prisoners during that time were quite definitely responsible for them.

Counsel reminded the Court that Stofel was never a party to any shooting and that there was not a single shooting specifically alleged against him. In fact, Grohmann stated in his affidavit that Stofel did not take part in the shooting.

Moreover the accused should not have been included in the charge since he was never in the concentration camp proper before being captured by the Allies. To suggest that he was ever a member of the camp staff was equally erroneous. He had decided to march to Belsen only after a railway station *en route* had been bombed.

8. *Captain Corbally's Closing Address on Behalf of Barsch, Schreirer, Dorr and Zoddel*

Captain Corbally submitted that the evidence of Litwinska, Pichen and Forster showed that Barsch was never in kitchen No. 1. The identification of Barsch was carried out by photograph ; there was no evidence that the deponents saw the man at all. That he was actually a medical orderly in No. 2 camp was shown by the testimony of Dr. Schmidt and Dr. Kurzke.[1]

[1] See pp. 55 and 56. The accused himself did not appear in the witness box.

Schreirer's case was that he was never a member of the S.S. Kurowicki's description of him as " knock-kneed " did not fit the accused. If Kopper's statement that he was an Oberscharführer in the winter of 1942–1943 was true, the story of Kurowicki and Diamant that he was a Block Leader during that time, in charge of Block 22, became far less probable. There was no evidence and it was most unlikely that the duties of a Block Leader were performed by men of the rank of Oberscharführer. Was it conceivable that a boy of 19 with one year's service could have attained the rank of Oberscharführer ? It was really significant that Kopper was the only person who identified Schreirer as having been at Belsen. She said that she saw him four times in all, but if she had seen him hundreds of others must also have seen him.

Passing to the defence of Dorr, Counsel said that he would like to adopt on his behalf the points made by Captain Fielden in defence of Stofel, particularly concerning the contradictions in the affidavits produced by the Prosecution.

Poppner described himself as having been imprisoned for seditious talk. Mocks was also a man who had been held for his association with some sort of illegal organisation. Grohmann was put into a concentration camp for refusing to go to work. These men obviously had prejudice against their jailers in the concentration camp in particular and against the S.S. organisation in general. Furthermore any truthful account of the journey would have mentioned the Gross Hehlen incident.

It was during the first night of this journey that Dorr was really in charge. Both Poppner and Grohmann mention killings by a stable on the first night. Counsel claimed however that there were stables later in the journey, but there was certainly no stable at Osterode. He submitted that this vagueness concerning the route was quite inexcusable.

The identity of Adolf Linz was unknown and it was impossible to say what reliance should be placed on his statement. He said that shootings were carried out in full view of the other prisoners whilst on the march. Poppner said that they took place in a wood. Counsel suggested that in this case Poppner was more to be relied upon, because it is most unlikely that shootings were carried out in full view of everybody.

Passing to the evidence against Zoddel, Counsel said that Glinowieski had not mentioned a stick in his affidavit. On the other hand, in his evidence in Court, he introduced a stick of more than a metre long and as thick as his arm. That seemed to Counsel a stupid and ridiculous exaggeration. Lozowski's account of the death of the man allegedly beaten by the accused was described by Counsel as hearsay upon hearsay. Counsel's comment on Zuckermann's evidence (1) was that it must have been well known throughout the camp that Zoddel was Camp Senior of Lager 1 and not Lager 2.

9. *Captain Neave's Closing Address on Behalf of Schlomowicz, Ilse Forster, Ida Forster and Klara Opitz*

Captain Neave adopted at the outset the remarks of Major Munro on concerted action and collective responsibility.

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(1) See p. 36.

In the affidavits of Judkovitz and Basch against Schlomowicz, the dates of the alleged beatings were given as March and April, but Counsel pointed out that the accused did not arrive in Belsen until late at night on the 8th April. None of the alleged victims of these supposed beatings were named, nor were their nationalities given ; the reason for that was that these victims were nothing more than figments of the deponents' over-taxed mental capabilities, due to physical and mental suffering.

The evidence for the Defence was continued in the straightforward evidence given by the accused Schlomowicz himself (1) which was unshaken by cross-examination, and in the affidavit of Blicblau (2). The accused was Block Senior in all for seven days and during five of these days was under British supervision. How could a prisoner be responsible for the well-being of the internees in Block 12, at least 1,000 or 1,100 people ? Apparently the Camp Kommandant himself could not improve the conditions. Block Seniors, according to Captain Sington's description, were not members of the camp staff ; they were prisoners nominated and exploited by the camp staff.

Counsel pointed out that Bialek's evidence regarding Ilse Forster (3) provided no date ; Counsel considered it a complete overstatement. His comment on Lippman's affidavit (4) was the same. Regarding Litwinska's allegation in Court that Ilse Forster had murdered a young girl, Counsel pointed out that she never mentioned this offence in her affidavit ; she had, however, mentioned therein a murder by Ehlert, while in Court she made no allegation against the latter accused. His submission was that neither incident had the slightest foundation in fact whatsoever.

The only evidence against Ida Forster was that of Ilona Stein,(5) and Counsel considered this to be a fabrication. The accused could not have rushed out of the kitchen ; at the start of the trial she was an extremely ill woman suffering from a disease which could not have developed within the space of her incarceration.

Counsel drew the attention of the Court to the fact that, in his second affidavit, Dr. Makar based his general accusation against Opitz on hearsay, whereas in his first he had based it on personal knowledge.(6) Again no dates were mentioned.

10. *Captain Phillips's Closing Address on Behalf of Charlotte Klein, Bothe, Walter and Haschke*

Captain Phillips reminded the Court that Colonel Smith had submitted that the " old text " of the *Manual of Military Law* provided a truer statement of the law on the matter of superior orders than did the amended text. In case the Court did not accept that claim, he would submit that even as amended the text in the *Manual of Military Law* afforded to the accused a defence. The last sentence ran as follows :

" The question, however, is governed by the major principle that members of the armed forces are bound to obey lawful orders only and that they cannot therefore escape liability if, in obedience to a command, they commit acts

(1) See p. 56. (2) See p. 57. (3) See p. 24. (4) See p. 29. (5) See p. 14. (6) See p. 30.

which both violate unchallenged rules of warfare and outrage the general sentiment of humanity ".

The acts alleged certainly outraged the general sentiment of humanity, but the Prosecution had also to prove that they violated an unchallenged rule of warfare. Even if the Prosecution could prove that the offences alleged were war crimes, they could only be shown to be breaches of one of the less well-established rules of warfare, and a rule of warfare which it would be at least difficult to call an unchallenged rule of warfare. On the Prosecutor's stating that the relevant rule of warfare was contained in paragraph 383 of chapter XIV of the *Manual of Military Law*,[1] Counsel replied that this was an unchallenged rule under the Convention, but in his submission, it was very much challenged as a rule of warfare, disobedience to which might bring punishment as a war criminal on an individual breaking it. As Colonel Smith had shown, it was a rule the breach of which could only be dealt with as a matter of State as opposed to individual responsibility.

It was not sufficient for the Prosecution to say that Belsen constituted a war crime, and that since these people were at Belsen they were war criminals. His four accused had not been shown personally to have had any contact with an Allied national. That fact threw the Prosecution back on to the second alternative open to it, that was to prove indirect responsibility, to satisfy the Court that these accused were at Belsen and that somehow they were responsible for the deaths and the suffering which undoubtedly took place there.

The case against three of his accused, Charlotte Klein, Bothe and Walter, rested entirely on affidavit evidence. Turning to the way in which the affidavits before the Court were prepared, he claimed that from Major Smallwood's evidence it appeared that accusations were invited from the whole number of internees at Belsen. It followed that each deponent would have considerable animus against the accused. Counsel pointed out also that the affidavits were prepared from statements taken by other people, mainly by police officers, and then turned into affidavit form by Major Smallwood, and that, " the accused were never present or really present when these accusations were being made ". Their identification rested solely upon the use of photographs. Since all the photographs, during Major Smallwood's period, were of persons who had been officials in Belsen, there was no such opportunity of testing a witness's accuracy as was offered in an identification parade, where there would be other soldiers, of the same rank and dressed in the same way as a suspected person, and it would be possible for witnesses to pick the wrong person.

When Major Champion took charge, there was a certain amount of improvement so far as checking the credibility of deponents was concerned, but the same situation continued with regard to photographic identifications. Sergeant Dinsdale, one of the investigating sergeants, had said that it was quite possible for there to have been a mistake in the key on one of these photographs. If that did in fact happen it completely invalidated the whole of an affidavit, but unfortunately, no one knew which affidavit. Sergeant Higgs had said that he used to take photographs round and show them to

(1) See p. 8.

prospective deponents, and as soon as a deponent said : " Yes, I recognise No. 3 on photograph No. 4 as having done something or other, but I do not know her name " the witness was told by the sergeant : " Oh, that is so and so ". The deponent was then able to pass on the names and key numbers to other intending deponents.

Charlotte Klein's task as distributor of bread was probably one of the most public in the whole camp. It was worthy of note that not a single Prosecution witness who had come into Court had been able to say a single word against her, and the Prosecution, so far as her own acts went, had to rely on a single paragraph in one affidavit.

Grunwald, whose evidence was used against Bothe, was only 17 at the time he made the affidavit,(1) and Counsel thought that that fact should be remembered when considering its worth. Charlotte Klein and Gertrude Reinhardt said that the accused Bothe never had a pistol, so far as they knew. The affidavit provided the only evidence that she ever possessed a pistol ; this document also contained a most improper statement, that victims of the accused " fell down, but I cannot say whether they were dead or wounded, but as they were very weak, thin and under-nourished I have no doubt that they died ".

Counsel's comment on Schiferman's evidence (2) was that the accused did work in the wood-yard near No. 4 kitchen, but not in February, 1945, the time of the alleged offence. The accused had denied both this evidence and that of Triszinska.(3) Hammermasch had made an allegation against Bothe in an affidavit, but had failed to recognise her in Court. Was it not likely that Schiferman and Triszinska also would have failed to recognise her, had they appeared in the witness box ?

The question which arose on examining Siwidowa's evidence against Frieda Walter (4) was as to the amount of force used. Counsel asked how Trieger could be correct in saying that this accused was supervisor of kitchen No. 2 at Belsen and that she used to beat women practically every day, when Walter was only in that kitchen on two days. Regarding Trizsinska's allegation against Walter,(5) his submission was that it was entirely a question of degree, because the accused had already admitted that she did in fact hit people now and then when it was necessary in the course of her duties ; his submission was that the deponent had exaggerated out of all conscience. Frieda Walter was recognised by one witness, Zylberdukaten, who had nothing to say against her, yet she too worked in a very public place, in one of the cookhouses.

Irene Haschke was the only one of his defendants who had been accused by a live witness. Counsel submitted that it was far from clear where the cistern mentioned in Rozenwayg's evidence (6) could have been situated. The accused Haschke never in fact worked in kitchen No. 1.

Examining Stein's evidence,(7) Counsel suggested that Haschke actually was not attempting to beat the people involved at all, and that she was merely trying to drive them away from the cookhouse when they were thronging

(1) See p. 26. (2) See p. 33. (3) See p. 35. (4) See p. 34. (5) See p. 35.
(6) See p. 16. (7) See p. 14.

round it in the hope of extra food. He regarded this explanation as a sufficient answer also to the evidence of Neiger and Triszinska.(1)

Emphasising that his four accused arrived in Belsen late in February or at the beginning of March, at a time when conditions were completely chaotic, Counsel submitted that they took the only possible course if they occasionally slapped people or boxed their ears. For example, when Charlotte Klein was distributing the bread, it is quite obvious that her bread cart would have been besieged by hungry internees, and the only thing for her to do under those circumstances was to drive them away. To have acted according to the Regulations and to have reported the matter on every occasion would have been a complete waste of time.

Before the Court convicted the four accused under Regulation 8 (ii) of the Royal Warrant it was invited to look at their position against the background of conditions at Belsen as described by Brigadier Glyn-Hughes, Dr. Wiesner and Dr. Leo.(2) At the time when his accused arrived at Belsen, there was already typhus in the camp and there were already coming into the camp people who were dead, dying or half starved and requiring special feeding. He accepted all that Captain Roberts had said about concerted action.

When interpreting the meaning of Regulation 8 (ii), it should be borne in mind that the Warrant did not and could not set out to alter the substantive law. It only set out to deal with procedural matters. Even Regulation 1 merely stated what body of law was to be applied in such trials, namely, the Laws and Usages of War ; it did not set out anywhere either to add to or to alter the content of the Laws and Usages of War. Regulation 8 (ii) was purely a procedural Regulation, because the question whether or not the accused could be found responsible for the conditions at Belsen was entirely and fundamentally a question of common sense. It was impossible to hold a man responsible for any state of affairs unless he had an opportunity to control that state of affairs. Nobody could say that his accused had, or could have had, the slightest control over conditions at Belsen. Counsel reminded the Court of the passage in the *Manual of Military Law*, which stated that in every trial, " the utmost care must be taken to confine the punishment to the actual offender ".(3)

11. *Captain Boyd's Closing Address on Behalf of Fiest, Sauer and Lisiewitz*

Dealing with Berg's evidence against Fiest,(4) Captain Boyd claimed that several witnesses had said that working parties in fact were not taken from women's compound No. 2, where the accused worked. For instance, Volkenrath had said that she could not remember any working parties being taken from women's compound No. 2. In any case, what this affidavit quite clearly meant was that as the party was marched down by Fiest, when it got to the gate somebody else " came out ". If it meant that Fiest did the kicking then the words " came out " were quite meaningless. Even if two meanings were possible on this affidavit, then the Court must accept that most beneficial to the defence.

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(1) See pp. 31 and 35. (2) See pp. 9, 18 and 36.

(3) Paragraph 449 (*Trial of war criminals. Punishments*) of Chapter XIV (*Laws and Usages of War on Land*) of the *Manual*. (4) See p. 24.

To people standing without watches, roll-calls such as those referred to by Neiger would seem very long; but Counsel reminded the Court that during the time roll-calls were going on the S.S. themselves had to be on parade. Furthermore, the roll-calls were quite clearly carried out on orders and, if necessary, he would rely upon the defence of superior orders.

Lobauer alone accused Fiest of beating. She however had withdrawn in the witness box much of what she had said in her affidavit, thus proving herself a thoroughly unreliable witness.

An Overseer called Ault worked in kitchen No. 3 and was very like Sauer.(1) Since the accusation was based on photographic identification, Counsel thought it quite clear that the incident related should in fact have been told of Overseer Ault and not of Sauer, who never worked in either kitchen No. 1 or No. 3.

Characterising Sunschein as a very honest witness, Counsel said that he regarded Lasker's evidence (2) as " embroidered "; the former would not have said that Sauer beat people only with her hand if in fact Sauer had used a whip. The Court should accept Sauer's story that she beat people only with her hand and only for stealing.

In view of Dr. Klein's evidence regarding Hilde Lisiewitz's health,(3) Counsel thought that the latter would not be in a fit state to carry out the feats alleged in the affidavit of Dora Almaleh.(4)

The deposition of Siwidowa (5) did not say which cookhouse Lisiewitz was said to have supervised. Lisiewitz was for some days in cookhouse No. 1, in the peeling department, but at one time or another every Overseer in Belsen must have been in the cookhouse. Ehlert, while critical of many other accused, had spoken favourably of Lisiewitz.

On the question of the general conditions at Belsen, Counsel adopted what had been said by Captain Phillips.(6) The Prosecution had to prove either some positive act creating these conditions or some deliberate neglect to do something which could have been done and which would have improved conditions. It was not simply a question of carelessness or inefficiency.

Lisiewitz was only in the position of an N.C.O. in charge of fatigue parties. She could have had no power at all to improve conditions, which must have existed when she arrived there at about the beginning of March. Fiest and Sauer had no real power, as their duties were only those of policewomen; the real person responsible for the compound was the Camp Leader, a man called Klipp.

Against all three there was evidence of their hitting prisoners. In Counsel's submission it was clear that that was done for a purpose, generally because of stealing, and sometimes as Fiest stated because she lost her temper, which was very understandable. It was equally clear that it was entirely unpremeditated. It was impossible to report to the higher authorities all breaches of camp rules; conditions were chaotic, and these people had

(1) See pp. 46, 58 and 60. (2) See p. 22. (3) See p. 41. (4) See p. 23.
(5) See p. 34. (6) See pp. 96 and 98.

to do something to keep what order they could. The alleged striking of prisoners was necessary to keep order and was not done because the accused had made a plan with anybody else to ill-treat all the prisoners.

12. *Captain Munro's Closing Address on Behalf of Johanne Roth, Anna Hempel and Hildegard Hahnel*

Captain Munro began by submitting that these three accused could have played no part at all in alleviating the conditions that existed at Belsen. They were respectively a prisoner of the Gestapo, forced to serve as a functionary, an Overseer in cookhouse No. 2 and a sort of second in command. They worked hard and were among the few people at Belsen who stayed in the camp all the time. They took the same chance of dying as any internee did.

His accused spent the whole of their days in No. 1 camp, surrounded by prisoners numbering four divisions of British infantry. Those people were hungry, and the ones who were not hungry were very sick. The beatings performed by the three accused were solely corrective beatings and not sadistic beatings. Every witness who had come before the Court had, suggested Counsel, grossly exaggerated the nature of those beatings.

Turning to the evidence against Roth, Counsel pointed out that, under cross-examination, Helene Klein had said that she did not sleep in Block 199, but with a friend in the clothing store. If she lived in another block she would not know who was the night guard.(1) She said first that the beating took place in the block in the night because Friedman wanted to go to the lavatory ; then that it was three o'clock in the morning when they assembled for Kommandos. She further stated that she did not see Friedman die at all, but that she was only told about it the next day. The evidence of Ehlert and Ilse Lothe on the time when they last saw Ida Friedman showed that the accused could not have killed her.(2)

Counsel's comment on Rosenzweig's allegation against Roth (3) was that obviously the latter, a farm girl and a prisoner for five years, in charge of a block of 800 people, had no idea of how to deal with them. Counsel felt sure that Roth had intentionally beaten people, but not with the savagery which the affidavit suggested. He submitted that in very difficult conditions Roth did all she could.

Charlotte Klein said that Hempel went to her for more bread, and when she could she gave Hempel more bread. Hempel was one of the people in Belsen who did positive things for the internees. She was in the position of one Overseer with 43 internee women and 18 men under her, cooking for 17,000 people every day for fourteen to sixteen hours a day. After reviewing the evidence against Hempel, Counsel reminded the Court that the accused had said, " I did beat people. I beat them because they were stealing", and that these people were stealing food which was precious to cookhouse No. 2, food which was invaluable for the feeding of the 17,000 people.

Counsel submitted that the allegation of Stempler that Hahnel had whipped girls in the bath-house in February, 1945, was disproved by the

(1) See p. 20. (2) See pp. 46 and 47-8. (3) See p. 33.

evidence of Pichen, Volkenrath, Ilse Forster and Sauer, as regards both the time when the accused was in Belsen and her place of work there.(1)

13. *Lieutenant Jedrzejowicz's Closing Address on Behalf of Starotska, Polanski, Kopper, Ostrowski, Burgraf and Aurdzieg*

Lieutenant Jedrzejowicz began by pointing out that all his clients were Poles. They were alleged to have committed crimes against Poles and other nationals, and in this respect, in his submission, no war crime had been committed.

Counsel expressed the opinion that the affidavits against Starotska often contained contradictory statements ; for instance Szparago Rozalja's said : " She killed and tortured 1,000 women ", and then later said : " She killed thousands of women ". Further, somebody who accused a person of killing 1,000 or more people should be able to name at least one specific instance and give a name, a date and description of how it happened. Mass murders were alleged against the accused in two affidavits, yet not by any of the 13 witnesses who had appeared in Court and recognised her ; these witnesses would surely have known had she been guilty of such acts.

Rozalja, Synowska and Szafran had said that the accused carried out selections. The Court must realise that it was unlikely, if not impossible, for a Block Senior or a Camp Senior to make her own selections for the gas chamber. Obviously Starotska, as a Block Senior and later as a Camp Senior, was present during selections at Auschwitz No. 2. She had to be present ; she could not avoid these selections. The Court had heard Dr. Klein say : " The selecting was done exclusively by doctors ". Why had none of the Prosecution witnesses or deponents ever mentioned a specific selection made by Starotska as a Block Senior or as a Camp Senior, or by any Block Senior or Camp Senior of any nationality ? On the other hand, the witnesses for the defence, Wojciechowska, Janicka, Komsta and Nowogrodzka, had all said that because she took part in selections she was able to do a considerable amount of good for the prisoners. The second and third of these witnesses had been in the same block, Block 7, at the same time as Synowska was, and the accused was Block Senior of the block ; their evidence contradicted that of Synowska.

Counsel asked why no other witnesses could corroborate the allegations of Szparago Rozalja,(2) if the accused had committed offences on such a great scale ?

Synowska's allegation that the accused used to push girls against the electrified wire and kill them in this way was belied by the evidence of Sompolinski, Litwinska and the accused regarding the wiring of the camp.(3)

Regarding the question whether the accused favoured Christian Poles, Counsel pointed out that the Jewish witnesses made far weaker allegations against her in Court than the Polish witnesses. The witnesses against her who appeared in Court never said that they were Polish Jews or Polish nationals of the Jewish religion ; they always said they were Jews from Poland. This

(1) See pp. 45, 53, 58 and 61. The accused Hahnel did not go into the witness box.
(2) See p. 32. (3) See pp. 12, 21 and 63.

circumstance might have given the impression that the accused treated the Poles better than the Jews or other nationalities.

Turning to the case of Kopper, Counsel said that Guterman, Synger, Koppel and Furstenberg, while alleging beatings against her, never said specifically that the beatings took place while she was the Block Senior of Block 224. Counsel asked the Court to accept that these beatings took place in Block 205 only, and in this respect to believe the testimony of the accused.(1)

Guterman in cross-examination had said that about 30 women were dying daily in the block. How then could Guterman know that Fischer died three weeks after the alleged incident (2) as a result of kneeling ? She might well have died from typhus or from starvation or any disease. As to the allegations of Guterman and Synger (3) regarding the girl who fainted on parade, there was a very material discrepancy in these two statements about the same incident, on the point of what happened to the girl after her fainting.

Koppel's story, according to which Kopper beat her, and Furstenberg's seemed the same. (4) In that case the latter was alleging that the accused killed Koppel, who had, on the contrary, appeared as a witness in the trial. If Koppel's account of the woman who died immediately after a beating by the accused were correct, why was it not mentioned by Synger, Guterman and Furstenberg, who all lived in the same block as Koppel ?

The defence of Kopper was that after a hard time at Ravensbruck and at Auschwitz, after a period of nearly four years, she arrived at Belsen and became a Block Senior, a position for which she was not suited. Once she was given a less responsible job, that of camp policewoman, she changed considerably. She was a very nervous person and would probably lose her temper when something went wrong, and would start hitting the girls with her belt or her hand without causing any serious injury.

The Prosecution alleged that Polanski had committed offences while an assistant Block Senior in Block 12, but Schlomowicz and Sompolinski had denied that he had held any such position. The Defence had shown that he was a good and kind man to his fellow prisoners both before he came to Belsen and after the liberation. Why should he have changed while in Belsen? There must be either a malicious invention on the part of the deponent or an error of identity.

Ostrowski's explanation that he was in bed in Block 19 the whole time between his arrival at Belsen and the British liberation, and that he had no function whatever and did not even help with the food distribution, was corroborated by Salomon and Burgraf. The various Prosecution witnesses disagreed among themselves as to the nature of the accused's function in the camp. The statements of Promsky and Kalenikow (5) were of very little value to the Court, because they were not checked, sworn or signed by the deponents, and it was quite possible that the reconstruction of the rough notes taken by the sergeant and the interpreter might have been very inaccurate.

(1) See p. 63. (2) See p. 19. (3) See p. 19. (4) See pp. 19 and 26. (5) See pp. 28 and 32.

Counsel expressed the opinion that the allegation made against Burgraf by Marcinkowski (1) was refuted by the evidence of the accused and Trzos (2) as to the former's position in the camp.

The alleged murder of 50 prisoners during food distribution just before the liberation of the camp must surely have been remembered by the inmates of Block 19 if it did in fact occur. Yet not a single allegation was made against the accused Burgraf by an inmate of his own Block 19. It was made by someone who was in Block 21, Marcinkowski. According to Trzos, the deponent had only mentioned the alleged killing after describing how he himself had been struck by the accused. In Counsel's submission, if the Court were to accept that a witness was reliable, they must accept that when he related his evidence he would first relate the more serious matter. Further, it was improbable that a person would die as a result of having been hit on the arm, especially, as stated, that he would die at once.

The evidence, for instance, of Polanski had proved that Aurdzieg had never been a Block Senior of Block 12 ; therefore he never was, as Pinkus described him, an Overseer. With regard to the question of gold and valuables, Counsel stated that none of the witnesses had said that they saw any transaction performed in Block 12 by anybody. They never saw any gold during the time they were in Belsen. None of them had said that the accused Aurdzieg beat or ill-treated prisoners. The allegation that he together with the other functionaries of the block killed a Russian had been explained by the accused and by his witness, Andrzejewski.(3) The Block Senior Schlomowicz had also said that never, while he was in the block, was any beating which resulted in death committed by the accused Aurdzieg.

The accused Aurdzieg had been interrogated by a French officer, Captain Pipien, through his sergeant interpreter, Le Fort. The latter had stated, in an affidavit, " I hereby certify that the deponent himself and with his own hand signed this written confession." That Aurdzieg never denied, but he denied that he signed it freely and voluntarily. The confession of the accused bore a great resemblance to the statement of Pinkus, made previously.

Of the accused whom Counsel represented, those who were functionaries in Belsen were Kopper, Burgraf and Aurdzieg. All three arrived at the end of March or in the first days of April. Could they be responsible for the conditions which existed in the camp or in the block ? Could they control them and could they really help the prisoners to survive ?

Polanski and Ostrowski, though alleged to be functionaries at Belsen, denied it, and witnesses also denied that they were functionaries. As regards Starotska's taking the part of Camp Senior, the accused had explained, " If I wanted to help the prisoners I had to gain the confidence of the German authorities ; . . . that was the prime object of my holding the position."

While not wanting to examine at length the question of concerted action, Counsel concluded his address with two general statements. In the first place, he submitted that collective responsibility could not be so interpreted as to make subordinates responsible for the acts of their superiors. Secondly

(1) See p. 30. (2) See pp. 67 and 68. (3) See pp. 68 and 69.

he pointed out that it was accepted in all civilised countries that one was allowed to disobey a superior order if the carrying out of this order would entail the commission of a crime because, in all civilised countries, he expected to get protection. In a concentration camp there was no such protection, least of all for prisoners acting as functionaries.

J. THE CLOSING SPEECH FOR THE PROSECUTION

1. *Remarks on the Charge Sheet*

Colonel Backhouse expressed the opinion that it would be improper to arrive at any finding in the absence of the accused Gura, who had been away from the Court for so long. He asked the Court to report to the Convening Officer that they were unable to arrive at a finding in his case because he was ill and away from Court, and that it was not practicable to adjourn the case. That would leave the Convening Officer free to take any course he might consider proper.(1)

He suggested that the Court should make a special finding regarding four of the alleged victims' names appearing on the Charge Sheet. Anna Kis and Sara Kohn were both mentioned in the affidavits of a certain Jenner, and as Jenner was not in the dock his affidavits were not put in. He continued: " They were general affidavits, and by that time we were trying to cut out as many of the affidavits as we could to save time, unless they raised something particular." It was obvious from the evidence that Glinovjechy was at Auschwitz and not Belsen, and that his name had been put into the wrong charge by mistake. Maria Konatkevicz had not been mentioned because the relevant affidavit dealt with events after the period set out in the charges. The Court could not find the accused guilty in respect of the fate of those four victims because the evidence was not put before the Court for one reason or another.

2. *The Law Involved*

Colonel Backhouse next made a general examination of the law involved in the case. He devoted himself largely to the task of answering the points raised by Colonel Smith.

He submitted that Allied nationals could only come into German hands, in an internment or concentration camp, in one of three ways. They could be prisoners of war, and the evidence showed that a number of the internees, particularly Russians, were prisoners of war; or they could be Allied nationals who were living in Germany and were interned, or inhabitants of occupied countries overrun during the war by Germany.

If they were prisoners of war, it was quite sufficient to quote the following passage from Article 46 of the Geneva Convention of 1929, relative to the Treatment of Prisoners of War: " All forms of corporal punishment, confinement in premises not lighted by daylight and, in general, all forms of cruelty whatsoever, are prohibited."

A civilian who was interned was entitled to precisely the same treatment as a prisoner of war. That was not a new doctrine; there existed a ruling

(1) See p. 146.

of the Judge Advocate General in January, 1918, on the subject, and far from being an arbitrary ruling made with a view to oppressing the Germans, it was a ruling which operated against the British Government in respect of Germans interned in England, making it clear that they had precisely the same rights and were to be treated in precisely the same way as prisoners of war. This ruling was based upon the case of *Ex parte Liebmann* (1916 1 K.B., page 268) where it was laid down that: " An enemy alien subject resident in the United Kingdom who is in the opinion of the executive government a person hostile to the welfare of that country and on that account interned may properly be described as a prisoner of war, although not a combatant or a spy." The Judge Advocate General's comment on the case was that although the annex to the Hague Convention did not expressly deal with or provide for such persons, as their position did not appear to have been contemplated in 1907, they were, nevertheless, entitled to be treated as prisoners of war.

The inhabitants of occupied territories were protected by Article 46 of the Hague Convention which stated: " Family honour and rights, individual life, and private property, as well as religious convictions and worship, must be respected." The *Manual of Military Law*, in chapter XIV, paragraph 383, stated: " It is the duty of the occupant to see that the lives of inhabitants are respected, that their domestic peace and honour are not disturbed, that their religious convictions are not interfered with, and generally that duress, unlawful and criminal attacks on their persons, and felonious actions as regards their property, are just as punishable as in times of peace."

The Prosecutor denied making any mistake when quoting paragraph 442 of the *Manual*.[1] He left out the words " members of the armed forces ", because they were quite immaterial. No one surely could suggest that if a member of the armed forces were put in charge of prisoners and ill-treated them he was guilty of a war crime, and that if, because of the man-power situation, a civilian was put in charge of them instead, and ill-treated them, he was not guilty of a war crime. The whole difficulty arose from the fact that when the Hague Convention was written a military body like the S.S. was not thought of, and it was taken for granted that only a member of the armed forces would guard prisoners of war and would, further, be in a position to ill-treat the inhabitants of occupied countries. The point was, however, completely academic, because Kramer had said: " We were members of the Wehrmacht; as soon as war broke out we became members of the Wehrmacht and I am a member of the armed forces of Germany ". The S.S. in the dock were on their own evidence members of the armed forces of Germany.

He agreed that a crime would not be a war crime if it was not connected with war. Where he and Colonel Smith were in complete disagreement was on the question of what was meant by " connected with war ". The latter Counsel had argued on the basis that the object of the ill-treatment must be connected with the war effort, whereas, he had argued, this ill-treatment of Jews was going on before the war and would have continued afterwards. The Prosecutor pointed out, however, that what was being complained of in the present trial was ill-treatment of Allied nationals during time of war.

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[1] See pp. 8 and 72.

Such ill-treatment was not happening before the war and that would not have gone on after the war. Allied nationals were entitled to protection by their Government. The Court was not, of course, concerned with what Germans did to Germans during the war, but it was concerned with the protection of Allied subjects from German ill-treatment during the war. The mere fact that those people came into the hands of the Germans and were interned or imprisoned by them, and that their countries were occupied by the Germans as a result of operations of war, was quite sufficient to turn that ill-treatment into a war crime ; it was precisely the type of war crime that was provided against by the Convention. On any other interpretation the Conventions and Regulations themselves would become nonsense. When a prisoner of war was ill-treated by one of his guards that, of course, did not help the war effort, yet if that person was an Allied subject who had come into his guard's hands by operations of war, then if the latter ill-treated him it was a war crime of precisely the type against which the Convention provided.

In any case, was it not quite obvious that the actual internment in Auschwitz or Belsen was done with a view to further a war effort ? There were two reasons for interning those people who were so treated. One was the deliberate destruction of the Jewish race. The avowed object of that was to strengthen the home front and to prevent what happened in the previous war. The destruction of Poland was another reason, and that again was an avowed war aim. The gathering into Germany of persons from every country that Germany overran was done with the deliberate intention of weakening that particular country in its effort to resist Germany.

Colonel Smith had suggested that the crime involved was the moving of the prisoner of war from the prisoner-of-war camp into the concentration camp and that anything which happened to him thereafter was thereby excused. The Prosecutor found it difficult to accept the suggestion that if a man were ill-treated in a prisoner-of-war camp that was a war crime, but if the ill-treatment took place outside in the street or in a concentration camp it was not.

Colonel Smith's next point was that the only purpose of the punishment of war crimes was to secure legitimate means of warfare. No extension of the application of a principle was involved in the charges, however, since the offences were, as Counsel had shown, provided against under existing International Law.

Colonel Smith had claimed that the State and not the individual was responsible in International Law, but he admitted that a war crime was one of the exception to that rule. Colonel Backhouse stated that under the Versailles Treaty, which was still in force, it was laid down that: " The German Government recognises the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the law and customs of war ". The Leipzig trials also recognised that if an individual broke one of the laws and customs of war he could properly be tried and in fact he was in some cases convicted by the Germans for breaches of international agreements.

Colonel Smith's argument on the question of whether the victims were Allied nationals applied, of course, to Poles and certain Czechs only. It had

no application, even if accepted, to persons of Russian, French, Dutch, Belgian, Greek, and other nationalities; the Germans made no pretence of annexing their countries. Again, before it was possible to annex a country the war must be ended. Whilst the war was still going on the citizens of the country occupied were entitled to protection under the Convention. The gassing of a Hungarian transport started at about the same time as D-Day. Surely Germany did not think the war was already over on D-Day, in 1944? If it were sufficient for a belligerent to say merely " We have annexed this country ", then the Covention could never apply at all. In actual fact the Germans never did such an absurd thing. The only part of Poland which the Germans ever declared annexed was a small piece of Silesia which was taken from them in the previous war by the Poles, and which they said was German. That was the only part they did intend to incorporate into the Reich; the rest of Poland was merely occupied territory. Even if the accused did not know that the victims were Allied nationals, he would still not agree with Colonel Smith's argument. By analogy, if a man assaulted a policeman he could not afterwards say that he did not know the victim was a policeman.

The Prosecutor pointed out that a charge did not become bad if it did not contain the names of the victims. In the *Peleus Trial* (1) and in the *Llandovery Castle Case*,(2) for instance, the victims had not been specifically mentioned in the charges against the accused involved. The charge was required by the Regulations to fall within the Field General Court Martial procedure, and the Field General Court Martial rules stated the charge could be drawn in any ordinary language.(3) It was quite obvious that the accused were not prejudiced in the present case.

Various Defending Officers had set up the plea of superior orders but, with the exception of the gas chamber, the accused had all said that ill-treatment of prisoners was forbidden and said: " We did it against orders ". So far as the gas chamber was concerned the accused said they were acting on superior orders; but in order to succeed, Counsel submitted, the accused must satisfy the Court that they did not know that what they were doing was wrong. Not one of them had dared to go into the witness box and say that. Could the Court believe that the persons involved did not know that what they were doing was wrong and contrary to every law and custom of war?

It had been suggested that their acts were legal under German law. Colonel Smith had put the proposition to the Court that a Decree gave absolute power to the competent authority, so that any order that Himmler gave automatically became law. An examination of the Decree showed that it did nothing of the kind. What the Decree in fact did was simply to say that cases against certain privileged bodies would be tried not in the ordinary Courts but in the Courts of those privileged bodies. It gave the S.S., amongst other people, immunity from trial in an ordinary Court for matters which they considered to be matters of politics. Therefore, if the crime against German Law which they committed was one which Himmler himself was condoning, in all probability they would be absolved from

(1) No. 1 of Vol. I of this series.

(2) *Annual Digest of Public International Law Cases*, 1923–1924, Case No. 235; Cmd. (1921) 1422, p. 45.

(3) Rule of Procedure 108: ". . . No formal charge-sheet shall be necessary . . ."

responsibility. That was the most that could be said. Could these acts be said to be done under cover of authority when they were kept secret even in Germany, and when any records that were kept were covered by the words " Special Treatment " ? In his submission, there was no pretence of legality about this procedure. Everyone in the camps knew that the daily murders were wrong.

Colonel Smith had queried the provision in the *Manual* regarding superior orders and had tried to set up that the original text is the right one. That amendment in the *Manual* was made, however, to bring it in line with almost every writer on the subject, including Professor Lauterpacht and Professor Brierly. It was in fact made in consultation with the American Judge Advocate General, and it was in line with American law as set forth in America, as opposed to the American Manual, which had not yet been amended.(1)

On the question of collective responsibility which was raised by Captain Phillips, the Prosecutor claimed that all the accused were parties to a general conspiracy (alternative expressions were " concerted action", " joint action", or " unit ") to ill-treat the persons who were under their care. Of course, he did not suggest, for instance, that the girl Hahnel was in the dock because she once hit a girl in a bath with a whip. If the Prosecution's case was right she was there because she was one of a body of people who were habitually ill-treating the persons under their care, and the fact that she hit somebody in a bathroom was merely brought in to show that she was taking an active part, however small, in the conspiracy.

It would undoubtedly be open to the Court to convict her in respect of specific actions even if they do not feel that she was a party to a more general ill-treatment. The extent of the punishment she should suffer would be an entirely different matter. If they thought she was guilty of an isolated incident of ill-treatment, or was merely a party to a very limited ill-treatment, naturally they would not want to visit any great wrath upon her ; whereas if, on the other hand, they thought she was a party to the extent of wholeheartedly joining in the conspiracy then the Court would probably take a different view.

A number of accused had been asked whether they had ever planned with others to commit ill-treatment. Proof of a conspiracy was nearly always, however, a matter of inference, to be deduced from the criminal actions of the parties to the deed, and a conspiracy might very well arise between

(1) That is to say, the United States text was still unamended at the time of the British Amendment, April, 1944. Paragraph 347 of the United States Basic Field Manual FM. 27–10 (*Rules of Land Warfare*) used to provide that individuals of the Armed Forces would not be punished for war crimes if they were committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they were committed by their troops, might be punished by the belligerent into whose hands they fell. By Change No. 1 to the *Rules of Land Warfare*, dated 15th November, 1944, the sentences quoted above from paragraph 347 have been omitted and the following provisions have been added to paragraph 345 :

> " Individuals and organisations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defence or in mitigation of punishment. The person giving such orders may also be punished."

persons who had never seen each other and had never corresponded together. " It is not necessary for the persons to have concocted the scheme the subject of the charge nor that they should have originated it. If a conspiracy is formed and a person joins in afterwards he is equally guilty as the original conspirators," it was stated in the case of *Rex v. Murphy* ;(1) and it had also been held that these principles applied even though the indictment did not specifically allege a conspiracy, if the acts amounted to a conspiracy. What was suggested was that, finding themselves in the S.S., and finding a conspiracy to ill-treat the persons who were interned, some of the minor figures in the dock joined in, assisted in, and were parties to that conspiracy.

It had been suggested by the Defence that it was not permissible to convict unless the person concerned was " in control of the situation". That was a very facile argument because it was quite easy to say that if one of the accused had not marched victims on the road to the gas chamber somebody else would have marched them. If all the girls had refused to march them on the parade they would never have been taken to the gas chamber. It was by that collective disclaimer of responsibility that the crime was committed. In a similar way, the actions of any one man in a mob lynching might be said to have no effect on the lynching, but if the whole mob did not do the lynching the victim would not die. On the question of the gas chamber selections, Klein had said : " My only part in the matter was to say this man is fit, this man is unfit, so I am not responsible." An S.S. man had said : " I know I was there, but I was not responsible because the man who did the selecting was Klein." Counsel claimed that if a number of people took a part, however small in an offence, they were parties to the whole. The question of the degree of their responsibility was relevant only in assessing punishment.

Regarding the question of the Polish prisoners in the dock, Counsel said that on the face of it, it might be a little absurd to suggest that it is a war crime for Poles to beat other Poles in concentration camps, but surely, if these people, whether to save themselves from being beaten or from whatever motive, accepted positions of responsibility in the camp under the S.S. and beat and ill-treated prisoners, acting on behalf of the S.S., they had identified themselves with the Germans, and were as guilty as the S.S. themselves. The same applied to Schlomowicz, who is not a Pole but an Austrian.

The following paragraphs of an article by Professor Brierly summed up the position on the question of what was a war crime :

> " For there is one clear and absolutely fundamental principle running through the laws of war which enables us if not to define war crimes or to make an exhaustive list of them at any rate to recognise one when we see one.
>
> "This is the principle that the only kind of injury to the person or the property of an enemy that the existence of war legally justifies is one which serves some military purpose. All wanton injury, injury which does not appreciably advance the military object of war, which is victory, is forbidden by the laws of war, and he who commits such injury commits a war crime.

(1) 8 C. and P., p. 311.

" Clearly that leaves open a lot of border-line cases but most of this difficulty disappears if we imagine the sort of question which a Court will have to answer : can this killing which would normally be murder, this injury which would normally be unlawful wounding, this taking of property which would normally be theft, be justified as an act of war? If not, it will be a war crime."

3. *The Facts Regarding Conditions in Auschwitz and Belsen*

The Prosecution suggested that the Court should first come to a conclusion as to the general picture of what was happening at these two camps, Auschwitz and Belsen, and then consider how the individual persons fitted into that general picture.

Could the Court have the slightest doubt about the gas chamber or the selections which were made for the gas chamber ? It was freely admitted that there were, in the camp Birkenau, five gas chambers attached to the crematoria, and that there was attached to each of these gas chambers a crematorium.

The persons who were being put into those gas chambers were not people who had committed an offence of any sort, and they were not people who had been submitted to any trial ; they were simply persons who were no longer fit to work for the Reich or persons of the Jewish race. There was no doubt whatsoever that, whatever other places may also have been used in the course of this destruction, in Auschwitz alone literally millions of people were gassed for no other reason than they were Jews. The people who were gassed were the old, the weak, pregnant women and children under 14.

Many of the people gassed were Allied nationals who came into the hands of the Germans because they were scattered around the various countries. The Hungarians were brought in at a later period ; it had been rightly argued that the Hungarians were not Allied nationals, but the Court must take the picture as a whole to see what was happening in this camp.

Those selections were made on a variety of occasions. Some victims never entered the camp but went straight to the gas chamber. The second class of selections were selections in the hospital. The third type took place in the camp, when the Jews, and according to some witnesses Aryans as well, were paraded and victims chosen out.

It was common ground that a doctor attended the parades, and it was clear that the Lagerführer (Camp Leader), as a rule, was there, and that some Block Leaders were present, whichever happened to be on duty.

It was the submission of the Prosecution that all people who took part in these selections, knowing what they were, were equally guilty, whether the doctor who said : " This one to live, this one to die ", or the man who pushed the victims into one particular compartment or the other, or the man who led them, or the man who gassed them.

Although a lot of people had tried to pretend that they did not know what these parades were for, was it not obvious from the body of the evidence that everyone knew their purpose ? As Schopf said, everybody knew that Block 25 was kept specially for people who were going to the crematorium. Many

witnesses and Irma Grese herself had borne witness to the brutality used on these occasions.

The last type of selection was the general selection. It had been the custom for some people at the camp gate to be selected. As they came back in the working party they were made to run at the double and those who fell out were selected. Naturally, persons who knew they were in a weak state of health, or had reasons to suspect that they would not be able to pass the selection at the gate, began to hide in the camp. Then the S.S. developed a new plan. When the working parties had gone out, they held a parade of everybody left in the camp. These were marched and lined up outside Block 25, and only those who could give a proper account of themselves escaped the gas chamber.

What were the duties of the various officials ? Everyone seemed to be agreed that it was the doctor's duty to make the selection. According to Hoessler it was the duty of the Overseer at the selection parade to maintain order, and the kapos were under the orders of the Overseer, doing what she told them to do. The Camp Senior had herself said that she took down the numbers of the persons on the selection and that all the Overseers who happened to have camp duty that day, together with the Block Leader, had to attend these selections.

Every person who took part in those parades, knowing what they were for, took part in deliberately organised murder, and an attempt to murder the whole Jewish race, to destroy the strength of Poland and to destroy by fear many other people.

The Prosecutor then asked what was the position in Auschwitz apart from the gas chamber ? Counsel referred to the lack of sanitation, lighting and water, of which Starotska had spoken. Many witnesses had spoken of the beatings there and of the practice of setting dogs on prisoners. To prove that the whole camp was ruled by force and ill-treatment, the Prosecutor referred to the evidence of Defence witnesses, namely Lothe, Grese, Lobauer, Gura, and Dr. Klein himself.(1) He again quoted Starotska, who had said : " Some of the Overseers had sticks ; some had whips, and some had dogs. Prisoners in Auschwitz were beaten on every occasion. They had to work very hard. Accommodation was very bad, and they had lice and other diseases, and dogs were set on them ". That was a reasonably fair picture of life at Auschwitz.

Colonel Backhouse explained that he was dwelling on Auschwitz because it was the obvious line of defence to say that Belsen was exceptional.

The evidence made it clear that Belsen was intended to be a new Auschwitz removed from the threat of the Russian advance. Dr. Klein said there was some talk of the camp being some kind of exchange camp for prisoners, but that later he realised that it was not a camp for sick people, but a death camp, a torture camp. Counsel claimed that there was never the slightest attempt to improve conditions there, to bring medical supplies, beds or anything else that one would naturally require to build up a convalescent camp, to provide any diet, or to make any provision for the sick people when they arrived. The prevailing attitude was summed up in Kramer's words : " Let

(1) See pp. 41, 46, 47, 48 and 51.

them die ". Was not that a continuation of the general situation in Auschwitz ?

It was quite obvious that the internees were being starved ; and if they were not being deliberately starved, at least there was not the slightest care as to whether they starved or not. No attempt was made to organise the feeding of the unfortunate ones who were weak, and the food actually went to the strong.

Counsel referred the Court to the evidence of Brigadier Glyn Hughes, Colonel Johnston and Captain Sington (1) for descriptions of the emaciated victims living alongside piles of dead. He submitted that the facts before the Court showed that conditions in Belsen arose, not out of a breakdown in organisation, but out of the complete neglect of the authorities.

Counsel submitted that there existed in Germany during the period covered by the charges an organisation which deliberately murdered and ill-treated a great number of Allied nationals. If the Court were satisfied that any of the accused did in fact join in this conspiracy to ill-treat and murder Allied nationals at Auschwitz or Belsen, however late he or she joined and however small the part played, that accused was responsible before the law.

4. *The Responsibility of Each Accused*

(i) *Kramer.* The Prosecutor pointed out that this accused had worked in concentration camps since 1934, and from 1942 onwards had been the Kommandant of a concentration camp. He served his apprenticeship in the gassing of innocent people, as he had explained himself, at Natzweiller, where he constructed the gas chamber, took the people in and gassed them himself. The Prosecution asked the Court to accept that he came to Auschwitz to manage the gassings of new transports in May, 1944. It had been said that he had written orders saying that the gas chamber was not his concern. He was the only person to say so. There were a number of witnesses who said that he took an active part in the selection parades, in that for instance he loaded people into the trucks and beat them when they would not get into the trucks. He admitted that he saw the selections but claimed to have taken no part in them.

So far as his general conduct in Belsen and Birkenau was concerned, everything depended on the general picture which the Court formed of these camps. Kramer had himself said that he was regularly in the camp and that he was always in the camp until the roll-call was finished.

Could there be any doubt that Kramer was implicated absolutely in the events in Belsen, in view of the evidence, for instance, of Brigadier Glyn Hughes, Colonel Johnstone, Sunschein and Sompolinski ? (2)

(ii) *Dr. Fritz Klein.* This accused had made no secret whatsoever of the fact that he attended selections and selected people, and that he knew that it was wrong and that it was murder. He agreed that those who were not fit to work were simply destroyed. The only time when he ever did anything to improve conditions in Belsen was when he knew that the British were

(1) See pp. 9-10. (2) See pp. 9, 10, 16 and 21.

coming. The evidence plainly showed that he was content to neglect the camp completely.

(iii) *Peter Weingartner.* The principal witness against Weingartner was Glinowieski, whose brother was said to have been beaten to death by the accused. Sunschein's evidence was also referred to by Counsel.(1) Weingartner had agreed that there were dogs with his party when they came to the hill on the way to work. Had the Court any doubt that the women in the " Vistula" Kommando were chased up the hill with dogs behind them ?

No witness had suggested that Weingartner ever attended or took part in a selection. Nevertheless, he was Block Leader at the gate of Lager A where the transports arrived. Was it credible that he never even saw a selection and knew nothing about them ? There was evidence that he had beaten Sunschein with a rubber hose at Belsen. Counsel asked the Court to regard the accused as being obviously involved in the state of affairs existing in both camps.

(iv) *Kraft.* Counsel referred to the evidence of Sompolinski,(2) who had recognised this accused in person. Kraft denied ever being in the actual concentration camp. Counsel submitted that the explanation of his being in the concentration camp was that soldiers would be sent in from the Wehrmacht camp to clean up the concentration camp before the British arrived.

(v) *Hoessler.* This accused like Kramer, was " one of the old guard ". In view of his own admissions and of the evidence of Dr. Bimko and various other witnesses,(3) Counsel was confident that Hoessler would be found guilty.

(vi) *Borman.* There were a number of allegations that Borman set her dog on people. She was also seen several times on selection parades. Jonas had said she was not content merely to stand there when she was the Overseer on duty but pointed out to the doctors : " This one looks quite weakly, she can be taken away as well ". There was also evidence of her beating people.

(vii) *Elizabeth Volkenrath.* Josephine Singer had said that this accused beat many people in the tailoring shop and threw a Czech woman down some steps. Later at Auschwitz she became supervisor in the parcel store, issuing bread, and that was where Sunschein saw her frequently beating people. Kaufmann had said that during selections she saw Volkenrath throw women to the ground or against a wall, trample on them and beat them with a stick or rubber truncheon. Singer, Trieger, Siwidowa and others had said that hers were not merely beatings with the hand but beatings with rubber sticks, beatings producing unconsciousness and sometimes death, and kicking.

At Belsen she continued her beating. Counsel referred to the evidence of Neiger, Loffler (4) and others in this connection.

(viii) *Ehlert.* From the point of view of the Prosecution, there was no evidence with regard to Ehlert's conduct at Auschwitz. Concerning her acts at Belsen, the evidence against her came from Sunschein, Hammer-

(1) See p. 16. (2) See p. 21. (3) See pp. 11, 12, 13, 14, 16, 17, 20, 21, 22 and 27.
(4) See pp. 30 and 31.

masch, Helene Klein, Neiger, Korkovitz, Loffler, Kopper and Weiss, and alleged the beating of people at the gate and the beating of people for unimportant reasons, for instance, for wearing a scarf.

(ix) *Grese.* Grese was quite frank about almost everything which was suggested against her. Kopper had made an allegation regarding Grese's behaviour in the sand pit Kommando.(1) Concerning her actions at Auschwitz, the Prosecutor drew attention also to the stories of Rozenwayg, Watinik and Triszinska, according to which she was in charge of a Kommando, with Lothe as the kapo, and alleging that she set a dog on them. On her own admission alone there seemed ample evidence to show that she was ill-treating, beating, and prolonging roll-calls at Auschwitz. At Belsen she was made Arbeitsdienstführerin and again there were stories from the prisoners as to how she beat people and forced them to " make sport ".

(x) *Lothe.* Lothe was herself an imprisoned German. When she eventually became a kapo, however, she worked with the S.S. and against the prisoners. Against her there were many allegations, for instance of beatings.

(xi) *Lobauer.* Lobauer was another kapo. There were many allegations of beating against this woman. She had said frankly : " I admit carrying a stick at Auschwitz and I admit using it ".

(xii) *Klippel.* Against Klippel there was very little evidence. One deponent had said that he was employed in the kitchen at Belsen, that he frequently beat women in this kitchen and that he twice shot Jewish women who approached the kitchen in search of food.(2) On the other hand there was considerable evidence to show that the accused did not belong to Belsen at all.

(xiii) *Schmitz.* The evidence against Schmitz was contained in the statement of Jecny, who disappeared without signing it.(3) Could the Court believe, if the accused were really a prisoner, a Camp Senior over 28 prisoners, that he should suddenly be put in charge of 15,000 people and tell Hoessler how to run the camp ? (4) What was much more likely was that he came as an S.S. man and helped to guard and to supervise the clearing up of the concentration camp during the last few days.

(xiv) *Francioh.* This accused tried to show that he was in jail during the relevant period in April, but actually his jail period was earlier. The evidence of the people from his own kitchen showed that he was not stating the truth. There were a number of different shootings alleged against him.

(xv) *Mathes.* All the allegations against this accused were to be found in three affidavits, and concerned the shooting of people trying to steal from the kitchen.

(xvi) *Calesson.* The Court would remember the allegations against this accused with regard to the transport, of which he was quite obviously the senior N.C.O. He was accused of shooting prisoners on the way, and it was also said that there was no food or water on the journey for the Jews and very

(1) See p. 37. (2) See the affidavit of Jakubowice on p. 27. (3) See p. 28.
(4) See p. 50.

little for the Christians. He was also faced with allegations of beating prisoners at Belsen and of shooting prisoners at Belsen station.

(xvii) *Burgraf.* The evidence against Burgraf was that he behaved badly at Drütte and that when he came to Belsen he continued to do so. He became a functionary in Block 19, where he armed himself with a table leg, with which he beat prisoners.

(xviii) *Egersdorf.* The evidence against Egersdorf was that of Almaleh, from which Counsel quoted the account of the shooting of the girl.(1) To the Judge Advocate's question asking what Counsel's attitude was to the Defence argument, that the evidence showed that the ill-treatment was not of an Allied national but of a Hungarian girl, and that this was not an incident which would support a charge in which ill-treatment of Allied nationals was alleged, the Prosecutor replied that the only reason for quoting these particular incidents in connection with any of the accused was to show that they, having joined the camp staff, co-operated in the ill-treatment of persons in the camp. The fact that the individual person whom an accused was seen ill-treating was Hungarian would not be relevant if the Court believed that the accused was taking a part in the systematic ill-treatment which was going on.

(xix) *Pichen.* Against Pichen there was a great deal of evidence as to what went on in his kitchen in particular. There was the account of the shooting on the day of the S.S. parade.(2)

(xx) *Otto.* The question was whether to believe this accused or not. The allegation made against him was that he caught Stojowska taking a bed from outside Block 213 and that a day or so later he came into Block 201, where she lived, found that the other Block Senior had also got a bed and beat them both. There was only the one affidavit against him, but this man undoubtedly frequented that part of the camp, and, asked Counsel, was it not the practice of an S.S. man, if he saw something irregular as he was going round the camp, to take action there and then ?

(xxi–xxii) *Stofel and Dorr.* Counsel suggested that the finding of the corpses (3) was entirely consistent with the story that Dorr shot each straggler along the route of the transport, and asked was it surprising, realising how cheap life was held in the concentration camps, to find one of the guards who had been in a concentration camp for a long time shooting people as they went, with the full approval of the man in charge, Stofel ?

(xxiii) *Schreirer.* Counsel did not examine the evidence regarding this accused except as regards his identification. Could the Court have any real doubt at all that he was in fact a member of the S.S., that the uniform he was wearing was his and that he was stationed in Belsen when he spent the evening with the girl in Soltau ? (4)

(xxiv) *Barsch.* In view of the evidence, Counsel did not ask the Court to say that this accused was ever in Belsen at all.

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(1) See p. 23. (2) See pp. 12, 27 and 52. (3) See p. 55.

(4) See p. 54. The Prosecutor later agreed with the Judge Advocate that nothing had been proved against Schreirer as regards Belsen.

(xxv) *Zoddel.* This man accepted the position and responsibility of a Camp Senior, becoming a senior prisoner in the camp, abused that position as the S.S. did, and identified himself completely with the S.S.

(xxvi) *Schlomowicz.* It was said that this accused regularly beat people at Belsen with a rubber cable and a stick.

(xxvii) *Ostrowski.* The Court might think there was no doubt at all that this accused had a function in the block in question and that in fact he was engaged, as various witnesses said, in beating and ill-treating people.

(xxviii) *Aurdzieg.* He was the man who made a full confession to Capt. Pipien of the French War Crimes Investigation team, then told the story of how that was obtained from him and he was made to sign at the pistol point ; yet if the Court would examine the original it would find that below his signature he went on to give an account and description of the persons who were working with him.

(xxix–xxxix) *Ilse Forster, Ida Forster, Opitz, Charlotte Klein, Bothe, Walter, Haschke, Fiest, Sauer, Lisiewitz* and *Hempel.* Against every one of these women there was evidence of beating. These beatings were not alleged merely to be slaps on the face or the boxing of ears. On the question of the rubber sticks of which the Court had heard so much, Counsel asked whether there existed a kitchen with running water, or with large boilers, and portable boilers which were brought in and filled, which did not have these short lengths of hose ?

(xl) *Roth.* In connection with this accused, Counsel made reference to the allegations of Sofia Rosenzweig, Rorman and Helene Klein.[1] Helene Klein had not been certain that the victim's name was Friedman ; Counsel suggested that whether Friedman was alive or not was of no great importance.

(xli) *Hahnel.* The only evidence against Hahnel was that of Stempler, who recognised her from a photograph and said that the accused beat a girl in the bath.

(xlii) *Kopper.* Was it not plain that Kopper preserved herself at Auschwitz as an informer ? She admitted she was two years in a Strafkommando without being beaten when everybody else was. She claimed that she had this good fortune because she knew her rights. The Court might think it was because, as other prisoners alleged, she was a known informer and was kept as such.

When she came to Belsen she was made Block Senior, and then a camp policewoman, and it was only, the Court might think, because she " got too big for her boots " that on the 1st March she was molested, as it was alleged. She was obviously a woman who was not liked by the other prisoners and they were only too pleased to beat her when given the opportunity. There were many allegations made against her regarding her acts while she was Block Senior.

(xliii) *Polanski.* Witnesses said that he was an assistant Block Senior in Block No. 12, that he behaved extremely badly and that he was one of the

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[1] See pp. 20, 32 and 33.

gang of people who were forcing people out to bury the dead early in the morning, beating them on the head as they went.

(xliv) *Starotska.* This accused had admitted to a number of offences, but claimed that she was actually acting as a sort of Scarlet Pimpernel on behalf of the prisoners. Did the evidence support her? Rozalja said: " She created an atmosphere of fear in the whole block, Block No. 26 " ; this was quite apart from the evidence of her denouncing people to the S.S., and regularly beating people in the block. The evidence of Anna Wojeiechowska[1] did not support the accused's story in the way the latter had intended ; the witness had not actually been selected for the gas chamber. Janicka and Komsta, two further Defence witnesses, had testified to her kindness, but they were both Aryan Poles, and therefore favourites. Nowogrodzka had made it quite clear that Starotska did no kindness whatsoever for anybody but Aryan Poles, and that she put Aryan Poles in a favourable position and paid no attention to the other prisoners.

Counsel submitted that she made herself indispensable to the S.S. in Auschwitz, and accepted any post which was given to her. When she came to Belsen the same was true.

K. THE SUMMING UP OF THE JUDGE ADVOCATE

The Judge Advocate began his summing up by pointing out that the Prosecution did not ask the Court to consider whether the taking of Allied nationals to Auschwitz was right or wrong. What they did say was that, when they were there, they should not have been ill-treated or maltreated to an extent that they died or suffered physical hardship. If the Court were satisfied that Allied nationals were taken in the way which had been described, and that they were put in a gas chamber because they were of no use to the German Reich, it seemed to him that a violation of the customs and usages of war had been committed.

In regard to the more general question of ill-treatment or maltreatment, the same difficulties did not arise, because it was not claimed that such treatment was in any way authorised by the German Reich, as it had been suggested might be the case in regard to the gas chambers.

Regarding the plea of superior orders, he advised the Court to follow the law as laid down in Volume II of Oppenheim's *International Law*, 6th Edition, p. 452 ; the passages quoted run as follows :

> " The fact that a rule of warfare has been violated in pursuance of an order of the belligerent Government of an individual belligerent commander does not deprive the act in question of its character as a war crime ; neither does it, in principle, confer upon the perpetrater immunity from punishment by the injured belligerent. . . . Undoubtedly, a Court confronted with the plea of superior orders adduced in justification of a war crime is bound to take into consideration the fact that obedience to military orders, not obviously unlawful, is the duty of every member of the armed forces and that the law cannot, in conditions of war discipline, be expected to weigh scrupulously the legal

(1) See p. 64.

> merits of the order received; that rules of warfare are often controversial; and an act otherwise amounting to a war crime may have been executed in obedience to orders received as a measure of reprisals. Such circumstances are probably in themselves sufficient to divest the act of a stigma of war crime. . . . However, subject to these qualifications, the question is governed by the major principle that members of the armed forces are bound to obey legal orders only and that they cannot therefore escape liability if, in obedience to a command, they commit acts which both violate unchallenged rules of warfare and outrage the general sentiment of humanity."

The Court would probably find that the reason why that attitude was adopted by the writer was contained in the next sentence: "To limit liability to the persons responsible for the order may frequently amount, in practice, to concentrating responsibility on the head of the State whose accountability, from the point of view of both international and constitutional law, is controversial."

The Judge Advocate went on to say that the two broad issues which had to be established beyond all reasonable doubt were, first, whether the crime set out in the charge sheet had been established, and secondly, if it had been established, whether the accused or any of them had been proved to have committed it.

Dealing with the first issue, the Judge Advocate expressed the view that there was a tremendous body of evidence to establish that at Auschwitz the staff responsible for the well-being of internees were taking part in gassings, in improper unlawful beating, in roll-calls and in the use of savage dogs; and that they were overworking and underfeeding the internees. It might even be that there were experiments performed upon people, allegedly in the interests of science, against their will. He was not suggesting for the moment that the prisoners in the dock necessarily committed what he called that general crime, but he stated that in his opinion there was evidence upon which the Court could find that the war crime set out in the first charge had been committed.

In respect of Belsen there was a general allegation of ill-treatment or maltreatment, of a state of wilful or culpable neglect whereby thousands of innocent people lost their lives. Here again it seemed to him, rightly or wrongly, that there was a tremendous volume of evidence upon which the Court could properly find that the offence alleged was committed by the staff employed at Belsen who were responsible for the well-being of the internees.

The difficult issue was whether each or any of the accused had been proved beyond all reasonable doubt to have committed the offence with which they are charged.

The Judge Advocate then summarised the evidence against the accused, beginning with those alleged to have committed crimes at Auschwitz. He prefaced this survey by stating in general that the case for the Prosecution was that at Auschwitz members of the staff agreed together, either tacitly or expressly, that they would ill-treat the internees, and that they would take part in the gassings.

In dealing with the evidence against Weingartner, the Judge Advocate said that through some error the events which were alleged to have taken place at Auschwitz appeared in the Belsen charge.(1) Weingartner could not, therefore, be punished for these matters but evidence regarding them had been allowed to be introduced, as showing the way in which he was conducting himself, from which the Court were invited by the Prosecution to infer that he must have been party to a system of ill-treating internees.

Regarding the allegations of beating, the Judge Advocate felt that, if discipline and order could not be maintained without a reasonable use of force, and whether there was specific authority to use that force or not, the Court would not hold that reasonable use of force against any of the accused as a war crime or as a breach of the customs and usages of war. What the Prosecution were alleging, and what they had to prove, was the use of force of such kind that it was savage and brutal, without justification, existing merely because the person causing it was a party to a system of cruelty which was in force in concentration camps.

There was a vast difference between hitting people with the hand and hitting them with a stick or kicking them, and the Court would no doubt have a very keen eye to discriminate between the various kinds of alleged ill-treatment. Great damage could be done even with the hand if people struck in anger or got into the habit of striking every day so that gradually more force was put behind their blows.

The Judge Advocate said that usually affidavits did not come before courts of criminal jurisdiction, but that under war conditions it had become necessary to introduce these affidavits in an endeavour, not to convict innocent people, but to convict guilty people. However much one would prefer to have a deponent in person before the Court the affidavits were properly admitted, and it was for the Court to say whether they would act upon them. There was nothing to compel the Court to accept them.

The affidavits were dangerous material. He had the greatest faith in cross-examination as a means of finding the truth. He invited the Court to consider the way in which the affidavits were taken, especially on the question of identity. He was sure that the Court would find it difficult to act upon the evidence of a mere one or two unless supported in some material particular.

It had been pointed out that sometimes a witness differed in his evidence in Court materially from his affidavit, or that he introduced matters which were not in the affidavit. Some affidavits used indiscriminate and very wide language such as " She threw people to the ground and cruelly beat them and many died ". A great number of the affidavits ended with allegations that people died as a result of what was alleged to have happened. He was sure that the Court would want more proof that people were killed in this manner before they accepted the allegation and that if there was any doubt they would not accept it.

The Judge Advocate was of the opinion that the charges did not say that every person who was on the staff of Auschwitz or Belsen concentration

(1) A reference to the alleged killing of Hejmech Glinowiewski. See pp. 4 and 15.

camps was guilty of a war crime. The Court would have to be satisfied that a person was deliberately committing a war crime, identifying themselves with the system in force at the camp ; their mere presence on the staff was not of itself enough to justify a conviction.

At the end of his summing up of the evidence relating to the offences alleged to have been committed at Auschwitz, the Judge Advocate said that the main allegations related to Allied nationals unknown. It was not necessary to prove everything in a charge. It was the substance which must be proved, and if the Court were satisfied that there was substantial ill-treatment, causing death or physical suffering to people whose names the Prosecution were not able to put forward, that would allow the Court to convict the accused, even though they were not satisfied of the death of any named person.

The case for the Prosecution was that all the accused employed on the staff at Auschwitz knew that a system and a course of conduct was in force, and that, in one way or another in furtherance of a common agreement to run the camp in a brutal way, all those people were taking part in that course of conduct. They asked the Court not to treat the individual acts which might be proved merely as offences committed by themselves, but also as evidence clearly indicating that the particular offender was acting willingly as a party in the furtherance of this system. They suggested that if the Court were satisfied that they were doing so, then they must, each and every one of them, assume responsibility for what happened. The Judge Advocate reminded the Court that when they considered the question of guilt and responsibility, the strongest case must surely be against Kramer, and then down the list of accused according to the positions they held.

Turning to the allegations regarding Kramer's actions at Belsen, the Judge Advocate said that he did not think it mattered very much whether he acted wilfully or merely with culpable neglect ; the question was whether the Prosecution had proved that Kramer did not carry out his duties as far as he was able to do and that he had caused at any rate physical suffering upon Allied nationals by reason of his actions ? Further, there was no charge against Dr. Klein of any deliberate acts of cruelty, and it was for the Court to consider whether Klein had a fair opportunity to do anything with regard to the conditions in Belsen and whether he so failed to act that the Court would have to find him guilty of the charge. What had to be decided was whether, in the time when he was really responsible and could improve matters, he failed either deliberately or in a culpable way deserving of punishment to do what he should have done.

The Judge Advocate later commented that it was acknowledged that at Belsen there were a large number of very sick and feeble people ; a resort to violence by smacking or striking people who were weak and not in a fit condition might become a very improper thing, and quite different from the same action adopted towards fit and strong persons.

Regarding offences committed outside Belsen, the Judge Advocate said that the charge alleged certain crimes committed at Bergen-Belsen between certain dates by members of the staff responsible for the well-being of the persons interned therein. A man could not be convicted upon a charge

which was not before the Court, but if the Court were satisfied that the substance of the charge was proved they might find a person guilty though of an offence differing from the particulars set out in the charge. He did not think that it mattered very much, looking at the substance of the charge and not the shadow, whether the people in a convoy on its way to Belsen had already reached and become internees in Belsen.

In the course of his treatment of the case against Burgraf the Judge Advocate said that it did not seem to be the aim of the Prosecution to bring accusations against anyone, however terrible, if they were only ordinary prisoners in the camps at Auschwitz or Belsen. The essence of the charge was that the accused should have been in some position of authority, with the power to look after the inmates and make their life satisfactory. It would be for the Court to decide whether Burgraf could be treated as being on the staff at Bergen-Belsen.

After surveying the evidence before the Court, the Judge Advocate said that on a broad basis it was suggested by the Prosecution that in Germany in the war years there was a system of concentration camps of which Auschwitz and Belsen were two ; that in these camps it was the practice to treat people, especially the unfortunate Jews, as if they were of no account and had no rights whatsoever ; that the staff of these concentration camps were deliberately taking part in a procedure which took no account of these wretched people's lives ; that there was calculated mass murder such as at Auschwitz ; that there was a calculated disregard of the ordinary duties which fell upon a staff to look after the well-being and health of people at Belsen ; that throughout these camps the staff were made quite clearly to understand that the brutalities, ill-treatment, and matters of that kind would not be punished if they took place at the expense of the Jews ; and that there was a common concerted design of the staff to do these terrible things.

As already indicated, apart from his comments on points of law, to which reference has been made in the preceding paragraphs, the Judge Advocate also provided the Court with a full summing up of the evidence which had been placed before it. This part of the Judge Advocate's address is not here reproduced in full since it would duplicate the summaries of evidence already set out on pp. 9–37 and 39–69.

L. THE VERDICT

The Court found the following guilty on both charges: Kramer, Fritz Klein, Weingartner, Volkenrath, Grese and Lobauer.

The following were found guilty on the Auschwitz charge only: Hoessler, Borman, Schreirer and Starotska.

The following were found guilty on the Belsen charge only: Ehlert, Francioh, Calesson, Burgraf, Pichen, Stofel, Dorr, Zoddel, Ostrowski, Aurdzieg, Ilse Forster, Bothe, Walter, Haschke, Fiest, Sauer, Lisiewitz, Roth, Hempel and Kopper.

Kraft, Lothe, Klippel, Schmitz, Mathes, Egersdorf, Otto, Barsch, Schlomowitz, Ida Forster, Opitz, Charlotte Klein, Hahnel and Polanski were found not guilty.

The Court ruled that in the case of findings of guilty on the Belsen charge the words: " Anna Kis, Sara Kohn (both Hungarian nationals), Hejmech Glinovjechy and Maria Konatkevicz (both Polish nationals) " would be omitted, as well as the words: " A female internee named Korperova."

In the case of findings of guilty on the Auschwitz charge, the words: " And particularly to Ewa Gryka and Hanka Rosenwayg (both Polish nationals) " would be omitted.

M. SPEECHES BY DEFENCE COUNSEL IN MITIGATION OF PUNISHMENT

Without calling any further witnesses, Counsel for the Defence made speeches in mitigation of punishment on behalf of the accused who were found guilty.

Major Winwood said that Weingartner was forced to do service in the S.S. at Auschwitz and Belsen. He felt sure that the Court must have formed the opinion that his mentality and temperament were, to say the least, not quite normal. Though unsuitable for the task, he was put in charge of a large number of women, and his nerves and temper sometimes overrode his reason. Deliberate ill-treatment was not part of his make-up. He was one of those unfortunate people caught up against his will in the Nazi machine of which he became an unwilling but very easily moulded tool. Dr. Klein received from his superior officer distinct and direct orders what to do. From the purely practical and human point of view, Dr. Klein had little option in disobeying the orders he received, since his superior was on the spot seeing that he carried out the order. Counsel asked that the Court bear this in mind in assessing punishment. Further, it had been said that he sent thousands to their death in the gas chamber, but every man or woman whom Dr. Klein chose as fit for work was saved from the gas chamber, and he or she was granted a lease of life. Kramer had represented himself as a true German who carried out an order because it was an order. Counsel suggested that a British officer of the same rank and equivalent position would bear a greater degree of responsibility if convicted of such a crime for he had been brought up to consider the principles of tolerance, kindness, and the rule of fair justice. The mind of the German, especially that of a National Socialist and member of the S.S., was drilled into one particular channel and the broad view of humanity was lost sight of. He could have fled from Belsen like others, yet he did not do so, although he must have known that his superiors had washed their hands of him. In conclusion, Major Winwood quoted from the *Manual of Military Law* on page 61: " The instigator of an offence should receive a more severe sentence than the person who was instigated to commit it." The men in the dock were instigated to commit this war crime and they had been found guilty. The instigators of the crime were about to stand their trial in Nuremberg. Were the Court to mete out to these minor characters a punishment which could not be exceeded at Nuremberg?

Major Munro wished to associate himself with what Major Winwood had said about the State system and also as to the effect on sentence of the plea of superior orders. Against Hoessler, apart from one general affidavit, there were no allegations of personal brutality. There was also a certain

amount of evidence in his favour. Borman had said that she joined the S.S. to make more money, but her life up to that time had been one of rather bitter and friendless loneliness. Volkenrath did not volunteer into the S.S. and the job she had latterly at Belsen of Oberaufseherin was not so important as it sounded. She had no administrative control in the camp, and the job mainly consisted in detailing other Overseers to particular jobs. Whatever might have happened later, it was clear that at the beginning Ehlert was a good and decent woman who looked after the interests of the prisoners, and who, it appeared, was punished for it. The Court was invited to take into account what the conditions in concentration camps could do to weak human nature.

Major Cranfield reminded the Court that Grese's mother died when she was 14 years of age, that she herself left her home at the age of 16, and that at the age of 18 she was conscripted into the concentration camp service. Grese was a girl of only nineteen when she came to the appalling atmosphere of Auschwitz. Grese was only a poorly educated girl. Her father was an agricultural labourer and she was a subject of the Nazi propaganda machine. At the time of the liberation at Belsen Lobauer had undergone five years of the most rigorous kind of imprisonment. She received that for refusing to make munitions which would, of course, have been used against the Allies. Further ; while she was undergoing that imprisonment she received a savage beating as a punishment for what the Court would consider a trivial offence. Prison functionaries such as she were ordered to take up their appointments and they had no opportunity of refusing.

Captain Roberts pointed out that on the day the British arrived at Belsen, Francioh went out of the camp to help his wife pack in order to return home, and had he chosen at that moment to go with her he could have gone quite easily. Instead he chose to return to the camp and to continue his duties there in accordance with the truce.

Major Brown stressed that less than a year before the liberation of Belsen, Calesson, then 52, was living at home with his wife and three children. In May, 1944, he was conscripted into the German army. He was only in Bergen-Belsen for five days. He was one of those men who could have left Belsen under the terms of the truce, but he remained there, because he had nothing to fear.

Captain Fielden observed that Pichen, far from being a full-blooded S.S. man, was conscripted into the Wehrmacht in 1940, and became an ordinary front line infantry soldier. He had suffered the horrors and perils of the Eastern Front, where he was wounded and was, as a result, a cripple. He did not come to Belsen until the middle of March. In trying to guard against continual thefts from the cookhouse, he was making an attempt to safeguard food for the benefit of the others. There was no accusation of actual killing against Stofel.

Captain Corbally, speaking on behalf of Schreirer, said that at the time when he was alleged to have been at Auschwitz he was 19 years of age. There was no evidence that he killed anybody at Auschwitz, and there was evidence that the most serious atrocity alleged against him was done in obedience to an order. Dorr, at the time of trial a young man of 24, did not

want to be a concentration camp guard. He wanted to be a front line soldier, and it was because of his illness that he was unable to pass the medical examination required. With reference to the crimes which he committed on the march Counsel claimed that every plan which had been made to get the prisoners to Belsen went wrong. Instead of going by train they had to walk. Dorr had never had to do anything like that before. He had considerable worry and responsibility to get these people to Belsen. The road they took might at any time have been cut by the British or American troops. Zoddel had been an internee for a long time and his internment had left him a sick man. Counsel invited the Court to say that there was no evidence which satisfied them that he really killed anybody.

Captain Neave reminded the Court that there was evidence that Ilse Forster, a girl of 23, did do something in her small way to alleviate the suffering and the hardships of those who worked directly under her in the kitchen.

Captain Phillips stated that, at the beginning of the trial, Bothe was 24, Walter 23 and Haschke 24. They all arrived at Belsen towards the end of February, 1945, at a time when the conditions in the camp had already begun to become bad and difficult. Counsel invited the Court to let their punishment be in proportion to their share in the responsibility. They were not in Belsen a very long time and did not hold any greatly responsible position. They were all educated and brought up under the Nazi system, with the result seen at Belsen.

Captain Boyd said that Fiest, Sauer and Lisiewitz were conscripted and only arrived at Belsen in late February and March, 1945. They were all small people with very little responsibility. As Mr Le Druillenec said, although he was speaking more particularly of prisoners, conditions at Belsen were such that anyone coming to the camp was almost inevitably brutalised.

Captain Munro said that Roth had been a prisoner of the Germans without any position at all for four years and two months before being given a position which, suggested Counsel, was only that of a hut orderly. She remained behind in Belsen until 16th June, a considerable time after the liberation by British troops, because she had a clear conscience. Like Pichen, Hempel worked in a cookhouse and Counsel claimed that whatever she did, she did it for the betterment of the prisoners.

Lieutenant Jedrzejowicz said that Aurdzieg, Burgraf, Ostrowski, Kopper and Starotska were all victims of war. They were dragged away from their homes and put for an indefinite period of time in a concentration camp. They were sent there to do hard work and eventually to die. Aurdzieg was taken away from home at the age of 16 years, and grew to be a man in a concentration camp. Burgraf also was in a concentration camp as a young man. He and Ostrowski were only seven days in Belsen. Kopper was an internee for a period of just under five years and held a position at Belsen for not longer than two months. As Starotska said, Kopper was unsuited to the job of Block Senior because she was in a state of complete exhaustion and on the verge of a nervous breakdown. The last accused, Starotska, had been in concentration camps since 1942, but before that she was sentenced to death and kept in prison by the Gestapo for a period of two years. This

sentence and her stay in prison until the sentence was commuted must have been a great mental and physical strain for a girl of 23 years of age. Dr. Bimko said that a number of prisoners at Belsen hoped that the accused would be appointed Camp Senior. Lieutenant Jedrzejowicz too referred to the brutalising atmosphere of the concentration camp.

N. THE SENTENCES

Subject to confirmation by superior military authority, the following sentences were pronounced:

Kramer, Fritz Klein, Weingartner, Hoessler, Francioh, Pichen, Stofel, Dorr, Borman, Volkenrath and Grese were sentenced to death by hanging.

Zoddel was sentenced to imprisonment for life.

Calesson, Schreirer, Ostrowski, Ehlert and Kopper were sentenced to imprisonment for 15 years.

Aurdzieg, Lobauer, Ilse Forster, Bothe, Haschke, Sauer, Roth, Hempel and Starotska were sentenced to imprisonment for 10 years.

Burgraf and Fiest were sentenced to imprisonment for 5 years.

Walter was sentenced to imprisonment for 3 years.

Lisiewitz was sentenced to imprisonment for 1 year.

These sentences were confirmed by superior military authority and were carried into effect.

PART II.—NOTES ON THE CASE

A. INTRODUCTION: THE ROYAL WARRANT OF JUNE 14TH, 1945

1. *Jurisdiction of the British Military Courts*

The jurisdiction of British Military Courts for the trial of war criminals is based on the Royal Warrant dated 14th June, 1945, Army Order 81/45, with amendments. The Royal Warrant states that His Majesty " deems it expedient to make provision for the trial and punishment of violations of the laws and usages of war " committed during any war " in which he has been or may be engaged at any time after the 2nd September 1939." It is His Majesty's " will and pleasure " that " the custody, trial and punishment of persons charged with such violation of the laws and usages of war " shall be governed by the Regulations attached to the Warrant.

The Royal Warrant is based on the Royal Prerogative which, in English law, is " nothing else than the residue of arbitrary authority which at any given time is legally left in the hands of the Crown " (Dicey's definition).

The constitutionality and legality of the Royal Warrant and of its individual provisions have so far not been challenged in any British Superior Court as have its American counterparts, the orders of the American executive authorities appointing Military Commissions for the trial of war criminals under the law of the United States. The latter have been reviewed by the Supreme Court of the United States in the so-called Saboteur Case, *Ex parte Quirin and others* (1942) and in the cases *In re Yamashita* (1946) and *In re Homma* (1946).[1]

Provisions similar to those contained in the Royal Warrant have been made in the Commonwealth of Australia by an Act of Parliament (War Crimes Act, 1945, No. 48/1945), and in the Dominion of Canada by an Order in Council, made under the authority of the War Measures Act of Canada, and entitled *The War Crimes Regulations (Canada)* (P.C. 5831 of 30th August, 1945; Vol. III, No. 10, Canadian War Orders and Regulations). The Canadian Regulations were given statutory form by an Act respecting War Crimes, of 31st August, 1946.

2. *Definition of " War Crime " in the Royal Warrant*

Regulation 1 of the Royal Warrant provides that " war crime " means a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since the 2nd September, 1939. The jurisdiction of the British Military Courts, as far as the scope of the crimes subject to their jurisdiction is concerned, is narrower than the jurisdiction of, e.g., the International Military Tribunal established by the Four Power Agreement of 8th August, 1945, which, according to Article 6 of its Charter, had jurisdiction not only over violations of the laws and customs of war [Art. 6 (*b*)] but also over what the Charter called " crimes against peace " and " crimes against humanity " [Art. 6 (*a*) and (*c*)].

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[1] See pp. 30–31, 77, 78, 79, 105, 110, 111, 113, 120 and 121 of Volume I of this series.

3. *Convening of a Military Court*

Regulation 2 of the Royal Warrant gives to certain Senior Officers power to convene Military Courts for the trial of persons charged with having committed war crimes. The accused is not entitled to object to the President or any member of the Court or the Judge Advocate, or to offer any special plea to the jurisdiction of the Court. (Regulation 6).

During the discussion of the question of securing an additional Defence Counsel to plead in the Belsen Trial on behalf of all the accused, the Judge Advocate quoted the marginal note to Rule of Procedure 32 (*Objection by Accused to charge*) and added that to Rule of Procedure 34, which provided for another type of objection, there was the marginal note *Special Plea to the Jurisdiction.* These last five words were also used in Regulation 6 of the Royal Warrant.

There seemed then to be some force in the argument put forward by the Defence and adopted by the Prosecution, that the Defence could attack the charge, but not the jurisdiction of the Court to try war crimes.

4. *Composition of the Military Court*

Regulation 5 of the Royal Warrant provides that a Military Court shall consist of not less than two officers in addition to the President. If the accused is an officer of an enemy or ex-enemy Power, the Convening Officer should, so far as practicable, appoint or detail as many officers as possible of equal or superior relative rank to the accused. He is, however, under no obligation so to do. If the accused belongs to the naval or air force of an enemy or ex-enemy Power, the Convening Officer should appoint or detail, if available, at least one naval officer or one air force officer as a member of the Court, as the case may be.

It was under this last provision that naval officers were appointed to sit on the bench, *inter alia*, in the *Peleus* and the *Scuttled U-Boats* Cases.(1)

5. *Mixed Inter-Allied Military Courts*

Further, under Regulation 5, the Convening Officer may, in a case where he considers it desirable so to do, appoint as a member of the Court, but not as President, one or more officers of an Allied Force serving under his command or placed at his disposal for the purpose, provided that the number of such officers so appointed shall not comprise more than half the members of the Court, excluding the President. It is left to the discretion of the Convening Officer to appoint or not to appoint Allied officers as members of the Court.

In law, a mixed Court constituted under Regulation 5, remains, of course, a British municipal court.

In the *Peleus* case and in the *Almelo* case,(2) Greek and Dutch officers respectively were appointed to serve on the Military Court ; in the first case because a Greek ship and 18 Greek nationals were involved as the victims of the crime ; in the second case because the crime had been committed on Dutch territory and one of the victims was a Netherlands national. In other cases, where the number of Allied nations involved was obviously

(1) See pp. 1–21 and 55–70 of Volume I of this series. (2) Ibid, pp. 35–45.

too large, as e.g., in the concentration camp cases, including the Belsen Trial, no allied officers were appointed. In many cases, official observers from all nations interested were invited to attend. Thus the following nations sent representatives to attend the Belsen Trial: Czechoslovakia, Denmark, France, Luxembourg, Greece, Poland, Russia, Yugoslavia and Holland. The Jewish World Congress was also represented. That the appointment of Allied members of the Military Courts is not compulsory is strikingly demonstrated by the trial by a British Military Court at Singapore of W/O Tomono Shimio of the Japanese Army. In that case the accused was charged, found guilty and sentenced to death by hanging, by a Court consisting of British officers only, for having unlawfully killed *American* prisoners of war at Saigon, *French* Indo-China. The *locus delicti commissi* was French territory, the victims were United States nationals.

6. *The Judge Advocate*

A Judge Advocate may be deputed to assist a British Military Court by the Judge Advocate General of the Forces or in default of such deputation may be appointed by the officer convening the court. The duties of the Judge Advocate, according to Rule 103 of the Rules of Procedure, an Order in Council (S.R. & O. 989/1926 as amended) promulgated under the authority of Section 70 of the Army Act,[1] consist mainly in advising the Court on matters of substantive and procedural law. He must also, unless both he and the Court think it unnecessary, sum up the evidence before the Court deliberates on its findings. Paragraph (h) of Rule 103 lays down that " In fulfilling his duties the Judge Advocate will be careful to maintain an entirely impartial position ". The Judge Advocate has no voting powers. The members of the court are judges of law and fact and consequently the Judge Advocate's advice need not be accepted by them.

If no Judge Advocate is appointed the Convening Officer must appoint at least one officer having legal qualifications as President or as member of the Court, unless, in his opinion, no such officer is necessary (Rule of Procedure 103 and Regulation 5 of the Royal Warrant, as amended). Since the Legal Member, unlike the Judge Advocate, is a member of the Court, he has the right to vote.

7. *Representation by Counsel*

Regulation 7 provides that Counsel may appear on behalf of the Prosecutor and accused in like manner as if the Military Court were a General Court Martial. The appropriate provisions of the Rules of Procedure, 1926, apply accordingly.

Rule 88 provides that Counsel shall be allowed to appear on behalf of the Prosecutor and accused at General and District Courts Martial,

(1) when held in the United Kingdom ; and

(2) when held elsewhere than in the United Kingdom, if the Army Council or the Convening Officer declares that it is expedient to allow the appearance of Counsel.

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[1] As to the relevance of the Rules of Procedure, see p. 130. Rule 103 is among those made applicable to Field General Courts Martial, " so far as practicable," by Rule 121.

The Rules of Procedure, 1926, provide that English and Northern Irish barristers-at-law and Solicitors, Scottish Advocates or Law Agents, and the corresponding members of the legal profession in other British territories, are qualified to appear before a Court Martial.

Regulation 7 of the Royal Warrant provides that, in addition to these persons qualified in British law, any person qualified to appear before the Courts of the country of the accused, and any person approved by the Convening Officer of the Court, shall be deemed to be properly qualified as Counsel for the Defence.

In practice accused persons tried as war criminals are defended either by advocates of their own nationality or by British serving officers appointed by the Convening Officer, who may or may not be lawyers. In the Belsen Trial all the Defence Counsel were British or Polish serving officers.

8. *Appeal and Confirmation*

No right of appeal in the ordinary sense of that word exists against the decision of a Military Court. The accused may, however, within 48 hours give notice of his intention to submit a petition to the Confirming Officer against the finding or the sentence or both. The petition must be submitted within 14 days. If it is against the finding it shall be referred by the Confirming Officer to the Judge Advocate General or to his deputy. The finding and any sentence which the Court had jurisdiction to pass, if confirmed, are valid, notwithstanding any deviation from the Regulations or the Rules of Procedure or any defect or objection, technical or other. An exception exists only in the case where it appears that a substantial miscarriage of justice has actually occurred.

No action has yet been taken before British civil courts similar to that taken in the United States in the *Quirin*, *Yamashita* and *Homma* cases, where the proceedings of United States Military Commissions were made the subject of judicial review. (See paragraph 1 *supra*).

9. *The Authority of Decisions of Military Courts*

The Military Courts are not superior courts and their decisions are therefore not endowed with that special binding authority which Anglo-American law attaches to judicial decisions as precedents. Their relevance for the development of International Law may rather be compared with the relevance of judicial decisions in countries whose legal systems are not based on the Anglo-American doctrine of the binding character of precedents. Although the findings and sentences of British Military Courts trying war criminals do not lay down rules of law in an authoritative way, they are declaratory of the state of the law and illustrative of actual state practice.

B. RULES OF EVIDENCE AND PROCEDURE

The Royal Warrant provides in Regulation 3 that, except in so far as therein otherwise provided, the Rules of Procedure applicable in a Field General Court Martial of the British Army shall be applied so far as applicable to the Military Courts for the trial of war criminals. These rules are contained

in the British Army Act and the Rules of Procedure made under the Act by an Order in Council, the latter being a piece of delegated legislation enacted by the Executive in 1926 (S.R. & O. 989/1926).

According to Section 128 of the Army Act, the rules of evidence of a British Court Martial are the rules applicable in English civil courts. By " civil courts " is meant courts of ordinary criminal jurisdiction in England, including courts of summary jurisdiction. This provision is made applicable, " so far as practicable ", to Field General Courts Martial by Rules of Procedure 73 and 121. Rule of Procedure 122(A) states that " practicable ", as used in the Rules, signifies " practicable having due regard to the public service ".

The rules of civil courts in England and, under the provisions quoted above, also of British Military Courts, differ in certain respects from the rules of procedure under which courts of continental countries exercise jurisdiction. One of the main differences is that in English courts the accused is allowed, if he so chooses, to give evidence on his own behalf as a witness under oath. The reported cases provide numerous instances of this and the *Dreierwalde* trial (1) may be taken as an example. There, the Judge Advocate, following the usual practice, told Amberger that, should he decide to give evidence on oath, he would be sworn and would no doubt be questioned to find whether his words were true. Should he decide not to do so, it would be permissible instead for him simply to make a statement, and in such a case his words could not be questioned as to their truth. In either event, his Counsel would be able to address the Court and call any witnesses, but, the Judge Advocate pointed out, if Amberger decided to take the latter course, so that his story could not be tested by questioning, it would not carry the same weight as would the former. The accused decided to give evidence on oath. Both the Defending Counsel and the Judge Advocate subsequently pointed out to the Court that the evidence on oath which he gave must be treated in the same way as that of any of the other witnesses.

There are, of course, also differences in the way in which witnesses are examined, on the one hand in the law of most Continental countries, where it is the President of the Court who primarily directs the examination, and on the other hand in English law, where it is mainly the responsibility of Counsel for the Prosecution and for the Defence to examine the witnesses " in chief ", to cross-examine and to re-examine them.

In the interest of the reliability of the fact-finding of the Court, English procedure, very similar to most continental codes of procedure, excludes certain types of evidence, e.g. written statements in circumstances where the person can be examined *viva voce*.

In view of the special character of the war crimes trials and the many technical difficulties involved, the Royal Warrant has introduced a certain relaxation of the rules of evidence otherwise applied in English Courts. Thus Regulation 8 (i) runs as follows :

> " At any hearing before a Military Court convened under these Regulations the Court may take into consideration any oral statement or any document appearing on the face of it to be authentic, provided

(1) See pp. 81–87 of Volume I of this series.

the statement or document appears to the Court to be of assistance in proving or disproving the charge, notwithstanding that such statement or document would not be admissible as evidence in proceedings before a Field General Court Martial, and without prejudice to the generality of the foregoing in particular :—

(*a*) If any witness is dead or is unable to attend or to give evidence or is, in the opinion of the Court, unable so to attend without undue delay, the Court may receive secondary evidence of statements made by or attributable to such witness ;

(*b*) any document purporting to have been signed or issued officially by any member of any Allied or enemy force or by any official or agency of any Allied, neutral or enemy government, shall be admissible as evidence without proof of the issue or signature thereof ;

(*c*) the Court may receive as evidence of the facts therein stated any report of the " Comité International de la Croix Rouge " or by any representative thereof, by any member of the medical profession or of any medical service, by any person acting as a " man of confidence " (*homme de confiance*), or by any other person whom the Court may consider was acting in the course of his duty when making the report ;

(*d*) the Court may receive as evidence of the facts therein stated any depositions or any record of any military Court of Inquiry or (any Summary) of any examination made by any officer detailed for the purpose by any military authority ;

(*e*) the Court may receive as evidence of the facts therein stated any diary, letter or other document appearing to contain information relating to the charge ;

(*f*) if any original document cannot be produced or, in the opinion of the Court, cannot be produced without undue delay, a copy of such document or other secondary evidence of its contents may be received in evidence.

It shall be the duty of the Court to judge of the weight to be attached to any evidence given in pursuance of this Regulation which would not otherwise be admissible."

C. QUESTIONS OF EVIDENCE ARISING IN THE TRIAL

During the course of the trial, a number of disputes arose as to the scope of Regulation 8 (i). These discussions are summarised in the following paragraphs. Comment is also made on some other applications of Regulation 8 (i), and on two further topics: Group Criminality and the Scope of Regulation 8 (ii), and the admissibility of evidence of offences committed outside Auschwitz and Belsen.

1. *The Admissibility of Affidavit Evidence*

In his opening Speech, the Prosecutor pointed out that although the trial was held under British law, the Regulations had made certain alterations in the laws of evidence for the obvious reason that otherwise many people

would be bound to escape justice because of movements of witnesses. A number of affidavits had been taken from ex-prisoners from Belsen, but many of the deponents had since disappeared. Therefore the Prosecution would call all the witnesses available and would then put the affidavits before the Court and ask for the evidence contained therein to be accepted.

On 3rd October, 1945, the Judge Advocate asked the Prosecutor what he relied on in putting in the affidavits. The Prosecutor replied that he relied on Regulation 8 (i).

The Judge Advocate asked whether Regulation 8 (i) (*a*) was not intended to be read, at any rate so far as an affidavit was concerned, to the effect that the Court had first to be satisfied that the witness was dead, or was unable to attend or to give evidence or was, in the opinion of the Court, unable to attend without undue delay.

The Prosecutor replied that the general introductory provision of Regulation 8 (i) made paragraph (*a*) academic by stating that Regulation 8 (i) (*a*) was " without prejudice to the generality of the foregoing." To the question whether the Prosecutor took the view that, even if there was a witness in the flesh who could be obtained, the Prosecutor would still be inclined to rely on the affidavits, the Prosecutor replied that technically he should take that view. It would, of course, be a matter for the Court to decide whether they considered that the statement or document appeared to be of assistance.

The Judge Advocate advised the Court that the regulation was so wide that the Prosecution's view of it was a correct one.

Captain Phillips then objected to the use of affidavit evidence, which would generally not be admissible before a Court. It was, he said, only admissible, if at all, as a result of Regulation 8 (i), and that Regulation, in his submission, was merely permissive. It said that the Court might take into consideration certain types of evidence. The objection of the Defence was that this was not a case in which the Court should receive such evidence. The Defence did not say that the Court could not do so, but they said that the Court had a discretion and that it should exercise its discretion here in favour of the Defence by refusing to accept the evidence. The whole of the evidence contained in these affidavits was, in the submission of the Defence, completely unreliable, thoroughly slipshod and incompetent.

The Judge Advocate said that it was entirely a matter for the Court's discretion whether they accepted this evidence or not. It was for the Court to consider what weight should be attached to any affidavit. In his view, all these exhibits would be admissible in evidence, but what was left for the Court to decide was how much weight they would attach to any particular document, having heard the whole of the circumstances and having considered it in the light of other evidence.

The Court decided that they would receive in evidence the affidavits tendered by the Prosecution. They added, however, that when they came to decide what weight should be attached to any particular affidavit, they would bear in mind any observation which the Defence might address to them.

On 19th September, 1945, the affidavit of Colonel Johnston was tendered by the Prosecutor. One of the Defending Officers objected to three paragraphs of the affidavit on the ground that they contained merely comment on points which it was the Court's duty to decide. A difficulty arose from the fact that the Court must know what was in a paragraph in order to decide whether to admit it or not. The Prosecutor pointed out that this was inevitably so in a system of Courts Martial, under which the Court was judge both of law and of fact. The Court must, in fact read themselves, or have read to them, the paragraphs in order that they might consider the legal point ; then they must do the impossible and say " we refuse to allow this to be put before us and, in our capacity of judges of fact, we will ignore them, although in our capacity of judges of law we must consider them first."

One of the paragraphs objected to was left out on the advice of the Judge Advocate, who remarked that the deponent was going rather outside his province. As to the two remaining paragraphs, the Court decided that the words " In short such orders and the carrying out of such orders was mass murder " and a reference to " accomplices in mass murder " should not be put in.

During the hearing of the evidence for the defence, the question arose whether, at that stage of the trial, affidavits made by witnesses who had been heard by the Court in person could be put in, in order to show the unreliability not of the witnesses involved but of the affidavits as a whole, all of them having been produced by the same War Crimes Investigation Unit.

The Defence argued that it was essential, in the present case, where the evidence for the Prosecution was largely documentary, for the Defence to be able to challenge the whole system whereby that documentary evidence was produced by pointing out discrepancies between what witnesses had said in Court and what they had said in written statements not yet entered as evidence.

This was opposed by the Prosecution on the ground that the examination and the cross-examination of the respective witnesses was the proper time to point out discrepancies between the affidavits and the oral evidence of witnesses and that if the defending officers had missed this opportunity, they could not submit the affidavit at a time when the witnesses had no opportunity of explaining the alleged discrepancy in the course of their cross-examination.

The Court ruled that, if there were any witnesses who gave evidence in Court personally and were cross-examined in regard to affidavits that they had made, and if those affidavits were not put in as evidence, the Court would allow any Defending Officer to put in such affidavits during the course of his defence, for the purpose of establishing the manner in which these affidavits had been taken.

On the other hand the Court felt that, in the case of witnesses who gave evidence in person and were not cross-examined in regard to their affidavits, the Court should not admit such affidavits, because they would carry no weight with them unless accompanied by a cross-examination of the witnesses so that the Court could appreciate exactly what their evidence would be in regard to the taking of the affidavits.

2. *The Use of Films as Evidence*

On 20th September, 1945, a film of the scenes which were found at Belsen was shown to the Court. Technically the film was an exhibit attached to an affidavit, made by members of the Army Film and Photographic Unit, stating that they photographed scenes at the camp, that they had seen the cinematographic film made from the negatives of the photographs taken by them, and that the film negatives were copies of the film taken by them.

On the 13th October, the Prosecutor applied for permission to show an official documentary film, made by the Soviet official photographers, of the concentration camp at Auschwitz, as part of the Prosecution's case. Alternatively he suggested that the Court might call for it themselves, the Prosecution's case having been closed. The film, which had only just been brought to his attention, was an official document of the Soviet Union and therefore admissible under Regulation 8.(1) In any case he could produce a certificate from the photographer. In law, a film had been held to be a document and capable of being a means of committing, not slander but libel. The Defence objected, alleging it to be a propaganda film that was not related in any way to any of the accused in the dock. It might not have been taken until long after they had all left the camp.

The Judge Advocate advised the Court that, provided they were satisfied as to the circumstances and the time of the taking of the film, then it was within the Court's competence to receive it in evidence and to attach such weight to it as they might think fit.

The Court decided to see the film as a silent film with an official translator indicating in English to the Court relevant points which would help them to follow the position and the layout of the camp. The Court would treat this as evidence called by the Court.

On the 15th October, an affidavit of one of the producers of the film was read, certifying that the film was an official documentary film prepared for the Union of Soviet Socialist Republics and published by them, that the filming took place at Auschwitz in Poland and that it was a true representation of the conditions there found. The filming began on the first day after liberation and was completed by the end of the investigation carried out by the Soviet War Crimes Commission. As the film was shown an interpreter made a commentary in English.

3. *A Map of Belsen Used as Evidence*

A second affidavit by Brigadier Glyn Hughes was tendered by the Prosecution during the hearing of the evidence for the Defence. In this he formally identified a plan of Belsen camp delivered to him by the army survey section ; this to the best of his knowledge and belief was a true representation of the camp before it was burnt down. Counsel on both sides considered the plan substantially accurate.

4. *Admissibility of Affidavits Made by one of the Accused*

On the 5th October, objection was raised by Major Cranfield to the admission of an affidavit made by the accused Kopper. It was submitted

(1) Counsel was presumably relying on Regulation 8 (i) (b). (See p. 131).

that the affidavit was objectionable as evidence against any of the other accused.

Major Cranfield pointed out that while this affidavit was admissible under Regulation 8 of the Royal Warrant,(1) that provision was merely permissive. He called on the Court to reject the evidence as being completely worthless. The Prosecution's own witnesses had called Kopper an informer and one who lied. In support of his argument he quoted a passage from page 94 of the *Manual of Military Law* governing the procedure followed in Courts Martial: "If the Prosecution find it necessary to call one suspected participator in a crime as a witness against the others the proper course is not to arraign him or, if he has been so arraigned, to offer no evidence and to take a verdict of acquittal." The reason was clear. The spectacle of one criminal turning on his fellow criminals to save his own skin was not one which was attractive to British justice.

The Prosecutor submitted that the meaning of the Regulation was that the Court could admit evidence that would not otherwise be admitted, but that if they found that they might accept it then they must accept it, subject to such weight as they might attach to it afterwards. The Court had not a discretion to say: "All this evidence is legal and we will accept this part and reject that part." The case came within a specific category mentioned under Regulation 8 (i). Any deposition, any summary, or any examination made by any officer detailed for the purpose by any military authority was included, and the Court had heard that Major Champion and Major Smallwood were in fact both detailed. Regulation 8 (ii) (2) rendered it permissible to enter evidence by one accused against another.

Replying, Major Cranfield said that in his view the object of Regulation 8 (ii) was to introduce into the law of procedure governing the Court the proposition that, if one of the accused were proved a member of a unit, then evidence against another member of that unit would be evidence against the accused, merely because he was a member of the unit. Regulation 8 (ii) did not render the affidavit admissible.

After quoting Regulation 8 (i) the Judge Advocate said that he saw no reason in law why the Court should reject this affidavit. They would have to read the document and then say whether they were satisfied that it appeared to be an authentic document on the face of it. They must then say whether it was a document which would help in proving or disproving the charges.

The Court decided that the document would be admitted, while reserving the right to judge what weight to place on it.

5. *Admissibility of Affidavits Made by an Accused While in Custody*

On the 5th October, Major Cranfield also objected to certain affidavits made by the accused Irma Grese because at the time the statements were taken the deponent was in custody. The Defence referred to paragraph 78 (3) of Chapter VI of the *Manual of Military Law*, which said that persons in custody should not be questioned without the usual caution being first administered.

(1) See pp. 130-1. (2) See p. 138.

The Defence made the point that the Prosecution could not put in those affidavits under Regulation 8. The Royal Warrant should, in case of doubt, be construed strictly against the Crown. It should be construed according to its meaning as appeared from its terms. No generality of words, however wide, should operate to embrace something which did not appear to be intended.

Counsel distinguished this question from that involving Kopper. The statement made by Kopper was a statement of evidence against other persons. The statements made by Grese were a confession and admission of the deponent herself. Counsel made a distinction between confessions and evidence. In his submission it was significant that nowhere in the Regulations was there any mention of a confession or an admission by an accused person. The intention of Regulation 8 was to enable the Court to hear secondary evidence in lieu of primary evidence. The Defending Officer referred to Regulation 3 of the Royal Warrant, detailing those sections of the Army Act and those Rules of Procedure which were not to apply to Military Courts. Rule of Procedure 4, stipulating that the usual caution shall be administered, was not so excluded by the Royal Warrant. Unless the evidence stated that Rule of Procedure 4 had been complied with, the Court could not hold that the documents appeared " on the face of it to be authentic " within the meaning of Regulation 8.(1)

The Prosecutor replied that the provisions regarding the cautioning of accused had no application in Military Courts. It was not necessary for the Prosecution to satisfy the Court that Grese's were voluntary statements. The Royal Warrant was drawn up with the deliberate intention of avoiding legal arguments as to whether evidence was admissible or not. They were drawn widely to admit any evidence whatsoever and to leave the Court to attach what weight they thought fit to it when they had heard it. By " authentic " was signified " genuine ".

The Judge Advocate said that the affidavits were not, in his view, analogous in any way to the statements or documents which came under Rule of Procedure 4 in the case of a Field General Court Martial.

He advised the Court to accept the Grese affidavits as documents within the meaning of Regulation 8 (i). Even if they were taken in such a way that they would not be accepted as a confession or document at a Field General Court-Martial, that circumstance would not help the Defence, because in Regulation 8 (i) there were the words " notwithstanding that such documents would not be admissible as evidence in proceedings before a Field General Court Martial ". This would not prevent the Defence from attacking the weight of the documents as evidence.

The Court overruled the submission of the Defence and admitted the documents. It would be open to the Defence to attack their weight.

Paragraph (E) of Rule of Procedure 4, to which reference was made, states that, during the preliminary investigation of a charge, " After all the evidence against the accused has been given, the accused will be asked: 'Do you wish to make any statement or to give evidence upon oath ? You

(1) Rule 4 is among those made applicable to Field General Courts Martial, " so far as practicable," by Rule 121.

are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing, and may be given in evidence '. Any statement or evidence of the accused will be taken down, but he will not be cross-examined upon it ".

> " If the accused is remanded for trial by court martial, no evidence will be admitted at his trial of any statement which he may have made, or evidence which he may have given, at the taking of the summary of evidence before such caution was addressed to him."

In the course of the trial of Eberhard Schoengrath and six others the Defence objected to the admission of statements made by five of the accused, on the grounds that, according to the affidavit of their interrogator, no caution had been administered to the accused, and that the statements were therefore made inadmissible by Rule 4(E).

The Legal Member, however, advised the Court that it was empowered to receive a statement even though a caution was not administered, provided the Court was satisfied that the statement was made voluntarily. It had been established by long precedent during war crime trials that the regulation which said that the Court might receive oral statements and documents appearing on the face of them to be authentic and would attach such weight to them as it thought fit was to be accepted as relating to affidavits and statements made by an accused. An abstract of evidence was quite different from a summary of evidence. When a summary was taken the accused must be present and must have the opportunity of cross-examining any of the witnesses. He continued : " That is all ruled out by the Royal Warrant. An abstract of evidence is merely supplying you with anything in the nature of evidence which the Prosecution propose to produce."

The rights of one accused before a Court Martial to which the Legal Member made reference are those contained in paragraphs (C) and (D) of Rule 4, which deal with the procedure to be followed where a case is adjourned by the commanding officer " for the purpose of having the evidence reduced to writing ", a process referred to in Rule 4 and in the marginal note to the Rule as adjournment for taking down the summary of evidence. These paragraphs read as follows :

> " (*c*) Where the case is so adjourned, at the adjourned hearing the evidence of the witnesses who were present and gave evidence before the commanding officer, whether against or for the accused, and of any other person whose evidence appears to be relevant, shall be taken down in writing in the presence of the accused before the commanding officer or such officer as he directs.
>
> " (D) The accused may put questions in cross-examination to any witness, and the questions with the answers shall be added in writing to the evidence taken down."

Regulation 4 of the Royal Warrant, however, provides that :

> " The commanding officer of the unit having charge of the accused shall be deemed to be the commanding officer of the accused for the purposes of all matters preliminary and relating to trial and punishments. . . . He shall without any such preliminary hearing as is

> referred to in Rule of Procedure 3 either cause a Summary of Evidence to be taken in accordance with Rule of Procedure 4 or an abstract of evidence to be prepared as the Convening Officer may direct. The accused shall not have the right of having a Summary taken or of demanding that the evidence at the Summary shall be taken on oath or that any witness shall attend for cross-examination at the taking of the Summary."

For the trial of Eberhard Schoengrath and six others, as for the Belsen trial, an abstract of evidence had been prepared, and not a Summary of Evidence. In both cases, the submission of the Defence was over ruled.

The result seems to be that, while in practice the Court will always ascertain whether or not a statement is made voluntarily in order to assess its evidential value, the Defence cannot prevent its being put in as evidence by denying its voluntary nature, but may attack its weight.

6. *Hearsay Evidence*

Hearsay, or secondhand, evidence was admitted throughout the trial, both in the witness box and in the affidavits entered. In English Civil Courts, subject to exceptions, a statement, whether oral or written, made by a person who is not called as a witness, is not admissible to prove the truth of any matter contained in that statement.(1) Such evidence is rendered permissible by Regulation 8 (i) provided that it satisfies the conditions laid down therein.(2)

7. *Group Criminality and the Scope of Regulation* 8 (ii)

Much discussion during the trial turned on the scope of Regulation 8 (ii) which was claimed by the Prosecution to be in point and which, as amended, provides :

> " Where there is evidence that a war crime has been the result of concerted action upon the part of a unit or group of men, then evidence given upon any charge relating to that crime against any member of such unit or group may be received as *prima facie* evidence of the responsibility of each member of that unit or group for that crime. In any such case all or any members of any such unit or group may be tried jointly in respect of any such war crime and no application by any of them to be tried separately shall be allowed by the Court ".

One of the striking features of the type of warfare waged by the Axis Powers in general and by the Nazi Regime in particular was the phenomenon of mass criminality for which certain organisations were responsible. In a great number of official and non-official statements, programmes and recommendations, attention was drawn to this fact, which was bound to confront the authorities charged with the meting out of just retribution with a formidable task and with great difficulties of a procedural and perhaps also of a substantive legal nature. For instance, the United Nations War Crimes Commission adopted on 16th May, 1945, a recommendation to its Member

(1) See Harris and Wilshere's *Criminal Law*, Seventeenth Edition, p. 482.
(2) See also the Report on the *Dreierwalde Trial*, on p. 85 of Volume I of this series.

Governments in which it was said that the Commission had "ascertained that countless crimes have been committed during the war by organised gangs, Gestapo groups, S.S. or Military Units, sometimes entire formations." In order to secure the punishment of the guilty, the Commission recommended, *inter alia*, the committing for trial, either jointly or individually, of all those who, as members of these criminal gangs, had taken part in any way in the carrying out of crimes committed collectively by groups, formations and units.

The British authorities, by enacting Regulation 8 (ii), would seem to have acted along the lines recommended as far as the burden of proof was concerned. Later, the Four Great Powers, in agreeing upon the Charter of the International Military Tribunal annexed to the Four Power Agreement of 8th August, 1945, went still farther by enacting the provisions of Articles 9 and 10 of the Charter concerning criminal groups and organisations. It is to be noted, however, that the judgment of the International Military Tribunal placed a restrictive interpretation on these provisions and made important recommendations with regard to them.(1)

In the Belsen Trial, each defendant was charged not only with taking part in the concerted action but also with offences personally committed and the Prosecutor stated in his opening speech (see Part I, p. 9) that, lest there should be the slightest shadow of doubt, no person had been brought before the court against whom the Prosecution would not produce some evidence of personal acts of deliberate cruelty and in many cases of murder. It is impossible to state whether and how far the court acted on Regulation 8 (ii) in convicting various accused. Reference may profitably be made, however, to the interpretations placed on this provision by Counsel.

Certain Defence Counsel claimed that the Prosecution were arguing that Regulation 8 (ii) made everyone who worked on the staff of Belsen or Auschwitz guilty of a war crime, *ipso facto*.

Both Defence and Prosecution were, however, agreed in fact that, before this provision could operate against any individual accused, it must have been proved that he knowingly took part in a common plan to ill-treat the prisoners in the two camps. The Prosecution claimed that, if such participation were proved, the insignificance of the accused's part, or the lateness of his arrival, would not serve to excuse him. For example, anyone taking part in the selection parades, knowing their purpose, took part in deliberately organised murder. The Prosecutor admitted that, if participation in only a limited ill-treatment were proved, then the responsibility would be less. On the other hand he claimed that proof of a conspiracy could be deduced from the acts of the accused and could well arise between persons who had never seen each other and had never corresponded together. Furthermore, the accused were as guilty if they joined in conspiracy already formed as they would have been had they originated it.

Major Cranfield and Captain Phillips pointed out that it could not be said that some of the accused had any power at all to control conditions at Belsen. Major Munro suggested that, if Regulation 8 (ii) were applied, the

(1) *The Judgment of the International Military Tribunal*, British Command Paper Cmd. 6964, p. 67.

accused would only be held collectively responsible for acts of a type similar to their own offences. Proof that an accused beat prisoners would not make him responsible for another's murder. Captain Roberts pointed out that common action was not the same as concerted action ; the latter involved prior planning with a definite end in view and full knowledge of the plan and of the end by the accused.

The Judge Advocate reminded the Court that, when they considered the question of guilt and responsibility under Regulation 8 (ii), the strongest case must be against Kramer, and then down the list of accused according to the positions they held.

At one point in the trial evidence was admitted by a witness as to acts of a person not identified by him. This incident illustrates both the application of Regulation 8 (ii), and the possible operation against Kramer of the principle of vicarious liability.

During the interrogation of the witness Abraham Glinowieski, the Prosecutor put to him a question concerning a person named Erich whom the witness had mentioned in his affidavit but whom he had not identified among the accused. Captain Corbally submitted that the Court ought not to hear this evidence. This witness had failed to identify Erich ; therefore this evidence was worthless, and not only against Erich himself. As it was a joint trial, Counsel considered himself entitled to object to it on behalf of the other prisoners whom he represented, and he thought that the other Defending Officers too would be entitled to object to it on those grounds. If the witness could not identify the man to whom he referred, the evidence was clearly worthless and it could only prejudice the whole mass of the prisoners before the Court.

The Prosecutor maintained that he was entitled to ask the question. He had a right to call evidence of cruelty and ill-treatment which went on at both camps, whether by the accused or not, so long as Kramer was the Kommandant of the camp and responsible for their behaviour. The accused were some of a group of people who set out to ill-treat and kill persons under their charge and evidence against other members of the group became evidence against them. That was the Prosecution's case, and on that ground alone, the Prosecutor would submit that, even if it were quite impossible to say who Erich was, or even if he did not know his name, the fact that he was one of the guards under Kramer and was permitted to behave in a way which the witness might say he behaved, made evidence of his acts admissible.

Addressing Captain Corbally, the Judge Advocate said : " I would be prepared to advise the Court that if this witness does not identify the accused whom you represent, then I shall tell the Court in my summing up exactly what you are saying now, but I am bound to tell the Court that in my view it is allowed to hear this evidence on the grounds that the Prosecutor has put forward. So far as you are concerned unless he is identified I agree, you are entitled to say there is no evidence against the man you represent ".

Unless the accused was identified, the Judge Advocate agreed that Captain Corbally was entitled to say that there was no evidence against the man whom he represented.(1) The Prosecutor said that he had made, up to then,

(1) In point of fact, Zoddel. See pp. 15 and 18.

no attempt to connect offences with any particular person because the witness had not recognised anybody.

Captain Phillips pointed out that ordinarily this evidence would be inadmissible as irrelevant and that it was only admitted by the special provision of Regulation 8, on the grounds that any one accused was to be held responsible for all the atrocities alleged to have been committed at Belsen. Before the Prosecutor could justify the inclusion of this evidence, however, he must satisfy the Court that, in the case of every one of the accused, there was at the moment sufficient evidence of concerted action to justify the admission of the evidence. Certain of the accused were only in Belsen for a very short period. Therefore, Counsel submitted that unless this evidence related or was shown to relate to specific accused, it was inadmissible on the grounds of irrelevance.

The Judge Advocate said he did not imagine for a moment that the Court would convict any of the accused merely because they happened to be at Belsen during the period charged. What the Judge Advocate thought the Prosecutor was going to say was: " If I establish that this camp was, in effect, itself a war crime in the way it was run, and I then show that one of the accused had an official position and was taking an active part in what was going on, then the Court will consider that ". The Judge Advocate did not quite see the relevancy of the Defending Officer's remarks on this particular point because the Prosecutor was offering a picture of the camp and at any rate the evidence would be relevant as regards Kramer, the Kommandant.

The Court decided to overrule the objection made by the Defence and invited the Prosecutor to continue with his examination.

The inclusion of this discussion on the effect of Regulation 8 (ii) in a section dealing with questions of evidence, and not in the later section on questions of substantive law, seems justified, despite the references made by the Prosecutor to the English law of conspiracy.(1) Such arguments were intended simply to elucidate the meaning of the term " concerted action ", and Regulation 8 (ii) as a whole appears to be relevant only for purposes of assessing evidence. What is to be proved or disproved remains " the responsibility of *each* member of that unit or group for that crime ".(2) Evidence rendered admissible by the Regulation is not more than *prima facie* evidence.

The Regulation, on the face of it, bears a resemblance to the rule of English criminal law that, after proof of a conspiracy between a number of persons, any act or statement by any one of them *in furtherance of the common design* may be given in evidence against them all.(3) But the reason for this rule is that each of the parties to a conspiracy has, by entering into it, adopted all his confederates as agents to assist him in carrying it out. Consequently, it would not be safe to assume without further enquiry that this rule of English criminal law is an exact model for Regulation 8 (ii).

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(1) See pp. 108-9. (2) Italics inserted.

(3) See Archbold, *Pleading, Evidence and Practice in Criminal Cases*, p. 1419; Kenny, *Outlines of Criminal Law*, 15th Edition, pp. 99, 161 and 341; Harris and Wilshere, *Criminal Law*, 17th Edition, p. 47.

8. *Admissibility of Evidence of Offences Committed outside Auschwitz and Belsen*

On 3rd October, 1945, Captain Corbally, in agreement with Captain Fielden, objected to a part of the affidavit of Bohumil Gromann because it alleged crimes commited by Dorr and Stofel on the march from the camp Klein-Bodungen to Belsen. No part of the evidence given in the affidavit was, in the submission of the Defence, connected with Belsen camp itself, and therefore it must be irrelevant on a charge which alleged that war crimes were committed by the accused whilst members of the staff of the Belsen camp. The accused were not at that time on the staff of Belsen.

The Judge Advocate, in summing up the ensuing argument, advised the Court that if they were satisfied that these men were on the staff of Belsen Concentration Camp at the time stated in the charge (between 1st October, 1942, and 30th April, 1945), and that they were responsible for the well-being of persons interned there, it would be within the Court's province to say that they did not find the charge bad because the crime occurred on the way to Belsen and not in Belsen itself.

The Judge Advocate reminded the Court that according to the Prosecution, although physically the accused were not at Belsen, they were going there. They had to deliver their convoy there and, claimed the Prosecution, it was reasonable for the Court to say that in substance the charge had been made out and that the two accused were on the staff of Belsen concentration camp. If they were not on that staff, on whose staff were they ? It was a matter for the Court to decide. As regards the victims, the Judge Advocate said that it was for the Court to decide whether it was proper to hold that they were persons interned in Belsen. They were undoubtedly going there and that is where they would have arrived if they had continued to the end of their journey. He advised the Court to examine the evidence in order to determine these questions.

The Court decided to admit the evidence. It was still open to the Defence to attack the weight thereof.

In his summing up, the Judge Advocate said, in this connection, that a man could not be convicted upon a charge which was not before the Court, but that if the Court were satisfied that the substance of the charge was proved they might find a person guilty though of an offence differing from the particulars set out in the charge. He did not think that it mattered very much, looking at the substance of the charge and not the shadow, whether the people in a convoy on its way to Belsen had already reached and become internees in Belsen. Both Stofel and Dorr were found guilty.

On the 4th October, 1945, Major Munro, on behalf of Ehlert, objected to part of an affidavit by Irene Loffler which did not refer either to Auschwitz or Belsen but to an incident which happened at Plaschau. Colonel Backhouse said that he was seeking to show that the accused were ill-treating prisoners before reaching Belsen, since it seemed from the cross-examination that the Defence intended to prove that conditions at Belsen were beyond their control. The Judge Advocate said that Ehlert appeared in both charges as an accused person, the suggestion being that the two concentration camps were in themselves a war crime and that this woman

was, along with others, a perpetrator of that war crime. This evidence was introduced to show she was systematically carrying out a course of conduct of this kind.

The Judge Advocate advised the Court that the law did admit evidence of that kind, and that if the Court decided to admit it it was legally in order. On the other hand, the Judge Advocate tended to the view of the Defence that it was not necessary to accept this evidence. The Court decided to omit the paragraph in question.

Nevertheless, at subsequent dates, evidence was admitted concerning the actions of various accused at camps other than Belsen and Auschwitz. For instance, Jutta and Inga Madlung bore witness to the good behaviour of Ehlert at Ravensbruck,[1] and evidence of Burgraf's misconduct at Drütte Camp contained in Kobriner's affidavit was admitted. In connection with the second instance, the Prosecutor again explained that the course of the cross-examination had shown that the Defence intended to claim that conditions at Belsen compelled the accused to behave roughly. This evidence of an accused's actions previously was intended to show that he was in fact acting in precisely the same way in a camp where those conditions had not arisen.[2] Again, Kramer admitted under cross-examination that he gassed persons at Natzweiller.[3]

D. OTHER PROCEDURAL QUESTIONS

1. *The Application by the Defence for the Severing of the Two Charges* [4]

The Defence applied for the trial of the two charges separately, quoting in their favour Rules of Procedure 16 and 108, and pointing out that their request was not the same as an application for a separate trial of individual accused such as was forbidden by Regulation 8 (ii) of the Royal Warrant.

Rule of Procedure 16, intended for proceedings by District Courts Martial is made to some degree applicable to Field General Courts Martial by Rule 109 which provides as follows :

> " The court may be sworn at one time to try any number of accused persons then present before it, but except so far as the convening officer has directed otherwise the trial of each accused person will be separate. The convening officer should only direct persons to be tried together in cases where the circumstances are similar to those mentioned in Rule 16, and the provisions of that rule will be complied with as far as practicable."

Rule 16, which was quoted in part by the Defence, runs in full as follows :

> " Any number of accused persons may be charged jointly and tried together for an offence alleged to have been committed by them collectively. Where so charged any one or more of such persons may at the same time be charged and tried for any other offence alleged to have been committed by him or them individually or collectively, provided that all the said offences are founded on the same facts, or form or are

(1) See p. 46. (2) See pp. 29 and 115. (3) See pp. 40 and 112. (4) See pp. 5-6.

part of a series of offences of the same or similar character. In any such case notice of intention to try the accused persons together should be given to each of the accused at the time of his being informed of the charge, and any accused person may claim, either by notice to the authority convening the court, or, when arraigned before the court, by notice to the court, to be tried separately, on the ground that the evidence of one or more of the other accused persons proposed to be tried together with him will be material to his defence; the convening authority or court, if satisfied that the evidence will be material, and if the nature of the charge admits of it, shall allow the claim, and the person making the claim shall be tried separately."

On behalf of those accused who appeared on both charges, reference was made by the Defence to Rule of Procedure 108, which in full reads as follows:

"The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act. No formal charge-sheet shall be necessary, but the convening officer may nevertheless direct the separate trial of two or more charges preferred against an accused; or the accused, before pleading, may apply to be tried separately on any one or more of such charges on the ground that he will be embarrassed in his defence if not so tried separately, and the court shall accede to his application unless they think it to be unreasonable. If such charges are separately tried, the provisions of Rule 62 shall apply as if the Field General Court Martial were a District Court Martial."

Rule 62 lays down certain rules which are applicable when the charges against an accused before a District Court Martial are inserted in different charge-sheets and which would presumably have been followed had the application for the severing of the two charges been granted. Rule 62 (A) states that the accused shall be "arraigned, and until after the finding tried, upon each charge-sheet separately, and accordingly the procedure in Rules 31 to 44, both inclusive, shall, until after the finding, be followed in respect of each charge-sheet, as if it contained the whole of the charges against the accused." (Rules 31 to 44 make provisions governing the course of trial from the arraignment of the accused to the finding of guilty or not guilty). *Inter alia*, Rule 62 also provides, in clause (B), that the "trials upon the several charge-sheets shall be in such order as the convening officer directs." The Convening Officer may, according to clause (D), direct that "in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets." In an explanatory footnote, the *Manual of Military Law* states that "Most of the ordinary cases which come before courts-martial are so simple in their facts that an accused person is not likely to be embarrassed by being tried upon several charges at the same time. But if the charges are complicated, or if the alleged offences were committed at different times, or if different sets of witnesses are required to prove the different charges, embarrassment is likely to arise." The *Manual* points out further that "after the finding of the court upon all the charge-sheets has been arrived at, the procedure will be the same as if all the charges had been inserted in one charge-sheet. Unless, therefore, the convening officer directs that the accused need not be

tried upon any subsequent charge-sheet, the court will not proceed to sentence until they have arrived at a finding on all the charge-sheets, and will then award one sentence in respect of them all. A finding of " not guilty " on any one or more charges in a charge-sheet (whether alternative or not) will be announced in open court."

It will be noted that even such a separation of the charges would not have entitled the trial of the two charges by different courts, which was also requested, though less strongly, by the Defence.

Footnote 1A to Rule of Procedure 16 states that " Where the offence of murder is charged, no other offence should be included in the same charge sheet." Rule 109, however, lays down only that Rule 16 shall apply to trials by Field General Courts Martial in the given circumstances " as far as practicable," and a footnote to the Rules could in any case have no legal authority. In claiming that the accused whom he represented could only be held " collectively responsible for other acts of a similar type " as those proved against them, " and nothing higher," Major Munro made no reference to this footnote.(1)

2. *Right of Accused to Have Evidence Translated* (2)

Immediately before Dr. Ada Bimko gave evidence, Lieutenant Jedrzejowicz said that, if the witness gave evidence in German, he would not require it to be translated into Polish.

The Judge Advocate felt bound to advise the Court that in his view, in this particular kind of Court, the accused must hear the evidence in the language which they could understand. Counsel could not possibly know how to cross-examine except on instructions from the accused whom he represented and his instructions must necessarily be determined by the evidence. The Judge Advocate advised the Court that he did not think that anybody should waive the rights of a person who did not understand a language when serious accusations of fact were being made. The Defending Officers were no doubt endeavouring to shorten the proceedings but he thought that the suggestion would be wrong in law.

The Court decided that the evidence must be translated into Polish so that the Polish accused would understand it, except in any case where a particular witness was called to make a specific accusation against one or two of the German accused and there was no question of that witness raising any point against the Polish accused. In cases where the Polish accused might be implicated by the witness, however, the evidence must be translated into Polish.

3. *Presence of Witnesses in the Court Room*

On 26th September, one of the Defending Officers mentioned that it had been brought to his notice that, while a witness was giving evidence, four other Prosecution witnesses, who had already been called, were in the public

(1) See p. 83.

(2) For a discussion on the same point see the Report on the *Scuttled U-Boats Case*, on pp. 65–66 of Volume I of this series.

gallery taking notes. Though admitting that it was not against the regulations for the witnesses to be there, the Defending Officer applied for the Prosecution witnesses to be excluded from the Court until the case for the Prosecution was closed.

The Prosecutor said he did not really object to this course, but added that, once the Prosecution witnesses had given evidence, normally they did remain in court. What the Defending Officers were afraid of was that the witnesses were acting as spies, taking notes of the accused's numbers and so on ; but it would be just as easy for somebody who was not a witness to do so on their behalf. The real answer would be to exclude the whole of the general public.

The Judge Advocate referred to the Rule of Procedure 81 which said :

> " During the trial a witness other than the prosecutor or accused ought not, except by special leave of the court, to be in court while not under examination and if while he is under examination a discussion arises as to the allowance of a question or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw."

The Judge Advocate added that the Rule of Procedure was one which affected General Courts Martial and it did not seem to apply to Field General Courts Martial and therefore not to a Military Court ; but the spirit remained and it was, in the Judge Advocate's opinion, entirely a matter for the Court to decide.(1)

The Court decided to uphold the Defending Officers' application and not to allow the Prosecution witnesses in Court after they had given evidence.

4. *Illness of an Accused and its Influence on the Proceedings*

On the 23rd October, the accused Gura fell ill and the question arose whether the trial could be continued in his absence or whether the charge against him would have to be dropped and the accused tried at some later stage.

After a consideration of the legal position the Judge Advocate, in his summing up, stated that Rule of Procedure 119(C) made it imperative for an accused to be present throughout his trial. Even if Gura had been able to come back after a short absence the trial would still not have been in order if it had continued in his case. The Judge Advocate said that the position was that Gura would not be found either guilty or innocent of this charge, but that the Court would regard the matter as " Not proceeded with to a conclusion ". Then it would be left to the appropriate military authorities to decide whether or not to bring him to trial again, starting afresh upon any charges they might consider appropriate.

Rule of Procedure 119(C) states : " The proceedings shall be held in open court, in the presence of the accused, except on any deliberation among the members, and the Judge Advocate (if any), when the court may be closed ". Rule 67 provides : " In case of the death of the accused or of such illness of

(1) It may be mentioned that Regulation 13 and Rule of Procedure 132 both lay down that a Court shall, in cases not foreseen by the legal provisions contained in the Regulations and Rules, do what " appears best calculated to do justice."

the accused as renders it impossible to continue the trial, the court will ascertain the fact of the death or illness by evidence, and record the same, and adjourn, and transmit the proceedings to the convening authority ". This Rule, however, even if it could have been held applicable in the case of Gura, is not one of those provisions, applicable to a District Court Martial, which are made applicable to a Field General Court Martial by other Rules of Procedure, mainly 121, and so to a Military Court.

Probably as a result of the difficulties which arose out of the absence of Gura, an amendment to the Regulations for the Trial of War Criminals was made by Army Order 8/46, whereby the following words were added at the end of Regulation 3 :

> " Notwithstanding the provisions of Rule of Procedure 119(C) a Court may, after his arraignment, proceed with the trial of an accused in his absence, if satisfied that so doing involves no injustice to such accused ".

5. *The Recording of Special Finding*

Rule of Procedure 121 makes Rule 44 among others applicable, " so far as practicable ", to a Field General Court Martial. Clauses (D) and (E) of the latter provision run as follows :

> " (D) Where the court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may instead of a finding of ' Not guilty ', record a special finding.
>
> " (E) The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein ".

During the examination of the accused Kopper, the Judge Advocate announced that the Court recognised that the person named " Korperova " in the Belsen charge must be the accused. At the beginning of his Closing Address,[1] the Prosecutor also made some remarks on the contents of the charges.

At the end of his summing up of the evidence relating to the offences alleged to have been committed at Auschwitz, the Judge Advocate said that the main allegations related to Allied nationals unknown. It was not necessary to prove everything in a charge. It was the substance which must be proved and if the Court were satisfied that there was substantial ill-treatment, causing death or physical suffering, to people whose names the Prosecution were not able to put forward that would allow the Court to convict the accused, even though they were not satisfied of the death of any named person.

As a result of the statements referred to in the last two paragraphs, the

[1] See p. 104.

Court recorded a special finding in that it stated that certain details would be deleted from the charges.(1)

E. QUESTIONS OF SUBSTANTIVE LAW

1. *The Sources of Substantive Law Regarding War Crimes*

Colonel Smith claimed that the Military Court trying the accused applied International Law and did not take its substantive law, as distinct from its procedure, either from the Crown or from Parliament. The Court was given its rules of procedure by the Royal Warrant but in deciding cases before it the former was not bound by, for instance, the British *Manual of Military Law*.

It is true that Regulation 1 of the Royal Warrant states : " ' War Crime ' means a violation of the laws and usages of war committed during any war in which His Majesty had been or may be engaged at any time since the 2nd September, 1939 ", and that Regulation 8 (iii) provides that : " The Court shall take judicial notice of the laws and usages of war ". It is also true that much substantive law on the matter of war crimes has been created or codified by international agreements such as the Hague Convention No. IV of 1907 (on the rules of land warfare) and the Geneva Prisoners of War Convention of 1929. On the other hand Regulation 9 of the Royal Warrant provides that the punishment of a war crime consists in any one or more of the following :—

(1) Death (either by hanging or shooting) ;

(2) Imprisonment for life or for any less term ;

(3) Confiscation ;

(4) A fine.

The Court may also order the restitution of money or property taken or destroyed by the accused. It would not be easy to maintain the proposition that provisions regarding punishment were mere matters of procedure. Further, there are spheres in which International Law is vague, and state practice is a very important source of law. The defence of superior orders is a case in point.

Chapter XIV (*The Laws and Usages of War on Land*) of the British *Manual of Military Law* is intended as a guide for the use of the military forces. It has not therefore the authority as a statement of International Law which attaches to an international treaty.

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(1) See p. 122. In this connection it is interesting to refer to the trial of a Japanese alleged war criminal, Sjt. Aoki Toshio, by a British Military Court at Singapore on 11th February, 1946. Toshio was charged with " committing a war crime in that he at Sonkurai Camp in the month of November 1943 in violation of the laws and usages of war by forcing some three hundred British prisoners of war at that time in his custody the majority of whom were sick and injured to enter a train containing no sufficient or suitable accommodation and by allowing Korean soldiers under his command to beat, kick and otherwise maltreat the said prisoners, causing the death of seven of the said prisoners and further injured the health of the remainder." The Court recorded a special finding of guilty, omitting the, words " causing the death of seven of the said prisoners." The sentence of three years imprisonment was confirmed by higher military authority. The Court thus removed the most serious details from the charge, and so made a more sweeping application of Rule of Procedure 44 than did the Court in the Belsen Trial.

Such publications, prepared for the benefit of the armed forces of various nations, are frequently used in argument in the same way as other interpretations of International Law, and, *in so far as their provisions are acted upon*, they mould state practice, which is itself a source of International Law.

At another point in his speech Colonel Smith set out to prove that the individual's first allegiance was to his national laws. Counsel's position would seem to be that, whereas the accusing state is bound by International Law on questions of substance, the accused must look first to his own laws. It could be argued, however, that the very fact that a Military Court did administer International Law would preclude an alleged war criminal from pleading on his behalf Municipal Law precedents such as *Mortensen* v. *Peters* and *Fong Yare Ting* v. *United States*.(1)

2. *Responsibility of State and Individual for Breaches of International Law*

Colonel Smith stressed that in International Law the general principle was that the State and not the individual was responsible for breaches of that law. There has not been universal agreement on the extent to which an individual can be held personally liable for breaches of such international agreements as the Hague Convention No. IV (Rules of Land Warfare) and the Geneva Prisoners of War Convention of 1929, according to the strict letter of which the responsibility for breach thereof lies on the State authority to which the perpetrator owes allegiance. The trend of opinion (2) and the practice followed by the Courts, however, has been to make the individual responsible for his acts in breach of international conventions, and this trend was illustrated on a high level by the decision pronounced by the International Military Tribunal at Nuremberg, that certain accused had made themselves criminals by waging war in breach of the terms of an inter-governmental agreement renouncing war undertaken as an instrument of national policy, the Briand-Kellogg Pact.(3) Indeed, the International Military Tribunal made use of the fact that the Hague Convention No. IV of 1907 had been enforced personally against its violators. The judgment on this point runs :

> " But it is argued that the Pact does not expressly enact that such wars are crimes, or set up courts to try those who make such wars. To that extent the same is true with regard to the laws of war contained in the Hague Convention. The Hague Convention of 1907 prohibited resort to certain methods of waging war. These included the inhumane treatment of prisoners, the employment of poisoned weapons, the improper use of flags of truce, and similar matters. Many of these prohibitions had been enforced long before the date of the Convention ; but since 1907 they have certainly been crimes, punishable as offences against the laws of war ; yet the Hague Convention nowhere designates such

(1) See pp. 74-5.

(2) See for instance Professor H. Lauterpacht, in the *British Year Book of International Law*, 1944, p. 64 ; Lord Wright in the *Law Quarterly Review*, January, 1946, p. 42 ; and Professor A. L. Goodhart in *The Juridical Review*, April, 1946, pp. 14–15.

(3) " Treaty Series, No. 29 (1929) " British Command Paper Cmd. 3410.

practices as criminal, nor is any sentence prescribed, nor any mention made of a court to try and punish offenders. For many years past, however, military tribunals have tried and punished individuals guilty of violating the rules of land warfare laid down by this Convention. In the opinion of the Tribunal, those who wage aggressive war are doing that which is equally illegal, and of much greater moment than a breach of one of the rules of the Hague Convention ".(1)

3. *The Nationality of the Accused*

The Court held five Poles guilty of war crimes against Allied nationals, thus approving the argument of the Prosecution that by identifying themselves with the S.S. the Polish accused had made themselves as guilty as they. The Court thus acted on the principle that its jurisdiction extended to the trial of Allied nationals alleged to have committed war crimes, their nationality being irrelevant in this connection.

4. *The Nationality of the Victims*

On the 3rd October, Captain Brown objected to part of Dora Almaleh's affidavit and submitted that the facts set out were completely irrelevant. The charge referred to a war crime and to the ill-treatment and death of Allied nationals. Paragraph 3 of the affidavit in question referred to a Hungarian girl and Counsel thought that it was within the knowledge of the Court that a war crime could not be committed by a German against a Hungarian. The Prosecutor made two points in replying. Hungary, he said, left the Axis before April, 1945, and had come on to the Allied side ; at that time, therefore, the Hungarians were at least some form of Allies, though Counsel did not know to what extent.(2) A more general point made by the Prosecutor was that what he was trying to prove was the treatment of the Allied inmates of the camp. He thought that he was perfectly entitled to put before the Court evidence of the treatment of other persons in the camp. If there were 10 people and he wanted to prove that one of them was badly treated, in the Prosecutor's submission, he was perfectly entitled to prove that the 10 were badly treated. The treatment of all the inmates in the camp was relevant to show the treatment of any individual inmate.

The Court decided that the paragraph be included in the evidence before the Court.

Colonel Smith claimed that only offences against Allied nationals could be regarded by the Court as war crimes, and that " Allied nationals " meant nations of the United Nations. The term therefore excluded Hungarians and Italians. As has been seen, the Prosecutor himself in effect disclaimed any intention of charging the accused of crimes against persons other than Allied nationals. Both Prosecution and Defence therefore recognised that, under the Royal Warrant, the jurisdiction of British Military Courts is limited to the trial of war crimes proper and excludes crimes against humanity as defined by Article 6(c) of the Charter of the International Military

(1) British Command Paper Cmd. 6964, p. 40.

(2) The paragraph alleged that Egersdorf shot a Hungarian girl in April, 1945.

Tribunal.(1) British Military Courts deal with such crimes only if they are also violations of the laws and usages of war.

A second question relating to the nationality of the victims of atrocities committed in the two camps arose out of Colonel Smith's claim that numbers of them had ceased to be Allied nationals, and had become German subjects, as a result of the annexation of their homelands by Germany. The Prosecutor replied that before it was possible for a country to be annexed the war must be ended. While the war was still in progress the citizens were entitled to the protection of the Hague Convention.

Oppenheim-Lauterpacht, *International Law*, Vol I, fifth edition, p. 450, states that the act of forcibly taking possession of a part of an enemy's territory during the continuance of war, " although the conqueror may intend to keep the conquered territory and therefore to annex it, does not confer a title so long as the war has not terminated either through simple cessation of hostilities or by a treaty of peace. Therefore, the practice, which sometimes prevails, of annexing during a war a conquered part of enemy territory cannot be approved. For annexation of conquered enemy territory, whether of the whole or of part, confers a title only after a *firmly established* conquest, and so long as war continues, conquest is not firmly established. For this reason the annexation of the Orange Free State in May 1900, and of the South African Republic in September 1900, by Great Britain during the Boer War, was premature."

This doctrine was underlined in the judgment of the International Military Tribunal at Nuremberg where it was stated :

> " A further submission was made that Germany was no longer bound by the rules of land warfare in many of the territories occupied during the war because Germany had completely subjugated those countries and incorporated them into the German Reich, a fact which gave Germany authority to deal with the occupied countries as though they were part of Germany. In the view of the Tribunal it is unnecessary in this case to decide whether this doctrine of subjugation, dependent as it is upon military conquest, has any application where the subjugation is the result of the crime of aggressive war. The doctrine was never considered to be applicable so long as there was an army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine could not apply to any territories occupied after the 1st September, 1939. As to the war crimes committed in Bohemia and Moravia, it is a sufficient answer that these territories were never added to the Reich, but a mere protectorate was established over them."(2)

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(1) Article 6 (*c*) of the Charter enumerates among the crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility :

> " Art. 6 (*c*). *Crimes against humanity :* namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated." For some provisions which govern United States Military Commissions set up for the trial of war criminals and which do reflect the influence of Article 6 (*c*), see Volume I, pp. 113–115.

(2) British Command Paper Cmd. 6964, p. 65.

5. *Civilians as War Criminals*

Colonel Smith assumed that the accused could not be regarded as members of the armed forces. The Prosecutor claimed that the S.S. were members of the German armed forces.

It would be harder to prove that the camp prisoners who were given minor official positions by the authorities were anything more than civilians. In meeting the argument that no war crime could be committed by Poles against other Allied nationals, the Prosecutor said that by identifying themselves with the authorities the Polish accused had made themselves as much responsible as the S.S. themselves. Perhaps it could be claimed that by the same process they could be regarded as having approximated to membership of the armed forces of Germany.

In any case subsequent court decisions have made it quite clear that civilians can commit war crimes. For example, in the *Zyklon B Case*(1) two German industrialists, undoubtedly civilians, were sentenced to death as war criminals for having been instrumental in the supply of poison gas to Auschwitz, knowing of its use there in murdering Allied nationals. Another instance among many is provided by the *Essen Lynching Case*(2) where civilians appeared among persons found guilty of being concerned in the killing of three British prisoners of war. *The Hadamar Trial*(3) provides an example from among the trials held before United States Military Commissions ; here the civilian personnel of a medical institution were found guilty of unlawfully putting to death Russian and Polish nationals.

6. *The Defence of Superior Orders*

There was some argument during the trial as to the extent to which the accused could plead the defence of superior orders.(4) It is not proposed here to set out at length the law and practice relating to superior orders in trials of war criminals since this task has already been performed in Volume I of this series, at pages 18–20 and 31–33. It will suffice to quote one legal text and one judicial utterance which are relevant to the issue and which have not appeared in the volume already published.

The Charter of the International Military Tribunal, in Article 8, provides that : " The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires " ; and on this the Tribunal made the following comment : " The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible."(5)

(1) See pp. 93–103 of Volume I of this series. (2) *Ibid*, pp. 88–92. (3) *Ibid*, pp. 46–54.
(4) See pp. 75-6, 79, 95-6 108 and 117-8. (5) British Command Paper Cmd. 6964, p. 42

ANNEX

TABLE OF ACCUSED

Name of Accused	Charge on which Accused's Name appeared	Position in the Camps	Verdict	Sentence
Antoni Aurdzieg	Belsen	Prisoner appointed a minor functionary	Guilty	Imprisonment for 10 years
Eric Barsch	Belsen	—	Not Guilty	—
Juana Bormann	Belsen and Auschwitz	Camp official	Guilty on the Auschwitz charge only	Death by Hanging
Herta Bothe	Belsen	Camp official	Guilty	Imprisonment for 10 years
Medislaw Burgraf	Belsen	Prisoner appointed a minor functionary	Guilty	Imprisonment for 5 years
Otto Calesson	Belsen	S.S. guard	Guilty	Imprisonment for 15 years
Wilhelm Dorr	Belsen	S.S. guard	Guilty	Death by Hanging
Karl Egersdorf	Belsen	—	Not Guilty	—
Herta Ehlert	Belsen and Auschwitz	Camp official	Guilty on the Belsen charge only	Imprisonment for 15 years
Gertrud Fiest	Belsen	Camp official	Guilty	Imprisonment for 5 years
Ida Forster	Belsen	—	Not Guilty	—
Ilse Forster	Belsen	Camp official	Guilty	Imprisonment for 10 years
Karl Francioh	Belsen	S.S. guard	Guilty	Death by Hanging
Irma Grese	Belsen and Auschwitz	Camp official	Guilty on both charges	Death by Hanging
Ladislaw Gura	Belsen and Auschwitz	—	Trial against him not proceeded with (see p. 146)	—
Hildegard Hahnel	Belsen	—	Not Guilty	—
Irene Haschke	Belsen	Camp official	Guilty	Imprisonment for 10 years
Anna Hempel	Belsen	Camp official	Guilty	Imprisonment for 10 years
Franz Hoessler	Belsen and Auschwitz	Camp official	Guilty on the Auschwitz charge only	Death by Hanging
Charlotte Klein	Belsen	—	Not Guilty	—
Dr. Fritz Klein	Belsen and Auschwitz	S.S. Doctor	Guilty on both charges	Death by Hanging
Josef Klippel	Belsen	—	Not Guilty	—
Helena Kopper	Belsen	Prisoner appointed Block Senior	Guilty	Imprisonment for 15 years

Name of Accused	Charge on which Accused's Name appeared	Position in the Camps	Verdict	Sentence
Georg Kraft	Belsen and Auschwitz	—	Not Guilty	—
Josef Kramer	Belsen and Auschwitz	Kommandant of Birkenau (Auschwitz No. 2) and later of Belsen	Guilty on both charges	Death by Hanging
Hilda Lisiewitz	Belsen	Camp official	Guilty	Imprisonment for 1 year
Hilde Lobauer	Belsen and Auschwitz	Prisoner appointed minor functionary	Guilty on both charges	Imprisonment for 10 years
Ilse Lothe	Belsen and Auschwitz	—	Not Guilty	—
Fritz Mathes	Belsen	—	Not Guilty	—
Klara Opitz	Belsen	—	Not Guilty	—
Vladislav Ostrowski	Belsen	Prisoner appointed minor functionary	Guilty	Imprisonment for 15 years
Walter Otto	Belsen	—	Not Guilty	—
Anchor Pichen	Belsen	S.S. guard	Guilty	Death by Hanging
Antoni Polanski	Belsen	—	Not Guilty	—
Johanne Roth	Belsen	Prisoner appointed minor functionary	Guilty	Imprisonment for 10 years
Gertrud Sauer	Belsen	Camp official	Guilty	Imprisonment for 10 years
Ignatz Schlomowicz	Belsen	—	Not Guilty	—
Oscar Schmitz	Belsen	—	Not Guilty	—
Heinrich Schreirer	Belsen and Auschwitz	S.S. guard at Auschwitz	Guilty on the Auschwitz charge only	Imprisonment for 15 years
Stanislawa Starotska	Auschwitz	Prisoner appointed Block Senior and Camp Senior	Guilty	Imprisonment for 10 years
Franz Stofel	Belsen	S.S. guard	Guilty	Death by Hanging
Elizabeth Volkenrath	Belsen and Auschwitz	Camp official	Guilty on both charges	Death by Hanging
Frieda Walter	Belsen	Camp official	Guilty	Imprisonment for 3 years
Peter Weingartner	Belsen and Auschwitz	S.S. guard	Guilty on both charges	Death by Hanging
Erich Zoddel	Belsen	Prisoner appointed Camp Senior	Guilty	Imprisonment for life

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